

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 21, 2023

3:32 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator James Kaufman, Vice Chair
Senator Löki Tobin
Senator Forrest Dunbar
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 8

"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 53

"An Act relating to involuntary civil commitments."

- HEARD & HELD

SENATE BILL NO. 45

"An Act relating to insurance; relating to direct health care agreements; and relating to unfair trade practices."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 8

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(S): SENATOR(S) WILSON

| | | |
|----------|-----|---------------------------------|
| 01/18/23 | (S) | PREFILE RELEASED 1/9/23 |
| 01/18/23 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/18/23 | (S) | HSS, L&C |

02/16/23 (S) HSS AT 3:30 PM BUTROVICH 205
02/16/23 (S) Heard & Held
02/16/23 (S) MINUTE (HSS)
02/21/23 (S) HSS AT 3:30 PM BUTROVICH 205

BILL: SB 53

SHORT TITLE: COMPETENCY; INVOLUNTARY CIVIL COMMITMENTS
SPONSOR(S): SENATOR(S) CLAMAN

02/01/23 (S) READ THE FIRST TIME - REFERRALS
02/01/23 (S) HSS, JUD
02/21/23 (S) HSS AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

GARY ZEPP, Staff
Senator David Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 8.

JEFFREY SINGER, Senior Fellow
Cato Institute
Phoenix, Arizona

POSITION STATEMENT: Testified in support of SB 8.

JARED KOSIN, President and CEO
Alaska Hospital and Healthcare Association
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 8.

BILL WARD, representing self
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 8.

STEVE FRANK, Board Member
Foundation Health Partners
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 8.

PATRICK SHIER, Representative
Pacific Health Coalition
Wasilla, Alaska

POSITION STATEMENT: Testified in support of SB 8.

MARY KASPARI, President
Interior Alaska Hospital Foundation

Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 8.

DAWN FRAZIER, representing self

Delta Junction, Alaska

POSITION STATEMENT: Testified in support of SB 8.

ERICK CORDERO, Vice President

Alaska Policy Forum

Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 8.

ANTONIA LEONARD, representing self

Wasilla, Alaska

POSITION STATEMENT: Testified in support of SB 8.

JAIMIE CAVANAUGH, Attorney

Institute for Justice

Arlington, Virginia

POSITION STATEMENT: Testified by invitation on SB 8.

ZACH YOUNG, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

MATTHEW MITCHELL, Senior Research Fellow

Knee Center

West Virginia University

Morgantown, West Virginia

POSITION STATEMENT: Testified by invitation on SB 8.

SENATOR MATT CLAMAN, District H

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 53.

EMMA POTTER, Staff

Senator Matt Claman

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 53.

NANCY MEADE, General Counsel

Office of the Administrative Director

Alaska Court System

Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 53.

ANGELA HARRIS, representing self
Juneau, Alaska

POSITION STATEMENT: Testified by invitation on SB 53.

MEGAN REGAN, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 53.

ACTION NARRATIVE

[3:32:50 PM](#)

CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Kaufman, Dunbar, Tobin, Giessel, and Chair Wilson.

CHAIR WILSON announced SB 45 was removed from the agenda.

SB 8-REPEAL CERTIFICATE OF NEED PROGRAM

[3:33:49 PM](#)

CHAIR WILSON announced the consideration of SENATE BILL NO. 8 "An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

[3:34:38 PM](#)

GARY ZEPP, Staff, Senator David Wilson, Alaska State Legislature, Juneau, Alaska, provided the sectional analysis for SB 8 as follows:

[Original punctuation provided.]

Sections 1-3: AS 12.25.030(e) & AS 12.55.155(c) (36)

PAGE 1, LINE 4 - PAGE 2, LINE 4:

Makes conforming amendments to AS 18.20.400 and AS 18.20.499 to eliminate references to AS 18.07.111, which is repealed under sections 9 and 10 of the bill.

Section 4: AS 18.20.400(c)

PAGE 2, LINE 8 - PAGE 4, LINE 10: Makes a conforming amendment to AS 18.26.220 by removing references to repealed sections of law.

Section 5: AS 18.20.400

PAGE 4, LINES 11 - 23: Makes a conforming amendment to AS 18.20.200(c)(7)(A)(i), which defines a "residential psychiatric treatment center" licensed by the Department of Family and Community Services.

Section 6: AS 18.20.499(2)

PAGE 4, LINE 24 - PAGE 5, LINE 5: Makes conforming amendments to AS 18.20.499(2) to eliminate references to AS 18.07.111, which is repealed under sections 9 and 10 of the bill.

Section 7: AS 18.26.220

PAGE 5, LINES 6 - 16: Repeals a section of uncodified law, section 4, chapter 275, SLA 1976, which provided a transition to allow medical facilities in existence or under construction before July 1, 1976 to obtain a certificate of need.

Section 8: AS 18.35.399(9)

PAGE 5, LINES 17 - 29: Makes a conforming amendment that removes the reference to the "certificate of need" statute AS 18.07.111, and replaces it with the updated statute reference under AS 18.20.400 (d), "Definitions".

Section 9: AS 18.07.021 - 18.07.111; AS 21.86.030(c)(1); AS 44.64.030(a)(18); and AS 47.80.140(b)

PAGE 5, LINE 30 - PAGE 6, LINE 1: Repeals all of AS 18.07, which describes the certificate of need program for health care facilities, and AS 21.86.030(c)(1), AS 44.64.030(a)(18), and AS 47.80.140(b), which also relate to the certificate of need program.

Section 10: Section 4, ch. 275, SLA 1976, is repealed:

PAGE 6, LINE 2: Repeals section 4, chapter 275, SLA 1976.

Section 11: Certificate of Need; Applicability:

PAGE 6, LINE 3 - LINE 8: Amends uncodified law and provides that the Department of Health may not take action on or after the effective date of sections 1-11 to revoke, enforce, or modify a certificate of need issued to a health care facility before the effective date of sections 1-11 of this Act.

Section 12:

PAGE 6, LINES 9 - LINE 14: Amends uncodified law by adding a new subsection that directs the Department of Family and Community Services to create necessary regulations by July 1, 2025, to implement the changes made by this Act by, but not before the effective date of sections 1-11 of the Act.

Section 13:

PAGE 6, LINE 15: States that section 12 of this Act takes effect immediately under AS 01.10.070(c).

Section 14:

PAGE 6, LINE 16: States that, except as provided in section 13 of this Act, this Act takes effect July 1, 2026

MR. ZEPP noted that Sections 5, 11, and 12 erroneously refer to the Department of Family and Community Services (DFCS) instead of the Department of Health (DOH).

[3:40:58 PM](#)

CHAIR WILSON opened public testimony on SB 8.

[3:41:21 PM](#)

JEFFREY SINGER, Senior Fellow, Cato Institute, Phoenix, Arizona, testified in support of SB 8 as follows:

[Original punctuation provided.]

My name is Jeffrey A. Singer. I am a Senior Fellow in Health Policy Studies at the Cato Institute. I am also a medical doctor specializing in general surgery and have been practicing that specialty in Phoenix, Arizona, for over 40 years. Thank you for allowing me to testify before the Senate Health and Social Services Committee regarding SB 8, which seeks to repeal health care Certificate of Need requirements. I appreciate this opportunity to provide my perspective as a health care practitioner and policy analyst to assist this committee in assessing existing policies.

[3:41:34 PM](#)

MR. SINGER continued:

Roughly four decades since the repeal of the 1974 federal law that incentivized states to establish "Certificate of Need" (CON) requirements before new

health care facilities can develop—or existing ones can add beds or equipment—CON requirements still exist to varying degrees in 35 states. A classic example of central planning, CON commissions are heavily influenced by incumbent health care providers. Attempts to reform or repeal them are often met by fierce resistance from the incumbents who try to make the case that they only have the interests of the general public in mind. CON laws render state health care systems sclerotic and unable to rapidly adjust their infrastructure to meet the changing demands of public health emergencies. Many governors suspended CON laws during the public health emergency. State legislators should formally repeal the CON laws in those states and those where they were not suspended.

[3:41:47 PM](#)

MR. SINGER continued:

Lawmakers enacted Certificate of Need Laws based on the theory that restricting the supply of health care services would somehow reduce demand for those services and thus restrain health care spending. However, policymakers should have noticed that third-party payers, private or government-run, pay for most health care services. This insulates most patients from the actual prices of health care services, while the third-party payers absorb the costs. Consumer-patients with little skin in the game have no incentive to be cost-effective. When price signals are inoperative, demand continues despite restrictions in supply. Shortages inevitably develop while prices paid by third-party payers increase at a greater rate than would have otherwise occurred. This is basic economics.

[3:42:29 PM](#)

MR. SINGER continued:

The only way to reduce health care expenditures when health care consumers are largely insulated from price effects is to decrease availability and access to health care. In a George Mason University Mercatus Center working paper, a review of 20 academic studies found that CON laws largely failed to achieve their goal of reducing health care costs and concluded that the overwhelming evidence is that CON laws are

associated with higher per-unit costs and higher expenditures. The numbers speak for themselves. National per capita health expenditures increased from \$2354 in 1974 to \$12,914 in 2021 (in constant 2021 U.S. dollars).

3:43:04 PM

MR. SINGER continued:

Despite the ineffective nature of these laws, states still have a variety of CON laws on the books today. The various states differ in the type and number of restricted facilities and expenditures. For example, Ohio restricts only long-term care services, while Kentucky restricts more than 24 different types of health care facilities. The state where I reside and practice medicine, Arizona, repealed all of the CON laws except for ambulance services in 1990. The Arizona Hospital Association supported this action. By 1990, California, Colorado, Idaho, Kansas, Minnesota, New Mexico, South Dakota, Texas, Utah, Wisconsin, and Wyoming repealed all of the CON laws.

Hospital administrators argue against the repeal of CON laws claiming these laws allow them to generate enough revenue to provide 24-hour emergency services and uncompensated care. Physicians and other health care practitioners also provide uncompensated care and other services. Yet state professional organizations don't argue for creating a certificate of need requirement before allowing additional doctors, nurses, psychologists, physical therapists, etc., to set up practices in a state. And they would be publicly derided if they did so.

3:43:47 PM

MR. SINGER continued:

New health care practitioners entering the state may provide competition to incumbents. This has not stunted the growth of the health care professions. Instead, it has benefitted health care consumers by increasing choice and access.

Lawmakers should heed the lessons the public health crisis provided and act now to repeal CON laws and rid their health care systems of discredited central planning reminiscent of a bygone era.

3:44:32 PM

JARED KOSIN, Present and CEO, Alaska Hospital and Healthcare Association, Anchorage, Alaska, testified in opposition to SB 8. He stated that to treat the repeal of CON as a binary choice grossly over-simplifies the issue. Healthcare is complex. The wholesale removal of CON directly threatens care access for vulnerable people, transparency, and overall healthcare costs, which is why most states still have CON laws. He agreed that healthcare costs are too high. However, healthcare is not a free market and will not respond as one because the prices for over 50 percent of healthcare services rendered are set and paid for by the government.

MR. KOSIN stated that eliminating CONs paves the way for a proliferation of ambulatory services that only serve patients with private insurance. This happened in Georgia, Pennsylvania, Ohio, and other states. Repeal of CON jeopardizes patients with Medicare and Medicaid. It also undermines the ability to offer core services at community hospitals. The repeal of CON laws leads to a proliferation of surgery and imaging centers; emergency care, labor and delivery, inpatient rehabilitation, and dialysis are impossible without these services in hospitals. He stated that people would not be better off having more surgery and imaging centers when hospitals cannot provide emergency services or deliver babies.

MR. KOSIN opined that balance is needed. The CON program is flawed; it has not been updated in twenty years. All the regulations for the CON program are in Alaska's Administrative Code. Modernizing regulations is the solution. He urged the legislature to direct the Department of Health to work with stakeholders on refining the Alaska Administrative Code and vote no on SB 8.

3:46:58 PM

BILL WARD, representing self, Delta Junction, Alaska, testified in support of SB 8. He stated that since 2018 a bill to repeal CON has been before the legislature. He has watched each bill die due to the legislature's irresponsible method of delaying bills to the end of a session for a budget battle. The legislature ignores action on important bills. Delta Junction needs advanced medical care facilities. CON restrictions exacerbate the situation. Delta Junction has two clinics that provide good urgent and routine care. Fairbanks' hospitals have handled emergency, advanced diagnostics, and extended care. The need for medical care in Delta Junction is recognized, but CON

laws prevent the expansion of care. Delta Junction patients are transported to Fairbanks if not stabilized within one day because the clinics lack the proper diagnostic equipment. Ambulance transport to Fairbanks is impeded by the weather and increased road use. Delta Junction's population is rising, and its citizens are aging. CON laws keep all eastern Alaska from receiving proper healthcare.

[3:50:42 PM](#)

STEVE FRANK, Board Member, Foundation Health Partners, Fairbanks, Alaska, testified in opposition to SB 8. He stated that Foundation Health Partners has a hospital, clinic, and long-term care facility. The foundation is a locally owned nonprofit organization. Surgery and imaging are two services that bring in money for the foundation. Repealing CON would allow others to take these services from the foundation but not offer the services that would not earn them a profit. Passing CON will hurt the foundation and cause Medicaid to increase. CON is a complicated issue. He warned the legislature to be careful in their decision because repealing CON will not reduce costs; it will increase the Medicaid budget.

[3:52:58 PM](#)

PATRICK SHIER, Representative, Pacific Health Coalition, Wasilla, Alaska, testified in support of SB 8 and said he favors measures that enlist the power of the competitive markets in pursuit of better healthcare access and pricing. The Pacific Health Coalition is a private nonprofit coalition of 49 self-funded health plans across Alaska and the Pacific Northwest. The coalition assists the 240,000 members in finding ways to provide the best pricing and value in quality healthcare. Member's plans saved over \$721 million in 2021, an increase of over \$100 million from the prior year. The coalition did this by leveraging available competitive principles. Competition is responsible for historic discounts in many areas, such as orthopedic surgery in south-central Alaska, where a provider approached the coalition to negotiate lower fees to reduce members' engagement in medical tourism. He opined that CON's intervention in healthcare had once been warranted, but it has since outlived its usefulness by creating barriers to Alaska's healthcare industry. Repealing CON would be the first step in unraveling many distortions in the healthcare industry. Repealing CON would help providers and consumers think of new ways to achieve high-quality, effective healthcare delivery in Alaska.

[3:55:08 PM](#)

MARY KASPARI, President, Interior Alaska Hospital Foundation, Delta Junction, Alaska, testified in support of SB 8 and provided a brief history of CON. She said Delta Junction is an underserved healthcare area in Alaska where CON laws do not help. From Delta Junction to the Canadian Border, there is no advanced health care available for Alaskans, only day clinics. The nearest hospital is 100 miles away, and getting there can be difficult due to weather, military convoys, and trucking services. A person does not realize the severity of the issue until it is their loved one in a life-threatening situation where time is of the essence. Repealing CON will increase Delta Junction's ability to knit necessary medical services in the community with the vast surrounding service area.

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DAWN FRAZIER, representing self, Delta Junction, Alaska, testified in support of SB 8. She said outlying communities drive through Delta Junction to get to a hospital in Fairbanks. People in those communities have driven in dangerous road conditions to reach Fairbanks to save lives. Community volunteers have worked hard to improve healthcare by establishing a clinic and pharmacy. The volunteers are now working to develop a small community hospital like those in Valdez, Nome, Cordova, and Wrangell. It is a big task for a worthy cause but receives no support from CON. Healthcare foundations, corporations, and organizations can weigh in on the decisions affecting Delta Junction, while its residents pay more for their care, additional for travel, hotels, and meals. The CON process is cumbersome, unfair, and influenced by profit and expenses. She opined that it is time to do away with the CON program. During COVID hospitals did not have enough beds due to CON laws.

[3:59:58 PM](#)

ERICK CORDERO, Vice President, Alaska Policy Forum, Palmer, Alaska, testified in support of SB 8. He stated that CON is detrimental to Alaskans. CON makes opening new healthcare facilities in Alaska difficult and expensive because patients pay higher costs for lower-quality care and have fewer options. CON laws require businesses to prove their services are necessary before entering the market, which limits accessibility and innovation. The laws also make it challenging to adapt to emerging healthcare needs quickly. Allowing existing providers to give input on their potential competition is not in the best interest of patients. COVID prompted Alaska and other states to suspend CON requirements to ensure healthcare facilities could deliver essential services. The suspension of CON created no

problems but made the healthcare system more responsive to emerging needs. Alaska needs to follow the example of states that have removed CON laws.

[4:01:45 PM](#)

ANTONIA LEONARD, representing self, Wasilla, Alaska, said she supports SB 8, the repeal of CON.

[4:02:31 PM](#)

CHAIR WILSON stated the committee would hear from previously invited testimony that could not testify due to time constraints.

[4:02:38 PM](#)

JAIMIE CAVANAUGH, Attorney, Institute for Justice, Arlington, Virginia, testified by invitation on SB 8 and said that from a policy perspective, several states with CON laws purposely exclude rural areas from the program. Alabama, Oregon, Tennessee, Washington, and Florida excluded rural areas from their Con programs to encourage hospitals and other healthcare facilities to expand into new areas. She opined that Utah and Colorado had not had a hospital closure since 2005, and neither state has CON laws. Therefore, it cannot be CON laws that prevent rural hospital closures. In 1987 the federal government repealed CON laws because findings showed the laws failed to control healthcare costs and were insensitive to community needs. Since then, various US government agencies have continued to be consistent and support CON repeal. In 2019 the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice submitted testimony supporting Congress's repeal. They testified that CON proponents concede that CON laws allow incumbent providers to earn greater profits than they would in a competitive environment. They argued that these providers use profits to cross-subsidize charity care. However, the evidence does not show that CON laws advance that goal. Empirical evidence contradicts the notion that dominant providers use market power to cross-subsidize charity care. DOJ and the FTC reviewed empirical evidence in a peer-reviewed journal and found that CON does not increase the amount of cross-subsidized charity care. They found that CON laws lead to higher costs, lower quality, and decreased access to care. She urged support for SB 8.

[4:05:32 PM](#)

ZACH YOUNG, representing self, Anchorage, Alaska, testified in support of SB 8. He said CON laws are antiquated and have done the opposite of their intent. Alaska has severe medical care

needs and a lot of rural communities. CON has caused undue hardship to Alaska's rural communities that should have hospitals. He stated his belief that repealing CON will provide affordable healthcare and competition within the hospital system, thereby creating more efficiency for the entire state of Alaska.

[4:07:16 PM](#)

CHAIR WILSON closed public testimony on SB 8.

[4:07:34 PM](#)

MATTHEW MITCHELL, Senior Research Fellow, Knee Center, West Virginia University, Morgantown, West Virginia, said he wished to address the comment that healthcare is not a free market and Medicaid costs will increase with the repeal of CON. He said 3 out of 10 Americans live in a state without CON, and their experience, as reported through 100 different studies, is greater access to higher quality and lower cost care. Alaska does not have to speculate what will happen with its repeal. A paper by Nancy Miller, Charlene Harrington, and Elizabeth Goldstein titled Access Community-Based Long Term Care: Medicaid's Role was published in 2002 in the Journal of Aging and Health. They found that CON is associated with higher per capita Medicaid community-based care expenditures. Two other studies found that CON's repeal does not affect Medicaid spending. Zero studies out of 40 found that Con is associated with reduced spending on Medicaid.

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CHAIR WILSON held SB 8 committee.

[4:10:15 PM](#)

At ease.

SB 53-COMPETENCY; INVOLUNTARY CIVIL COMMITMENTS

[4:12:18 PM](#)

CHAIR WILSON reconvened the meeting and announced the consideration of SENATE BILL NO. 53 "An Act relating to involuntary civil commitments."

[4:12:49 PM](#)

SENATOR MATT CLAMAN, District H, Alaska State Legislature, Juneau, Alaska, sponsor of SB 53, stated that his office began working on SB 53 at the request of legislators wanting to respond to constituent Angela Harris's tragic experience.

SENATOR CLAMAN moved to slide 2 and read:

[Original punctuation provided.]

Angela was returning books to the Loussac Library in Anchorage when a man stabbed her in the back. The perpetrator had attacked two other women less than two months earlier, and was released by the court after he was found incompetent to stand trial. We believe this individual should not have been released to the community. A petition for an involuntary commitment should have been filed based on his prior attacks and his psychiatric condition that made him a danger to the community.

[4:13:43 PM](#)

SENATOR CLAMAN turned to slide 3 and read:

[Original punctuation provided.]

In working on this legislation, we reviewed the extensive legal history of John Hinckley. You may remember that John Hinckley was arrested for his assassination attempt on President Ronald Reagan in 1981. Hinckley was charged with attempted assassination of the President; assault on a federal officer of the United States; and illegal use of a firearm. In the trial, the jury found Hinckley not guilty by reason of insanity. Immediately upon this finding by the jury, Hinckley was committed to Saint Elizabeths Hospital for an indeterminate period of time - an involuntary commitment.

From 1981 to 2022, the restrictions imposed on Hinckley by the court were lessened as his psychiatric condition improved. During his hold, Hinckley petitioned the court numerous times for release.

[4:14:26 PM](#)

SENATOR CLAMAN continued:

For example, in 1999 Hinckley filed a motion for conditional release. The court was required to make findings of fact and conclusions of law whether the proposed release would benefit the patient and be safe for the public. The court denied the motion because of Hinckley's history of deception, the hospital's

repeated inability to control his actions, and an incident where Hinckley attempted to stalk a member of the staff. Hinckley's counsel appealed the decision, and the appellate court affirmed the ruling of the lower court.

In 2008, Hinckley was approved by the court for limited conditional release for overnight stays at his mother's home. The plan included very detailed requirements for the plan of his stay, who was meant to supervise Hinckley, and how many times he was meant to meet with the local psychiatrist during these stays.

In 2013, Hinckley was approved for eight 17-day visits with the purpose of these visits being genuine integration into the community. The court found that Hinckley's narcissistic personality disorder was not evidence of potential dangerousness but maintained concerns about his failure to integrate himself into the community.

[4:15:26 PM](#)

SENATOR CLAMAN continued:

In 2016, the hospital and government agreed that Hinckley's primary diagnoses had been in full and sustained remission for well over twenty years. Most experts agreed that he had received the maximum benefits possible in an in-patient setting. The court approved full-time convalescent leave with additional and modified conditions.

Ultimately, in 2021, the court held a status conference at which government counsel and Mr. Hinckley's counsel discussed his mental stability, compliance with conditions set by the court, and their agreement specific to Mr. Hinkley's 2022 unconditional release.

You may ask - why talk about John Hinckley. Here's why:

Hinckley was a person with a mental illness who spent many years in involuntary commitment and who was only released when he no longer presented a danger to the community.

[4:16:22 PM](#)

SENATOR CLAMAN turned to slide 4 and said:

Senate Bill 53 deals with Title 12, which is related to criminal charges, and Title 47, which is related to civil proceedings.

The determination of whether an individual is competent or incompetent to stand trial, in addition to restoration to competency if deemed incompetent, is a process set out in the Code of Criminal Procedure in Title 12. The standard for determining an individual's competency to stand trial is found both in statute and in a long history of case law. A simplified explanation of competency, an important consideration of the court, is whether the individual understands the charges against them, can assist their lawyer, and is therefore able to plead guilty or not guilty to the charges.

Competency is not a defense and is unrelated to the mental state of the individual at the time of the crime. In order to protect constitutional due process rights of individuals in our legal system, a person who is incompetent to stand trial cannot be convicted of a crime. This is because a person has the right to understand the crime with which they are charged and the consequences of the crime they've been charged with.

A separate process is used for involuntary commitment in Title 47 Welfare, Social Services, and Institutions. The standard for involuntary commitment is whether an individual, as a result of their mental illness, is a danger to themselves or others.

[4:17:57 PM](#)

SENATOR CLAMAN turned to slide 5 and said:

[Original punctuation provided.]

Senate Bill 53 creates a duty for the Department of Law to file a petition seeking involuntary commitment when: a defendant is found incompetent to stand trial at the expiration of the final period for competency restoration, the defendant is charged with a felony

offense against the person, and they present a danger to themselves or others.

The legislation does not specify which side of the Department of Law files the petition, either criminal or civil division, and this is meant to allow the Attorney General's office more management flexibility in determining who makes these petitions.

[4:19:56 PM](#)

SENATOR CLAMAN turned to slide 6 and said:

[Original punctuation provided.]

In our conversations with Angela, we grew to understand the direct impact current statute has had on her ability to find the assurance she needs moving forward. The legislation before you creates a five-year involuntary hold option for individuals who meet the following qualifications:

- They have been found incompetent to stand trial on a felony offense against the person
- They have been previously subject to involuntary commitment orders for 30, 90, and 180-day holds
- They have a history of felony offenses against the person
- And they present a danger to themselves or others

This expansion of Alaska's involuntary commitment statutes reflects the reality that there exists a small number of individuals who, as a result of behavioral health issues, present a danger and are not suitable for community-based treatment options.

[4:19:37 PM](#)

SENATOR CLAMAN turned to slide 7 and said:

[Original punctuation provided.]

As a matter of protecting the due process of individuals in the state of Alaska's care, Senate Bill 53 includes language that the respondent may petition for early discharge. The court must find, in order to accept a petition for early discharge, that the

respondent is no longer a risk to themselves or others.

[4:20:08 PM](#)

EMMA POTTER, Staff, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 53 as follows:

[Original punctuation provided.]

Section 1

AS 12.47.110. Commitment on finding of incompetency Adds a new subsection (f) clarifying that the Department of Law has a duty to file an involuntary commitment petition when a person has been found incompetent to stand trial and the criminal charges are being dismissed due to the defendant's inability to be restored to competency.

Section 2

AS 47.30.771. Additional five-year commitment Adds a new section creating additional five-year involuntary commitment. Five-year commitment petitions are filed at the expiration of 180-day commitments for individuals who meet the following criteria: the respondent is mentally ill and as a result is likely to cause harm to self or others; the respondent has a history of repeated felony offenses against a person under AS 11.41, or attempts of harm to self; the respondent has been found incompetent to stand trial under AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41; and commitment of the respondent for greater than 180 days but not greater than five years is necessary to protect the public.

Clarifies that findings of fact relating to the respondent's behavior made at 30-day, 90-day, and 180-day commitment hearings shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. Instructs the department to submit an annual report to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record of the respondent detailing how many respondents are committed under this section and how much time remains on each order of commitment.

Section 3

AS 47.30.780. Early discharge Amends subsection (a) to include reference to new subsection (c) of AS 47.30.780.

Section 4

AS 47.30.780. Early discharge Adds new subsections which require that the professional person in charge may not discharge respondents from involuntary commitment unless the court enters an order officially terminating the involuntary commitment after a hearing. This section requires a court decision on discharge of a respondent from involuntary commitment.

Section 5

AS 47.30.805. Computation, extension, and expiration of periods of time Amends section (a) to include five-year commitments. States that five-year commitment period expires at the end of five years after the 180-day period of treatment.

[4:22:57 PM](#)

SENATOR GIESSEL asked Senator Claman why he chose five years for the commitment period.

[4:23:05 PM](#)

SENATOR CLAMAN stated he sought to establish balance by not taking away too many rights. For example, a 50-year commitment seems excessive regarding due process and what a court would approve. Five years has some equivalencies to certain felony sentences. The five-year hold provides time for the offender's successful planning and community integration. Having hearings every six months puts an undue burden on victims such as Angela.

[4:25:24 PM](#)

SENATOR DUNBAR referred to page 2, lines 12-15, and asked for an explanation of "repeated." He wondered whether a person would need more than one prior offense to receive a five-year commitment.

[4:26:37 PM](#)

SENATOR CLAMAN opined that the court of appeals determined "repeated" to mean more than one. He said he leans towards removing the word "repeated" because one prior felony offense should be adequate. The first incident is not enough, but the second incident would be enough to receive a five-year commitment.

[4:27:33 PM](#)

SENATOR DUNBAR opined that a person would not receive a five-year commitment until a third felony incident occurred based on how SB 53 was written.

[4:28:00 PM](#)

SENATOR CLAMAN said his understanding and the court of appeals opinion would be that a second incident would be the basis to move forward. He thinks "repeated" should be removed from SB 53.

[4:28:33 PM](#)

SENATOR DUNBAR asked how other states have handled involuntary civil commitment.

[4:28:53 PM](#)

SENATOR CLAMAN replied that there are two topics associated with involuntary commitment. The first is how long an incompetent person should be held to establish competency. The second is the length of time for a civil commitment. SB 53 seeks to make Alaska one of the first states to have a long involuntary civil commitment based on facts about a person's unprosecuted criminal conduct. He said he was not familiar with other states' incompetency hold laws. Recently, Colorado has allowed individuals to be held to try and restore them to competency using the length of the potential criminal charge. If someone was facing a 99-year sentence, they could be held involuntarily for 99 years to try and restore their competence. He stated his belief that this creates due process concerns somewhere after year one but before year ninety because it is like putting someone in jail without holding a trial.

[4:30:48 PM](#)

SENATOR KAUFMAN referred to Page 2, line 10, and asked if the requirements are inclusive.

[4:31:20 PM](#)

SENATOR CLAMAN said page 2, line 18 uses the word "and, which means requirements 1 - 4 in subsection (b) must all be true.

[4:31:40 PM](#)

SENATOR TOBIN asked whether an incompetent person stands trial for their crime once declared competent.

SENATOR CLAMAN replied that there are three outcome scenarios for an incompetent individual who has committed a crime:

- If, after a period of hold to restore competency, the person is not restored to competency, that fact is brought before the court, and the court dismisses the charges based on incompetency.
- If a person is deemed competent sometime after the court has dismissed charges based on incompetency, the charges against them can be reinstated.
- If the court dismisses charges based on incompetency and sometime after that, the person is deemed competent, the original charges can be reinstated.
- If the person is deemed competent after a period of hold to restore competency, the charges proceed.

[4:33:23 PM](#)

CHAIR WILSON asked Senator Claman whether the three outcomes of a commitment hold were included in SB 53 and if it mentions there is no statute of limitations for incompetency.

[4:33:53 PM](#)

SENATOR CLAMAN replied that SB 53 does not require the specification of the statute of limitations that apply to certain crimes. There is no statute of limitations for murder, sexual assault, or abuse. He suggested seeking a legal opinion.

[4:34:37 PM](#)

CHAIR WILSON questioned whether SB 53 needs to contain language stating a person could face original charges once found competent.

[4:34:55 PM](#)

SENATOR CLAMAN opined that it would not prevent charges from being filed. He deferred to the general counsel.

[4:35:29 PM](#)

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Juneau, Alaska, said AS 12.47.110(b) clarifies what happens when somebody is found incompetent. She summarized AS.47.100(b) as follows:

If the person is what we call not restorable after two six-month periods, the charges shall be dismissed without prejudice; without prejudice meaning the prosecutor is free to refile. But it also says if the defendant remains incompetent for five years, the same

time period as Senator Claman's bill, by the way, after the charges have been dismissed, the defendant may not be charged again, for that same facts, except if the original charge is an A felony or an unclassified felony. So, I think that's very clear; for the more serious crimes, you can do it at any point, but after five years, the 11.41 crimes that are B or C felonies or below could be recharged because the case was dismissed without prejudice.

[4:36:41 PM](#)

SENATOR TOBIN said a patient or individual under SB 53 who has committed a crime must petition a competency declaration. She asked if an individual could game the system by not applying for a declaration of competency.

[4:37:24 PM](#)

SENATOR CLAMAN said he is concerned that a decision of incompetency under Title 12 is being confused with an involuntary commitment decision under Title 47. SB 53 is more about involuntary commitment than competency. Involuntary commitment results from a person's mental health posing a defective danger to oneself or others. He stated his understanding that courts ultimately decide competency. A medical professional can opine that a person is competent to stand trial, but the decision is not made solely by a physician or evaluator. SB 53 seeks to establish that before a person's release from an involuntary commitment by a physician or evaluator, they must have a court hearing and receive a non-dangerous finding before being released.

SENATOR TOBIN said she wants to ensure that the court could hold a person accountable following the five-year jeopardy period if they are competent.

SENATOR CLAMAN responded that after being held incompetent for five years, the court could not charge a person that didn't have a Class A or unclassified felony charge against them. However, if four years and six months into an involuntary hold, a person was found competent, the court could bring charges against them.

[4:39:59 PM](#)

CHAIR WILSON asked how it is justifiable to hold a person in an involuntary hold for five years if the sentence they would have received for the crime committed was less than five years.

[4:40:45 PM](#)

SENATOR CLAMAN replied that there is no criminal sanction when a person is declared incompetent and criminal proceedings are dismissed. Once this happens, the individual is held involuntarily based on their psychiatric condition if they are a danger to themselves or others. He stated there are people in the Alaska Psychiatric Institute who are on serial 380-day holds based on a finding of danger to the community. The ability to hold an individual is unrelated to the criminal process because incompetency means they do not understand the process.

[4:41:43 PM](#)

CHAIR WILSON turned to invited testimony on SB 53.

[4:41:55 PM](#)

ANGELA HARRIS, representing self, Anchorage, Alaska, gave her invited testimony as follows:

I was stabbed while returning borrowed items at the Loussac Library on Sunday afternoon, February 13, 2022. My family and I've lived in Alaska since 2005. I am a mother to four children, all of whom I've regularly taken to the library since they were young. I have two daughters serving in the United States Navy; one promoted me to grandma a month ago. And [I've] a senior and junior. I am serving on active-duty coast guard. My assailant, Corey Lee Ahkivgak, drove a dirty Leatherman knife into my spine, between L2 and L3, penetrating my spinal cord.

Mr. Ahkivgak was located and arrested by APD later that afternoon while I was awaiting emergency surgery to remove the knife and the blood clots that damaged a nerve bundle in my spinal cord. The stabbing left me paralyzed from the waist down and with decreased sensation in my upper extremities. I was unable to live in my home until we made modifications at our house to become handicap accessible and safe for me to navigate. My parents flew in from the Lower-48 to live in our home with my two youngest children for eight months.

I'm now on a long road to recovery. I attended physical therapy and occupational therapy five days a week for approximately nine months, and I see a counselor no less than twice a week to help work through the PTSD of my assault.

After the assault, I was unable to see or hug any of my family members due to the COVID protocol. I was left to deal with the physical, mental, and emotional impact on my own. To have one designated approved visitor after I was transferred to St. Elias Rehabilitation Center, we had to petition committee members to request access. After many declines and being subpoenaed by the Grand Jury, I requested to be discharged against the doctor's orders because I could no longer navigate the tragedy on my own. Eventually, the committee agreed to approve one visitor. The designated member was permitted to enter and exit the building only once a day.

[4:44:35 PM](#)

MS. HARRIS continued:

Take a moment to imagine sitting alone, left to process the absolute worst event in your life. Sepsis [indiscernible], as the knife was unclean, and your parents and your children can only see from a window. Worse than this, imagine that it's you on the other side of the window looking at your loved one wounded by a man who has been arrested on multiple occasions and released back into our community because the law has no provisions for him.

Mr. Ahkivgak has a history of assaulting women. In 2018 he violently attacked his mother with a frying pan. He attacked two other women on December 10, 2021. He was declared incompetent and not restorable, and he was released back to the public on January 6, 2022. On February 10, 2022, he was arrested for trespassing. Thirty-eight days after his release, he stabbed me on February 13, 2022. He was declared incompetent, and he could be released back into the public after his next competency hearing in a few months. There's no longer a record of these assaults, and the courts have been very unclear on whether or not they maintain information on those cases that are dropped due to incompetence.

Furthermore, I no longer have the right to know when he is released because I'm told it violates his HIPAA rights. We need improvements to the state's mental health system, particularly regarding violent offenders, and we need to close the loophole and

current laws that allow people to commit violent crimes only to be released back into our community. We need to give victims more peace.

4:46:21 PM

MS. HARRIS continued:

As I work towards healing, it's difficult for me to live with the reality that my assailant could be released after the next 180-day hearing. I attended several block hearings, hearings where numerous cases are grouped and heard one after another when the issues are very similar. And I was appalled at how often the defense was able to get their clients released from custody simply because there's a waitlist for restitution, and it was too long, and it began to encroach upon the defendant's rights. I'm a firm believer that everything happens for a reason, and I know that Jesus would not have put me in this position if I couldn't handle it. With that being said, I intend to share my story while I continue to attend physical and occupational therapy appointments to physically heal with the hopes of reducing the amount of senseless violent assaults.

Aaron, who was the main provider of our home was unable to work as he had to care for me to take me to and from my daily outpatient care appointments. The State offers no financial assistance to supplement his lost income, and because he was not considered a victim, he was not offered support for the trauma that he experienced by watching his partner of 12 years lay on the floor with a knife in her back. There's no reimbursement for items needed to assist victims in daily living. Victims for Justice has a \$40,000 cap on services provided. I would have blown through that the first hour after my attack. If I were not on active duty with the United States Coast Guard at the time of my attack, I would have very limited resources and cannot imagine the ruins of other victims and what they've experienced. As the perpetrator, Mr. Ahkivgak has more rights, options, and resources at his disposal than I do as his victim.

My attack is an example of why we need to be tougher in our laws and build out mental health facilities to get violent offenders the help that they need and to

properly prosecute them once they're restored. API serves our entire state, yet they're operating on a very limited capacity with a maximum of 80 beds, and only 10 of those are designated for restoration. If the state of Alaska has a robust Mental Health Trust, where are the funds being allocated if not API?

[4:48:37 PM](#)

MS. HARRIS continued:

We must address the common element of inadequate mental health services for violent offenders and their victims. I just share with you my experience and navigation through this process. I share this with you and all fellow Alaskans to emphasize that we must close the loopholes that allow violent offenders to victimize more innocent Alaskans. It's currently up to the victims to pursue a civil commitment if their assailant has been released due to incompetence. Why hasn't the state taken on this responsibility?

Not every victim has resources to heal themselves, much less pursue a civil commitment request against their assailant. I listened in on the block hearings, and I've heard victims plead with the courts to keep their attacker from being released, only to hear that they couldn't hold them because it exceeds a reasonable amount of time for them to get evaluated or treated.

The moment an offender commits a criminal act against a fellow citizen, then their right of privacy should be outweighed by the victims, and the public's right to know because this is a public safety issue. SB 53, presented here today by Senator Claman, is an opportunity for you and your elected positions to make changes that are beneficial for all Alaskans, whether victim or offender. Senate Bill 53 is a good starting point, but I encourage each of you to learn more about the issues and find solutions to prevent what happened to me from happening to others. Without your support, my story will become normal for far too many Alaskans. My final question to all of you - Is my sequence of events going to be the new normal, or do you have the internal fortitude to support and pass this bill so there are less Alaskans presenting with the same

scenario as I've lived? Thank you for your attention and your time.

[4:50:38 PM](#)

SENATOR KAUFMAN thanked Ms. Harris for her testimony.

[4:51:08 PM](#)

At ease.

[4:52:02 PM](#)

CHAIR WILSON opened public testimony on SB 53.

[4:52:32 PM](#)

MARK REGAN, Legal Director, Disability Law Center, Juneau, Alaska, testified in opposition to SB 53 but apologized on behalf of the system for what happened to Ms. Harris. He stated that if state officials had the capacity in places like the Alaska Psychiatric Institute and could have filed a civil commitment petition before the state deemed Mr. Ahkivgak incompetent to proceed, he would not have been released to the community, and the tragedy would not have happened. He stated that the problem is not loopholes in the system; rather, the state has not set up the system to deal with the problem. He said a particular part of the system's setup is the idea of competency restoration. API is not the right place for competency restoration because it participates in the overload at API.

There are 80 beds at API, and ten are devoted to competency restoration. Competency restoration should not occur in jail and cannot happen at API because the ten beds are full. There are long waitlists of people in prison who have been found incompetent without a place to go through competency restoration. A positive outcome of this tragedy would be revising the competency restoration system allowing more people to receive treatment. The solution is not to impose mandatory civil commitment of up to five years. Had the system functioned correctly, the solution would have been for the state to file a petition for civil commitment.

[4:56:23 PM](#)

CHAIR WILSON stated he has heard that people are using incompetency hearings as an easier way to get charges dropped because of the time constraints and limits on the Department of Law. He asked how many evaluations are on the waitlist and if more people are needed to handle the workload. He asked if it is possible for victims of attackers in civil commitment to be

notified of their attacker's release, like the Victim Information and Notification Everyday system (VINELink). VINELink empowers survivors of convicted criminals. He stated he does not see it as a HIPPA violation because personal information is not released.

[4:58:06 PM](#)

SENATOR CLAMAN replied that he would provide the committee with the number of people in restoration holds. He knows the number of people in sequential long-term civil commitments. His office is looking into options for notice requirements that do not run afoul of HIPPA. He stated his belief that while the state could not integrate notification of civil commitment release with the criminal system, other options could be available since civil commitment proceedings are not confidential. He asked if the committee would like the statistics on the current number of civil commitments.

[4:59:35 PM](#)

CHAIR WILSON responded yes, and also the number of people in criminal commitments since the systems would be similar.

[4:59:47 PM](#)

SENATOR CLAMAN stated that the Department of Family and Community Services had reported ten individuals with long-term civil commitments, and he provided their commitment dates.

[5:01:09 PM](#)

CHAIR WILSON closed public testimony and held SB 53 in committee.

[5:01:47 PM](#)

There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee meeting at 5:01 p.m.