

LEGAL SERVICES

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MEMORANDUM

October 24, 2017

SUBJECT: Breath test (CSSB 54(FIN); Work Order No. 30-LS0461\N.32)

TO: Senator John Coghill
Attn: Jordan Shilling

FROM: Hilary V. Martin 
Legislative Counsel

You have asked whether there are any legal problems with amendment 30-LS0461\N.32.¹

Amendment N.32 requires the commissioner of corrections to conduct a chemical test of the prisoner's breath at the time of the prisoner's release and release the prisoner only if the test result indicates that the prisoner's breath has less than 0.08 grams of alcohol for each 210 liters of breath.

Holding a prisoner beyond when the prisoner should be released likely violates the prisoner's due process rights. If the prisoner is eligible for release, the commissioner does not have any authority to hold the prisoner for a longer period. As a custodian of that prisoner the Department of Corrections probably has a duty of care for a person that is unable to safely care for themselves at the time of release. Involuntary commitment may be one option available to the department. In addition, it is not clear in the amendment what the commissioner should do with the prisoner if the prisoner has a breath test higher than 0.08 grams of alcohol for each 210 liters of breath.²

If I may be of further assistance, please advise.

HVM:dls
17-524.dls

¹ A copy of amendment N.32 was provided to our office by Mr. Shilling.

² The amendment would prohibit release even if a responsible third party is available to take a prisoner home.