

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

February 26, 2001
1:38 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Dave Donley, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 97
"An Act relating to fees for probation and parole."

PREVIOUS COMMITTEE ACTION

SB 97 - See Transportation minutes dated 2/26/01.

WITNESS REGISTER

Ms. Loretta Brown
Staff to Senator Jerry Ward
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced SB 97

Mr. Bruce Richards, Special Assistant
Office of the Commissioner
Department of Corrections
4500 Diplomacy Drive, Suite 109
Anchorage, Alaska 99508-5927
POSITION STATEMENT: Opposed to SB 97

Ms. Lynda L. Zaugg, Director
Division of Community Corrections
Department of Corrections
4500 Diplomacy Drive, Suite 109
Anchorage, Alaska 99508-5927
POSITION STATEMENT: Testified on SB 97

Ms. Barb Brink
Alaska Public Defender Agency
900 West 5th Avenue, Suite 200
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 97

Mr. Michael Stark
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: Testified on SB 97

Mr. Robert Buttane
Division of Juvenile Justice
Department of Health &
Social Services
PO Box 110601
Juneau, Alaska 99801-0601

POSITION STATEMENT: Opposed to SB 97

ACTION NARRATIVE

TAPE 01-5, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:38 p.m. Present were Senator Therriault, Senator Ellis and Chairman Taylor. Senator Cowdery arrived at 1:43 p.m. Chairman Taylor announced the first order of business would be SB 97.

#SB 97

SB 97-PROBATION AND PAROLE FEES

MS. LORETTA BROWN, staff to Senator Ward, said other states have used probation and parole fees to offset the cost of supervision. There is a common perception that criminals are penniless and unemployable, but most offenders on probation can afford modest supervision fees. The agreement of release for most parolees is to find a job, and part of a probation officers job is to help with that. By 1992, almost half of the states allowed probation departments to charge fees for probation supervision, ranging from \$10 to \$40 a month. Many of these fees are being raised but successful programs have figured out how to recoup the cost - nonpayment has been replaced with community service. If a person cannot pay the fee because of unemployment or because he or

she may be in a full time rehabilitation program or, in the case of Alaska, a person may be living in a village, probation could not be revoked. It is not uncommon for offenders who are willfully behind in fee payments to have also violated other conditions of his or her probation. Therefore, it is argued that probation fee programs are not likely to increase probation failure rates. Probation will not be revoked solely because fees have not been paid.

MS. BROWN noted when fee collecting was first introduced many probation officers did not like it, but administrators made it clear that fee collection was part of the job. Rather than detracting from casework, fee collection furthers the goal of helping probationers avoid relapsing into criminal behavior. A study by the National Council on Crime and Delinquency found that collections rarely occupied more than two percent of a probation officers time. The requirement of fee payment is a good barometer of a probationers overall adjustment while on probation. Mr. Monty Morgan, Director of Adult Probation in Jefferson County, Texas, said there is a direct correlation between probation compliance and fee payment. Offenders learn to budget and meet ongoing financial obligations and they learn to accept responsibility for making payments and taking charge of their lives.

MS. BROWN said fees were collected in Alaska a few years ago but the program was rescinded. One of the reasons for being rescinded was because the money collected was not enough to offset the cost of the program. Even though the fee does not completely cover the cost of supervision, it would augment the budget and provide for extra services that are not affordable now.

SENATOR THERRIAULT asked how the fee of \$3.30 was arrived at.

MS. BROWN replied that SB 97 says the fee should be no less than \$1.50 a day, which come to \$45 a month. This fee was proposed a few years ago in another bill and Senator Ward wanted to use it again.

Number 594

MR. BRUCE RICHARDS, Special Assistant to the Commissioner, Department of Corrections (DOC), said DOC is opposed to SB 97 based on the department's past experience with probation and parole fees. DOC agrees that fees are appropriate for other states but not for Alaska. 1989 through 1991, when DOC had a fee of \$45 a month, the collection rate was approximately eight percent. Many offenders, when coming out of an institution, do not have the ability to pay a fee on top of victim restitution fines and other things of this nature. It is also difficult for people of rural Alaska where

there is not much opportunity for employment. SB 97 would require a collection fee of not less than \$1.50 per day, and DOC would set this rate in regulation. SB 97 requires that fee collections be contracted outside of DOC. DOC has had some difficulty in researching who would take this type of contract. Collection agencies are only interested in collecting on delinquent debt, but a bank could set up an escrow account to administer collection of fees.

MR. RICHARDS said in reference to the Texas fee, the fee is commonly made the first priority of collections prior to victim restitution. When the collection fee is moved to the top of the list, the collection success rate goes up but victims who are in line for restitution become second to the fee. DOC does not see how the fee would benefit the state monetarily. Using the escrow system as an example, there would be a \$35 set up fee, which the state would be responsible for when the offender is released, and an annual maintenance fee.

Number 850

SENATOR COWDERY asked if a person's Permanent Fund Dividend (PFD) could be used for the fee.

MR. RICHARDS said offenders do not receive a PFD the first year he or she is out of prison - the state has already taken it.

SENATOR COWDERY asked if the second year PFD could be used.

MR. RICHARDS said if it were available it would be on the list after child support, victim restitution and other things in statute that have to come first.

SENATOR COWDERY asked what had a higher priority than education, public safety and transportation. He asked where the money should come from to support the probation system - should something else be cut.

MR. RICHARDS said offenders are required to pay for their own treatment after he or she leaves the institution. He does not know where, in line, the probation fee should be, but child support and victim restitution would come above probation fees.

Number 1011

SENATOR THERRIAULT asked for more information about the previous fee program and how long it was in use.

MR. RICHARDS said the program was from 1989 to 1991.

SENATOR THERRIAULT asked about the percentage of people who paid the fee.

MR. RICHARDS said DOC went back and found receipts for the program and divided that number by the number of cases - that number came to eight percent. The last year of the fee program approximately \$120,000 was brought in, and there were fewer than 3,000 probationers on the caseload.

Number 1062

CHAIRMAN TAYLOR said he would like to know how a person on probation made the payment during the time the program was in operation. Was the payment made to a different agency or office? He said there probably was not a great deal of zeal on the part of the probation officer to make sure the fee was collected. He would like to know who kept track of the money, how it was handled, and why it was a couple years later when the collection rate was discovered to be eight percent.

MS. LYNDA ZAUGG, Director of Community Corrections, DOC, said the old policy said, "Probation compliance is the responsibility of the supervising probation officer. Whereas the responsibility for payment rests with the probationer. The probation officer shall arrange and monitor the probationer's payment, which will be made to the clerk, designated for this purpose by the chief probation officer."

CHAIRMAN TAYLOR asked if "clerk" was the clerk of court.

MS. ZAUGG said it is a clerk in the probation office. The clerk accepted the money and forwarded it to DOC accounting in Juneau, which then forwarded it to the general state account.

CHAIRMAN TAYLOR noted the fee picked up another \$100,000 in one year for the general fund.

MS. ZAUGG said the amount was \$120,400.

CHAIRMAN TAYLOR said the \$120,400 may not have supported the program but it helped.

Number 1217

MR. RICHARDS said there was also the community work service component for the people who did not pay the fee. She said keeping

track of this was very intensive and time consuming.

CHAIRMAN TAYLOR said that when the program stopped the community lost the benefit of the service and the state lost the revenue.

MR. RICHARDS said that was correct, but probation officers were able to spend more time providing supervision as opposed to tracking money and community work service hours.

CHAIRMAN TAYLOR said he felt DOC did not want to collect the fees and therefore the program did not succeed.

CHAIRMAN TAYLOR said on prioritization, the legislature often times makes decisions on where money should go first.

It would seem to me that if such a program were to be implemented, as contemplated in this bill, before that guy can make any child support payments, or make any restitution payments, or make any payments for his treatment, he's got to be out of jail and on probation. And if we have to, as budgets and revenues around here decline, if we have to cut back on probation and more people have to stay in jail longer, then the first entry is he's got to get on probation and get back out on the street where he can make this money. It would seem to me that would be your number one priority in making sure that department was taken care of. And if revenues were necessary to do that from the individual, for him to get back on the street, as opposed to sitting further in jail, I don't think there's a whole lot of them that would feel real bad about paying a couple three bucks to be out. And that's literally what the choice is that you're talking about. I would think we could probably take another look at that.

Number 1359

SENATOR COWDERY said the incentive is to stay on parole and if a person does not pay they will go back to jail. He said it may not be cheaper, but after a person is paroled it would be easy to come up with \$100 a month.

MS. BARB BRINK, Alaska Public Defender Agency (APDA), testifying via teleconference from Anchorage, said fees are not simply collected by garnishing wages or attaching PFD checks but also by filing petitions for parole and probation and from filing petitions for revoked parole. APDA represents people accused with not making a good faith effort to pay the fee. APDA would help collect data

concerning the parolee's income - what he or she were doing with their time, or whether he or she were in treatment or if they were engaged in a seasonal occupation that excluded them from earning money. APDA gathers this evidence to persuade the court that the person was making a good faith effort. Ms. Brink said SB 97 assumes that everyone is completely capable of paying the fee, and the bill requires APDA to gather the evidence and prove that people are not able to pay.

MS. BRINK said the fiscal note is small because APDA anticipates a half time attorney who would not start until the program is in operation. She wanted to highlight how dangerous it is to predict this type of thing. There is no way of knowing how many cases APDA would have. The language is mandatory; every person does have to be ordered to pay, even if the judge can see the person does not have the mental facility to come up with this type of money. Ms. Brink said there are many indigent people who would not be able to pay.

MS. BRINK said that in fiscal year 1998, APDA handled over 3,800 new felony and juvenile delinquency cases. If only three fourths of these cases had some type of probation or parole, and if 10 percent of these people are unable to pay, this would be a huge additional caseload - over 300 new cases per year. Because of this, SB 97 could be more expensive than the fiscal note APDA has submitted.

Number 1568

SENATOR COWDERY asked how many of the 3,800 cases were bonded.

MS. BRINK said APDA does not have the ability for this type of data, but very few of APDA's charged felony clients are released from custody before his or her trial, the vast majority remain in custody until their trial.

MR. MICHAEL STARK, Assistant Attorney General, DOC, noted there are hidden costs in SB 97 and that the program is not likely to pay for itself. Some of the costs are enhanced risks to public safety, particularly for the small probation office where time will be taken away from supervision for bookkeeping and follow up. The past fee structure was a considerable burden for rural Alaskan probation/parole offices because there may only be one or two officers.

MR. STARK said the type of offender today is more serious than in 1989 through 1991. There are probably close to 4,000 probation and parolees who are being supervised at any one time, many of which

are out for violent offenses. Mr. Stark hoped the committee would look at the issue of diminished supervision because SB 97 would cause some diminishment of supervision.

MR. STARK noted that it costs over \$100 a day to house an offender and her or she gets a credit of \$50 a day toward paying off their incarceration fee. It is mandatory for the parole board to revoke parole for any offender who does not pay but who has the ability to pay. Yet there is no measure, such as the \$50 per day, so a person may owe a lot of money and have to go back to jail for a year or two. This would be costly for the state.

Number 1796

SENATOR COWDRY asked if there had been any consideration for privatizing collections.

MR. STARK said the Attorney's General (AG) office pursues collections for money owing to different state agencies. SB 97 does mandate DOC to contract out with either a "collection agency or other person for the administration and collection of probation fees imposed under AS 12.55.104 and parole fees imposed under AS 33.16.155." Two years ago an identical bill was introduced and DOC made efforts to see if any collection agency would be willing to take this on. None were willing because it would not be financially feasible for them. Banks were looked at for setting up escrow accounts and there would also have to be follow-up for pursuing collections therefore more than one agency would have to be contracted with.

SENATOR COWDRY said the court has privatized its collections.

MR. STARK said he had talked with an employee of the court system and that person said the court does not contract out collections. The AG's collection section still pursues fines and restitution.

MR. STARK said the target population in Alaska are not well off and do not have the resources for paying the fee. He said the idea of a fee is a worthy idea because these people owe a debt to society. Mr. Stark is concerned that SB 97 would decrease supervision of a parolee, which may cause harm to victims and their families.

SENATOR THERRIAULT asked if there was a fiscal note.

MR. RICHARDS said a fiscal note had been sent last week.

CHAIRMAN TAYLOR said his office had not received the fiscal note.

Number 2033

MR. ROBERT BUTTCANE, Juvenile Probation Officer, Department of Health and Social Services (DHSS), Juvenile Justice, said DHSS opposes SB 97. He said a fiscal note is being finalized but it has not been submitted yet. DHSS has not had experience assessing probation fees against juvenile offenders or their families. However, the juvenile system emphasizes the competency development of a juvenile offender equal to restoration of a victim and the assurance of public safety. In implementing the restorative justice model, DHSS has emphasized the need of the juvenile offender to make his or her victim whole. A great deal of emphasis is placed on restitution to victims. In calendar year 2000, \$132,000 was collected from the PFD in restitution that went to victims. SB 97 lists the probation fee as the eighth of eight priority uses for the PFD. In many of the juvenile cases, the PFD has already been used to compensate victims for their loss. Therefore, the monies that might otherwise have been available for probation fees would not be accessible through the PFD. This also places hardship on parents who are expected to contribute to the cost of care of their child when the child is placed in an out-of-home setting. The court orders the parent to make child support payments that go to the state to help offset the cost of care. Parents are also expected to contribute all or portions of the cost for treatment or counseling such as anger management classes, family therapy, and sex offender classes.

MR. BUTTCANE said it is not infrequent that the juvenile offender has offended against their parent, such as stealing the car. The offender would be put on formal probation because he or she would need the guidance and structure that probation provides. The offender is also expected to make restitution to the person whose property may have been damaged as well as to the parent. SB 97 makes the minor and the parent responsible for the probation fee. Most juvenile sex offenders offend against siblings or relatives and a fee would add more turmoil. Offenders are removed from the home and child support orders are imposed on the parents - SB 97 would add insult to injury to the parents.

MR. BUTTCANE added that most of the juveniles on probation are middle adolescents, 15 and 16 years old, but there are children on probation who are 12 and 13, and their capacity to generate income is low. Not all 12 year olds incur restitution obligations that would take their entire PFD but some do. There were 1,360 youth on juvenile probation in fiscal year 2000. DHSS did an informal inquiry to its field probation offices and asked how many families they felt would give the court reason to find they had no ability

to pay. Based on that response, the estimate was from 60 to 70 percent.

MR. BUTTCANE said an accounting process would have to be employed to communicate to a contractor when the juvenile was placed on formal probation and when his or her case was withdrawn from probation, causing a paperwork flow from DHSS to the contractor. Delinquency dispositions are for an indeterminate period of time, not to exceed two years, so each probation case is different. Additional support personnel would be needed to process the paperwork. The delinquency system does not have its own attorney; it relies on the District Attorney (DA) in most communities. DA's are not inclined to get involved in cases that relate to fee processing or do litigation on whether or not a family has the means to pay a fee. Because of this, DHSS may have to rely on Assistant AG's who are located in Anchorage and Fairbanks for assistance. This would increase DHSS's attorney fee payments to the Department of Law. Right now, most juvenile cases are heard in court without an attorney - SB 97 requires an attorney.

TAPE 01-5, SIDE B

MR. BUTTCANE said the fee would be a challenge for DHSS to implement.

Number 2197

SENATOR COWDERY asked if people are paroled without a source of income.

MR. BUTTCANE said the delinquency system does not have a parole mechanism.

SENATOR COWDERY wondered how the system would get the juvenile offenders attention without a fee. He said someone needed to be held accountable.

Number 2133

MR. BUTTCANE said that most juvenile offender parents are active participants in the process of holding their children accountable. Most parents participate in the counseling and treatment processes and they do this willingly.

CHAIRMAN TAYLOR said it seems incredible to him that 48 states can collect some type of fee but Alaska cannot. Texas alone picks up 50 percent of the cost of supervision off the fee. Chairman Taylor said he challenges DOC to come up with something that explains why

Alaska is so much different from Texas in being able to collect fees. He thinks there is an opportunity for DOC to be a willing participant in fee enhancement, and the legislature would be willing to work with DOC in finding something the department could work with.

SENATOR THERRIAULT asked Ms. Brown to address the questions that had been raised during the meeting.

MS. BROWN said successful programs charge an average of \$10 to \$40 a month, and, generally, people on probation do not have a problem with that amount. When they do have a problem it is usually in some other area. Most of the cases that are being sent back to jail are not just for nonpayment - probationers are not abiding by other areas of the probation. Generally, it is found that caseload is not increased and it is cheaper to have someone on probation than to have him or her incarcerated. Most states do not revoke probation solely on nonpayment of fees.

SENATOR THERRIAULT asked if Senator Ward considered the cases where there was a sex offense within the family.

MS. BROWN said Senator Ward had not communicated this to her.

CHAIRMAN TAYLOR said he would hold SB 97 in committee until members had a chance to review the fiscal note.

There being no further business to come before the committee, CHAIRMAN TAYLOR adjourned the meeting at 2:42.

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