

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 29, 2023

1:30 p.m.

**MEMBERS PRESENT**

Senator Matt Claman, Chair  
Senator Jesse Kiehl, Vice Chair  
Senator James Kaufman  
Senator Löki Tobin

**MEMBERS ABSENT**

Senator Cathy Giessel

**COMMITTEE CALENDAR**

CONSIDERATION OF GOVERNOR APPOINTEES:

Commission on Judicial Conduct  
Todd Fletcher - Anchorage

- CONFIRMATION ADVANCED

Board of Parole  
Sarah Possenti - Fairbanks

- CONFIRMATION ADVANCED

SENATE BILL NO. 53  
"An Act relating to involuntary civil commitments."

- HEARD & HELD

SENATE BILL NO. 37  
"An Act establishing the crime of airbag fraud."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: SB 53  
SHORT TITLE: FIVE-YEAR INVOLUNTARY 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  
02/21/23 (S) Heard & Held  
02/21/23 (S) MINUTE(HSS)  
02/28/23 (S) HSS AT 3:30 PM BUTROVICH 205  
02/28/23 (S) Heard & Held  
02/28/23 (S) MINUTE(HSS)  
03/09/23 (S) HSS AT 3:30 PM BUTROVICH 205  
03/09/23 (S) Moved CSSB 53(HSS) Out of Committee  
03/09/23 (S) MINUTE(HSS)  
03/10/23 (S) HSS RPT CS 3NR 2AM NEW TITLE  
03/10/23 (S) AM: WILSON, TOBIN  
03/10/23 (S) NR: DUNBAR, GIESSEL, KAUFMAN  
03/10/23 (S) JUD AT 1:30 PM BUTROVICH 205  
03/10/23 (S) Heard & Held  
03/10/23 (S) MINUTE(JUD)  
03/15/23 (S) JUD AT 1:30 PM BUTROVICH 205  
03/15/23 (S) <Bill Hearing Canceled>  
03/22/23 (S) JUD AT 1:30 PM BUTROVICH 205  
03/22/23 (S) <Bill Hearing Canceled>  
03/24/23 (S) JUD AT 1:30 PM BUTROVICH 205  
03/24/23 (S) <Bill Hearing Canceled>  
03/29/23 (S) JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

TODD FLETCHER, Appointee  
Commission on Judicial Conduct  
Anchorage, Alaska

**POSITION STATEMENT:** Testified for reappointment to the Commission on Judicial Conduct.

SARA POSSENTI, Appointee  
State Board of Parole  
Department of Corrections (DOC)  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified for reappointment to the State Board of Parole.

DAVID IGNELL, representing self  
Forensic Journalist  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing for Todd Fletcher's reappointment to the Board of Parole, he testified that the January 6, 2023 hearing was informal and the protocol was ignored.

ED MARTIN JR., representing self  
Kenai, Alaska

**POSITION STATEMENT:** Testified that he appreciated his discussion with Board of Parole appointee, Todd Fletcher, but he had the same concerns as Mr. Ignell about the board generally.

EMMA POTTER, Staff  
Senator Matt Claman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the explanation of changes in the committee substitute for SB 53.

NANCY MEADE, General Counsel  
Administrative Offices  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions about the changes to SB 53.

JOHN SKIDMORE, Deputy Attorney General  
Office of the Attorney General  
Criminal Division  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions about the changes to SB 53.

#### **ACTION NARRATIVE**

[1:30:36 PM](#)

**CHAIR MATT CLAMAN** called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Kiehl, Kaufman, Tobin, and Chair Claman.

#### **CONSIDERATION OF GOVERNOR APPOINTEES** **COMMISSION ON JUDICIAL CONDUCT** **BOARD OF PAROLE**

[1:31:35 PM](#)

CHAIR CLAMAN announced the consideration of the Governor Appointees to the Commission on Judicial Conduct and the Board of Parole.

[1:31:48 PM](#)

CHAIR CLAMAN invited Todd Fletcher to provide testimony on his appointment to the Commission on Judicial Conduct, including whether this was a first appointment or renewal.

[1:32:13 PM](#)

TODD FLETCHER, Appointee, Commission on Judicial Conduct, Anchorage, Alaska, stated that he currently serves on the commission. He expressed his enthusiasm about serving again and he said he appreciates the diverse compilation of members including judges, attorneys, and citizens. He respected his fellow members for their efforts to improve the transparency of the judicial system.

SENATOR KIEHL thanked Mr. Fletcher for reapplying. He noted that the Commission on Judicial Conduct rarely engaged in formal proceedings. He asked Mr. Fletcher's opinion about the commission's handling of complaints.

MR. FLETCHER responded that he had little experience with addressing complaints during his time on the commission. He stated that the commission actively consults about formal matters.

SENATOR KIEHL stated that the response was helpful.

CHAIR CLAMAN stated appreciation that he was reapplying because it contributes to institutional knowledge. He asked about the length of the appointment commitment.

MR. FLETCHER replied that his most recent appointment was for three years. He remarked that he had grown since then, which allowed him to address issues with knowledge.

[1:36:22 PM](#)

CHAIR CLAMAN asked Sara Possenti to provide her testimony as an appointee to the State Board of Parole.

[1:36:38 PM](#)

SARA POSSENTI, Appointee, State Board of Parole, Department of Corrections (DOC), Fairbanks, Alaska, testified as an appointee. She stated that she was reappointed to the Board of Parole for the fourth time, serving a total of 12 years. She reported working for the Department of Corrections for over 20 years. She specialized in supervising sex offenders and served as the treatment abuse team leader. She felt that her institutional knowledge was valuable to the State Board of Parole.

[1:38:59 PM](#)

SENATOR TOBIN commented on a trend among recent appointees. She noticed a concentration in a particular voice and experience. She pointed out that AS 33.16.020 states that the Board of Parole should have representation from ethnic, racial, sexual and cultural populations across the state. She noted that many boards and commissions are lacking Alaska Native voices.

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CHAIR CLAMAN asked Ms. Possenti's perspective on granting parole.

[1:40:45 PM](#)

MS. POSSENTI replied that the board's consideration of discretionary parole involves several criteria. The board receives a significant volume of information from the Parole Officer (PO) related to criminal history. The criteria address whether a prisoner may remain in a community without violating further laws or posing a threat to the public. Parole should not diminish the seriousness of the sentence. Treatment is considered to reduce risk to the community. She stated that the questions posed to the applicants consider the treatment completed, controlled release, employment, and the nature of the parole request. An early release to the community requires great consideration.

CHAIR CLAMAN opened public testimony on the governor appointees.

[1:44:40 PM](#)

DAVID IGNELL, representing self, Juneau, Alaska stated that he is a forensic journalist and retired attorney. He spoke to the appointment of Todd Fletcher to the Commission on Judicial Conduct. He announced his participation in the commission's January 6, 2023 hearing, which he classified as an insult. He opined that the proceeding was informal, and the protocol was ignored. He opined that Alaska had a systemic failure of the judicial system that places politics over basic constitutional rights. He agreed that Alaska Natives are poorly represented on the judicial commission. He stated that the Supreme Court order in 1993 was an abomination and that grand juries must be given the right to investigate the issue.

[1:47:17 PM](#)

ED MARTIN JR., representing self, Kenai, Alaska, stated his interest in the Commission for Judicial Conduct. He appreciated his time visiting with Mr. Fletcher. He expressed concern about

member limitations related to commission agendas. He spoke briefly about the Board of Parole.

[1:50:13 PM](#)

CHAIR CLAMAN closed public testimony on the governor appointees.

SENATOR KIEHL stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Commission on Judicial Conduct  
Todd Fletcher - Anchorage

Board of Parole  
Sarah Possenti - Fairbanks

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR CLAMAN found no objection and announced the names would be forwarded.

### **SB 53-FIVE-YEAR INVOLUNTARY COMMITMENTS**

[1:51:03 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 53 "An Act relating to involuntary civil commitments."

He noted that this was the second hearing, he was the sponsor, and there was a committee substitute (CS) for the committee to consider. He asked Ms. Potter to proceed.

[1:51:35 PM](#)

EMMA POTTER, Staff, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska reviewed the changes from version S to version Y of SB 53.

**Section 1** (page 1, lines 5-14; page 2, lines 1-7):

- Amends subsection (a) to remove the requirement that psychologists are "forensic" psychologists.

**Section 2** (page 2, lines 8-25):

- Amends subsection (b) to remove the requirement that attorneys file a motion that is "written"

when making a motion for a judicial determination of the competency of the defendant.

- Amends subsection (b) to specify that the court make findings of fact and conclusions of law that justify an examination before ordering the defendant examined for competency.

**Section 3** (page 2, lines 26-31; page 3, lines 1-17):

- New subsection (i) states that defendants may be released on bail conditions for outpatient competency examinations. It states that before releasing a defendant on bail under this section, the court shall consider: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter.
- New subsection (k) states that a court may rely on a defense attorney's representation that the attorney possesses information, including privileged information provided at an ex parte hearing when determining bail conditions for defendants under this section.

**Section 4** (page 3, lines 18-31; page 4, lines 1-10):

- Amends (b) to conform with dangerousness standards created by the legislation and limits the arson standard to felony arson only. Defendants charged with a felony offense against a person or felony arson may be committed for a total of two years for competency restoration.

[1:53:25 PM](#)

**Section 5** (page 4, lines 11-31; page 5, lines 1-6):

- Amends subsection (f) to state that before releasing a defendant on bail under this section, the court shall consider: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to

participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter.

- Amends subsection (g) to limit the arson standard to felony arson only. This section states that, at the expiration of the competency restoration period, the prosecutor shall: (1) file a petition seeking involuntary commitment under the new AS 47.30.706 before dismissal of charges; (2) notify the civil division of the Department of Law within 24 hours after filing the petition; and (3) provide the court's findings to the civil division of the Department of Law within 24 hours after the court's ruling.

**Section 6** (page 5, lines 7-31; page 6, lines 1-5):

- Creates a new section AS 47.30.706: Commitment after finding of incompetence.
- This section closes the period of time between a criminal case dismissal of charges for a felony offense against a person or felony arson, based on an individual's incompetency, and the start of civil commitment proceedings. Under current statute, there is not a process that allows for the civil commitment proceedings to begin for individuals who meet the dangerous standard without them being released to the public.
- The section states that: if a person is found incompetent to proceed on a felony offense against a person or felony arson, an attorney with the Department of Law shall file a petition to have the person delivered to the nearest evaluation facility. Upon receipt of this petition, the court shall issue an ex parte order, appoint an attorney for the respondent, and may direct the peace officer to take the respondent into custody and deliver them to the nearest appropriate facility for evaluation. The court shall set a date, time, and place for a 30-day commitment hearing, to be held within 72 hours. This matches the current statute and timeline for 30-day commitment hearings.
- This section includes language which states that an individual charged with a felony offense against a person or felony arson who is found to be incompetent to stand trial is rebuttably presumed to be mentally ill and present a

likelihood of serious harm to self or others. This creates the basis by which the court can issue the ex parte order and initiate the 30-day commitment proceedings.

**Section 7** (page 6, lines 6-11):

- This section amends AS 47.30.710 subsection (a) to include the new section of statute AS 47.30.706: Commitment after finding of incompetence.

**Section 8** (page 6, lines 12-22):

- This section was numbered Section 6 in the previous bill version.

**Section 9** (page 6, lines 23-31; page 7, lines 1-28):

- This section was numbered Section 7 in the previous bill version.
- Amends section to limit the arson standard to felony arson only.
- Amends subsection (a) to clarify that a respondent is released from involuntary treatment at the expiration of the 180-day commitment period unless an additional 180-day commitment is petitioned or a commitment up to five-years is petitioned, if the individual meets the standards of a five-year commitment.
- Removes "attempts of harm to self" from the involuntary commitment standards for additional five-year involuntary commitment.

**Section 10** (page 7, lines 29-31; page 8, lines 1-3):

- This section was numbered Section 8 in the previous bill version.

**Section 11** (page 8, lines 4-23):

- This section was numbered Section 9 in the previous bill version.
- Amends section to limit the arson standard to felony arson only.

**Section 12** (page 8, lines 24-31; page 9, lines 1-14):

- This section was numbered Section 10 in the previous bill version.

[1:56:53 PM](#)

CHAIR CLAMAN informed the committee that Mr. Skidmore was available to answer questions.

[1:57:07 PM](#)

SENATOR TOBIN asked about the removal of the term "written" in Section 2.

MS. POTTER replied that version S included the word "written." The Department of Law (DOL) requested the addition in the previous committee of referral. The court makes findings of fact and conclusions of law that justify examination as a better approach.

[1:58:23 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Alaska Department of Law, Anchorage, Alaska, added that the concept may lead to a dramatic increase in requests for an evaluation of incompetence. The Department of Law attempted to allow courts to make an informed decision about whether or not such requests are based on a factual basis. He informed the committee that adding the word "written" requires a rule change, which slows the process and is not the department's intention.

[1:59:42 PM](#)

CHAIR CLAMAN informed the committee that Nancy Meade and Kaci Schroeder were available to answer questions.

SENATOR KIEHL asked about the time required to enter findings and facts.

[2:00:43 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, Anchorage, Alaska, anticipated that most judges, in most circumstances would be able to make such a ruling during the hearing.

[2:01:14 PM](#)

SENATOR TOBIN asked if the five stipulations in Section 3 are considered during the process of determining competency.

MS. MEADE did not anticipate that the stipulations would be discussed in the same hearing. She stated that bail conditions are set beforehand in most circumstances. She added that the defense may propose that the defendant is incompetent, which happens in a different hearing. She pointed out the flexibility to amend bail conditions. Occasionally, a request to amend the bail conditions offers a condition for the delay.

CHAIR CLAMAN noted that the factors address the bail decision rather than the incompetency decisions.

MS. MEADE added that AS 12.30 states that when a person is deemed incompetent, the judge must consider other factors when making the bail decision. Appropriate bail conditions protect the community.

[2:03:55 PM](#)

SENATOR KIEHL wondered how frequently a person evaluated for competency is released on bail.

[2:04:45 PM](#)

MS. MEADE replied that some defendants are out on their own recognizance or out on bail with pre-trial supervision. She stated that once a person claims incompetency, a judge finds facts and laws to justify an examination. She noted that for some people in jail, it takes a couple of weeks to effectuate that evaluation, so they are out on bail. Once the claim is made, individuals are not necessarily detained in a hard bed.

[2:05:45 PM](#)

MR. SKIDMORE added that the concept in Section 3 is less about a person released on bail. He informed the committee that Sections 3 and 5 make an outpatient evaluation available. He noted that a person out on conditions of release and requesting an evaluation must present to the Alaska Psychiatric Institute (API). If a person is found to be incompetent, they must stay at API for purposes of attempting a restoration. He stated that Section 3 addresses the option of an outpatient clinic (page 2, line 28) or facility conducting the examination.

MR. SKIDMORE shared that Section 5 had a provision allowing for outpatient restoration services. He mentioned the significant waitlist for evaluation and restoration in Alaska. Section 5 attempts to expand the services available to provide evaluation or restoration services. He noted that if outpatient services were appropriate, that person would not be in custody. The provisions attempt to guide a release assessment.

[2:08:00 PM](#)

SENATOR KIEHL asked if outpatient options exist in Alaska.

MR. SKIDMORE replied that some providers and facilities can conduct examinations on an outpatient basis. He guessed that some providers or facilities may be capable of providing restoration services. He noted that Alaska statutes require

assessments to be done at API facilities. The provision attempts to expand those entities capable of performing such examinations or restoration services.

[2:08:50 PM](#)

CHAIR CLAMAN added that restoration services might facilitate competency restoration for a person who can be released safely to the community. The restoration services would prevent a person from sitting in jail waiting for a competency restoration from API.

[2:09:38 PM](#)

MS. MEADE added that incomplete data showed 25 percent of those ordered to receive a competency examination were found to be competent by the examining physician or facility.

[2:10:24 PM](#)

SENATOR TOBIN asked about Section 6, which indicates that a person would be delivered to the nearest evaluation facility. She queried the next step if the nearest evaluation facility is at capacity.

MS. POTTER referred to subsection (c) stating that a person taken into custody for evaluation may not be placed in jail or another correctional facility except for protective custody purposes and while awaiting transportation to an evaluation facility.

[2:11:26 PM](#)

VICE-CHAIR KIEHL moved to adopt the committee substitute (CS) for SB 53, work order 33-LS0172\Y, as the working document.

CHAIR CLAMAN found no objection and version Y was adopted.

CHAIR CLAMAN held SB 53 in committee for future consideration and set an amendment deadline.

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[2:12:41 PM](#)

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:12 p.m.