

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
February 11, 2002
1:32 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 242

"An Act relating to concealed handgun permittees."

MOVED SB 242 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 223

"An Act limiting the award of good time and restricting release on mandatory parole for prisoners serving certain sentences who fail to attain certain minimum educational standards; providing that prisoners having attained or attaining those educational standards receive good time awards and availability of release on mandatory parole of one-third of the term or terms of imprisonment rounded off to the nearest day; and providing for an effective date."

MOVED CSSSSB 223(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

No previous action.

WITNESS REGISTER

Brian Judy
National Rifle Association
Institute for Legislative Action
555 Capitol Mall, Suite 625
Sacramento, CA 95814

POSITION STATEMENT: Supports SB 242

Pete Roberts
P.O. Box 1134
Homer, AK 99603

POSITION STATEMENT: Supports SB 242

Captain David Hudson
Alaska State Troopers Department of Public Safety
5700 E. Tudor Rd.
Anchorage, AK 99507-1225

POSITION STATEMENT: Testified on SB 242

Lieutenant Julie Grimes, Supervisor
Concealed Handgun Permit Program, Department of Public Safety
5700 E. Tudor Rd.
Anchorage, AK 99507-1225

POSITION STATEMENT: Testified on SB 242

Joe Nava
No address given
Fairbanks, AK

POSITION STATEMENT: Supports SB 242

Candace Brower, Program Coordinator
Department of Corrections
431 N. Franklin Ste 400
Juneau, AK 99801

POSITION STATEMENT: Opposed to SB 223

Bruce Richards, Special Assistant
Department of Corrections
4500 Diplomacy Ste 109
Anchorage, AK 99508

POSITION STATEMENT: Opposed to SB 223

Rose Munafo, Criminal Justice Planner
Department of Corrections
4500 Diplomacy Ste 109
Anchorage, AK 99508

POSITION STATEMENT: Opposed to SB 223

ACTION NARRATIVE

TAPE 02-03, SIDE A

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:32 p.m. Present were Senator Donley, Senator Cowdery, and Chairman Taylor. Senator Therriault arrived at 1:33 p.m. and Senator Ellis arrived at 1:37 p.m. Chairman Taylor announced the first order of business would be SB 242.

#SB 242

SB 242-CONCEALED HANDGUN PERMITTEES

CHAIRMAN TAYLOR, SB 242 sponsor, explained that the purpose of initiating the legislation was to give themselves an update on the current status of the reciprocity agreements that were supposed to be entered into by the Department of Public Safety (DPS) with other states on the issue of concealed carry permits. The Department of Public Safety's website listed seven states from which Alaska recognizes permits. The website indicated six of those, Arizona, Florida, North Dakota, Oklahoma, Utah and Wyoming were by agreement. There are other states, which he believed had expanded to seven, which currently recognize Alaska's permits; he listed Idaho, Indiana, Kentucky and Montana. He understood four of those states were added since the legislation was filed.

He explained it had been four years since the legislature instructed, with mandatory language, DPS draft regulations and get about the business of providing reciprocity for concealed carry permits with other states. That was primarily so Alaskans, who meet the highest standards in the nation for a concealed carry permit, would be granted the opportunity to utilize that permit in other states to which they traveled. He had hoped that would be an ongoing process but was concerned that over the last four years DPS had not taken the action required by the legislature. That was the purpose for filing this bill.

BRIAN JUDY, National Rifle Association Institute for Legislative Action, gave the following testimony in support of SB 242. In 1994 DPS disseminated a white paper on HB 351, the original right to carry bill in Alaska. The title of that report was To Conceal or Not to Conceal, That is the Question. He said that report was full of a number of alarmist suggestions and predictions, that there would be guns at grocery stores, on ball fields and Anchorage fender benders would become shoot outs. In 2000 DPS acknowledged the outcome was the same as in every other state, there had been virtually no problem. Law-abiding citizens who have been issued permits are exercising their constitutional right to bear arms and their right to self-defense with the utmost responsibility. Self-defense is a fundamental right and law-abiding citizens should be able to choose to not only provide a means for self-protection but also to determine how best to provide this protection.

MR. JUDY said it is the NRA's belief, as with driver's licenses,

the right-to-carry permits should be honored universally. Studies have shown that crime rates dropped when law-abiding citizens have the means to provide for their own self-protection and when criminals know that their next potential victim might fight back.

In 1998 SB 141 first recognized permits from other states. In 2000 SB 294 clarified and broadened the number of states Alaska would recognize and there was no opposition to that bill. He said DPS has been unable to provide a complete and accurate listing of all the states Alaska recognizes. The current statute said Alaska recognized states with similar laws and states that recognize Alaska's permits. There are states in both of those categories that Alaska law recognizes that are not listed on the website. The website posting did not necessarily get the information out to all law enforcement agencies in the state.

He said SB 242 would recognizing all other states permits and relieve DPS of the burden of having to evaluate other states laws. It will notify all the local law enforcement agencies that any permit from any other state is valid. He felt the State of Alaska should not have any reservation about welcoming law abiding citizens of other states and welcoming their permits.

He said their intent with this law is to allow the people who can carry openly in Alaska to choose to carry concealed. Any law-abiding tourist right now can carry a firearm openly virtually anywhere in Alaska. He said it made no sense to allow anybody to carry openly but deny those who have gone through the licensing process in their own state the ability to carry concealed. Law abiding citizens should be able to choose whether to provide for their own protection and be able to choose the manner in which they do so. The NRA urged the committee to support SB 242.

SENATOR COWDERY asked how many other states have carry permits.

MR. JUDY answered there are 31 states that allow the carrying of concealed weapons and issue permits to their residents and a lot of states issue to non-residents as well.

SENATOR COWDERY asked if the criteria in other states were similar to the criteria in Alaska for obtaining a carry permit.

MR. JUDY said the laws differed but were similar. Virtually all the states require a background check and most of those are fingerprint based. The majority of states require some type of a training program but they vary considerably. Regardless of the differing criteria and the differing standards from state to

state, the one piece of information that is the same out of every state is that permit holders are not a problem.

CHAIRMAN TAYLOR told of a state employee that had contacted him. He held a concealed carry permit but had never used his permit in Alaska because he never felt he needed to. He had carried concealed in Arizona and appreciated the fact that Alaska had a reciprocity agreement with Arizona that allowed that.

He commented that regulations from DPS required people who held concealed carry permits from North Dakota be at least 21 years of age.

MR. JUDY said there were a couple of states that allowed for the sheriff to issue to people with cause between the ages of 18 and 21.

SENATOR TAYLOR said the purpose of the legislation is to expedite the process of providing for reciprocity. He asked for some background on Mr. Judy's working relationship with DPS.

MR. JUDY said it was generally positive but not productive. In March of 1998 following the passage of SB 141, DPS issued a memorandum to law enforcement personnel that summarized the provisions of the new law and included a list of 17 states from which permits would be recognized by Alaska. In 1999 DPS changed their policy and were not honoring permits from any state. In May of 1999 he first contacted Deputy Commissioner Del Smith who said he would look into it and the problem would be addressed.

MR. JUDY said there is a lack of complete information and posting it on the website does not meet the requirement of the statute that DPS provide the information to all local law enforcement agencies.

SENATOR ELLIS noted that the title of the legislation was broad.

He asked Chairman Taylor if this legislation addressed a concern in his community that involved an incident where Mr. Timothy Wagner had been adjudicated mentally ill. He had a concealed carry permit and there were a number of people concerned about that being allowed under the law. He asked if he was familiar with that incident. If that is a problem, was any thought given to fixing it in this legislation. He wanted Chairman Taylor's thoughts and also Mr. Judy's comment on the subject of people adjudicated mentally ill having concealed carry permits.

CHAIRMAN TAYLOR said his primary concern was the broadness of the title and would not mind at all narrowing that up a bit if people thought it would be appropriate.

CHAIRMAN TAYLOR did not think Mr. Wagner was adjudicated mentally ill until after the incident. He was concerned that had Mr. Wagner been standing outside of the same store with his gun in a holster on his leg he would have been legal in Alaska, he does not need a permit to do that. He was sighted for failing to disclose to the officer who approached him the fact that he had a concealed firearm. Chairman Taylor was not sure how to address that situation in the legislation but would be happy to give consideration to it.

SENATOR ELLIS asked Mr. Judy to explain how other states may have addressed or failed to address the subject of mental illness and concealed carry.

MR. JUDY said under Federal Law there is a prohibition on possession of a firearm for anybody who has been adjudicated mentally incompetent or who has been committed to a mental institution. The State of Alaska has the same standard for possession of a firearm. In this incident Mr. Wagner had not been adjudicated and had no record of any kind of mental problems. If he had been carrying openly and exhibiting delusional behavior nothing could have been done except if law enforcement at the scene or the person at the dive shop who was observing his behavior could, under Alaska Law Sec 47.30.700, initiate an involuntary commitment procedure. Had that happened and Wagner had been committed then he could not under Alaska Law possess a firearm.

MR. JUDY explained in 1998 SB 141 brought the concealed weapon permit law into line with the possession law in the State of Alaska. With that bill if you could legally possess a firearm then you would qualify for a permit and any place that you could carry a firearm openly you would be able to carry a firearm concealed.

He said the law worked perfectly in the Wagner case because law enforcement was readily able to determine that he had a permit, he was acting delusional, he had not let law enforcement know that he was a permit holder and carrying so they were able to arrest him and charge him. He was ultimately convicted by that section. As part of his sentence he was given 3 years probation and as a condition of the probation he was prohibited from possessing firearms. He said that meant he does not qualify for a permit for as long as he is subject of that prohibition. Mr.

Judy thought once he completed his probation if he was still considered to be a danger and to have mental problems then any one of the people who are working with him in the system could initiate commitment procedures and there by not only prevent him from qualifying for a permit but also keep him in the prohibited class regarding straight possession.

CHAIRMAN TAYLOR said he was taken off the street, his gun was removed and he was convicted of the offense because he had a concealed carry permit and did not adhere to Alaska Laws. Had he been carrying the gun openly there would have been no offense.

PETE ROBERTS, Homer resident, asked the committee to vote for reciprocity on concealed carry permits. He said the statistics on it are magnificent. If statistics were only so good for people driving cars people would be a lot safer. He thought there were some very good reasons for concealed carry permits and a number of them had occurred recently. Some of the schoolyard shootings would have been better if there had been some armed adults. He knew that would not be covered under this bill but in schools and on airplanes maybe some incidents, such as on September 11th, would not have happened if there had been somebody armed. He supported SB 242. He said there are so many laws covering guns that only legitimate responsible people can legally be doing anything with a gun in the United States and that is as it should be. He concluded an armed society is a polite society.

CAPTAIN HUDSON, Alaska State Troopers Department of Public Safety, said Lieutenant Julie Grimes, Supervisor of the Concealed Handgun Permit Program was with him. He explained in 2000 he testified on SB 294 and assisted in developing those changes in the law. At that time their goal was to try to increase reciprocity around the nation in regards to concealed handgun permits. He said they were remiss in that their website did not identify clearly several of the states that they have reciprocity with. He said Mr. Judy indicated there is a two-part reciprocity agreement that was developed in Chairman Taylor's last bill.

- To accept anyone's permit from a state that would accept Alaska's.
- If a state met the minimum criteria of Alaska we would accept their permit.

He explained that the reason he was adamant at that time in regards to reciprocity was they wanted to try and make sure Alaskans had the opportunity to carry firearms as they traveled from state to state. He believed at that point in time that the primary impetus was to provide Alaskan citizens the opportunity

to carry their firearms when they traveled to other areas.

CAPTAIN HUDSON noted that Mr. Judy said there were approximately 31 states that currently had forms of handgun permit programs. Alaska recognized 25 of those states as defined in SB 294 which Chairman Taylor had worked so hard on in 2000. DPS wanted some sort of documentation from those state managers that would allow them to put that agreement on file so they could make sure Alaskan citizens were safe when they travel. The current website listed the states which had given them a reciprocity agreement so when Alaskan citizens travel they had something to back that up.

He said DPS was moving forward and continues to try to move forward, they want to make sure that Alaskan citizens can carry their firearms when they travel outside the State of Alaska and DPS can provide them recent, current and accurate information on which states will accept their permits. One of their biggest fears has been that as our state laws have changed since 1994 and other states also continually change their laws. They try to maintain a relationship to insure correct information for Alaskans traveling to another state.

CAPTAIN HUDSON wanted to make sure the committee did not think DPS had done nothing because they had attacked the issue in several directions. Alaska accepts several states permits and those states had yet to tell DPS if they would accept Alaska's. On the website they showed nine actual reciprocity states. There was actually fourteen but they were waiting for some written confirmation from them. Out of the 31 existing states with carry permits, Alaska would then or very soon accept 25 of those states and hopefully they can get some of them to accept Alaska's.

SENATOR COWDERY asked how many unlawful incidents had occurred in the State of Alaska caused by a concealed carrier who used his weapon illegally.

CAPTAIN HUDSON said to his knowledge there had not been any. He noted Mr. Judy had said the citizen that goes to the trouble of getting a permit and legally doing so is not likely to be out committing crimes.

SENATOR COWDERY asked if there had been any incident where a carrier has been a help to law enforcement in Alaska.

CAPTAIN HUDSON did not believe there had been any identified incidents of that either.

SENATOR THERRIAULT said Captain Hudson had stated in his comments

DPS wants to provide good concise, timely information but started his comments out by saying DPS had been remiss in getting that information out. He wanted to know where the problem was.

CAPTAIN HUDSON said he would be remiss in telling him that if he looked at the website that day all 14 states were up there because they were not. He wanted to make sure that was clear because he didn't want him to think he was leading him astray. They had constantly tried to contact other states. It was a dynamic ongoing process and like anything, it was a matter of timeliness trying to make it happen. The website was not as up-to-date on a daily basis as they wished.

SENATOR THERRIAULT asked if the 25 states were states where Alaska recognized their permits and the list of 13 they had in front of them or the 14 that Captain Hudson was talking about were states that recognized Alaska's.

CAPTAIN HUDSON said the list on the website that day under reciprocity, a total of 14, were states with true reciprocity. They would take Alaska permits and Alaska would take theirs. They had identified another 11 states which met the criteria in the second portion of Alaska's law but had not yet said or provided any documentation that they would accept Alaska permits. They were working on that on a regular basis and he thought some or most of them would accept Alaskan permits. It was a matter of reaching the right person at the right time.

SENATOR THERRIAULT asked Mr. Judy if we recognize everybody's permit but have no leverage to get other states to recognize ours did that put Alaska citizens at a disadvantage.

MR. JUDY said the more states NRA can get to pass laws such as the one they are considering with SB 242 the more leverage they would have. He assured him NRA was working with states trying to get legislation passed where if states were not cooperative those states would simply recognize permits from all states. He thought the more states they can get to act, like hopefully Alaska will act, then it will be like a string of dominoes eventually all the dominoes are going to fall.

He reiterated his doubt that all law enforcement agencies are aware of those 25 states because he had been attempting on a regular basis to get information and had never heard that DPS considers 25 states as being valid in Alaska. He said he would venture to guess that most law enforcement agencies had no clue regarding that point as well. One of the comments the NRA made for proposed regulations for SB 294 was for all law enforcement

in Alaska be notified including those that do not have web access. He wanted the web to reflect a complete listing of those states with reciprocity and those states with similar laws.

CHAIRMAN TAYLOR said that was the purpose of the legislation and for being there. He was shocked to hear that DPS was recognizing 25 states. He asked Captain Hudson and Lieutenant Grimes had he asked DPS in early December how many states Alaska recognized and granting reciprocity to what would the number have been then.

CAPTAIN HUDSON said he could not answer that. In the last several months they had put more emphasis on trying to accomplish this. He believed Commissioner Del Smith had spoken to Chairman Taylor and they put some emphasis on it. He knew that the reciprocity page on the website which had nine states on it were all there in December. There had been several added since that time.

CHAIRMAN TAYLOR said when they checked the website on the first of February it listed seven states which Alaska recognized. From Captain Hudson's testimony they actually now have 14 which they have some type of agreement with and 25 that they hope to have some type of written agreement with in the near future. He asked if that was correct.

CAPTAIN HUDSON said yes. They had four states they had been in contact with which indicated they would give DPS some sort of a written confirmation they will give reciprocity; Georgia, Alabama, Connecticut and Indiana. When they actually get something from their program managers in writing they are locked in on the website. For the top six there are copies of agreements that citizen can pull up and see. The website is dynamic and changing. The other states they evaluated for criteria have been contacted and are pending response from them and hopefully they will accept Alaska permits. One of the things New Hampshire indicated was they would honor Alaska except for the 120-day rule in Alaska law. He said they are trying to convince them under the second phase of our law, if they will just accept our permit we will accept theirs, there is no limit for the 120 days.

CAPTAIN HUDSON said there is dialogue going on between program managers of these states and they are looking at various websites and trying to make it work to the best of their ability. It behooves them to do so because once they can get them locked in if they don't change their laws then they will be through with that issue and can move on to other things.

CHAIRMAN TAYLOR said he was making an assumption but it seemed to him that they had made very little progress in reciprocity for almost four years and during that period of time the dialogue was ongoing. He asked when those letters started flying out of DPS.

CAPTAIN HUDSON said after they passed SB 294 in 2000 he went off to school for three months in Virginia and then changed positions in DPS. He was replaced by another Lieutenant, not Lieutenant Grimes. He came back to the program in July. He did not want to place blame anywhere or try to lead anybody astray but knew there had been work done on the program since he had come back and taken over. He assisted Lieutenant Grimes promotion and she came onto the program in the fall of last year. There had been impetus placed on the program since that time.

CHAIRMAN TAYLOR said if he was to go back through the file to find out when the letters actually left DPS to the other states most of them would be sometime after last fall.

CAPTAIN HUDSON said that was not quite true. He saw the letters before he went off to the FBI National Academy in September of 2000. Prior to his departure he saw letters that were being mailed out to every state that indicated they had state run concealed handgun programs at that time. He knew letters went out after the bill was passed into law. How much occurred in the interim between then and the following July he did not know.

CHAIRMAN TAYLOR asked if the DPS website was the way Alaskans discover what states give reciprocity.

CAPTAIN HUDSON said that is correct. He said they were waiting for written confirmation from Kentucky, Georgia, Alabama, Connecticut and Indiana. They were working with Arkansas, Louisiana, Maine, Maryland, North Carolina, New Hampshire, New York, Oregon, South Carolina, Tennessee and West Virginia.

CHAIRMAN TAYLOR asked if their website information and regulations as they are drafted were in compliance with the law. He understood that instructors who are certified to give the training programs for concealed carry were having trouble because of problems inherent between the regulations and the website.

CAPTAIN HUDSON said he was confused about that because the only contact he had had from any instructors recently in regard to the website and statutes was out of Fairbanks. The instructors indicated they did not have access to the website and asked them for hardcopies of the regulations.

SENATOR THERRIAULT wanted to touch on the issue of Mr. Wagner because he had gotten calls from constituents. He asked if Mr. Wagner had been taken into custody by the police solely on the fact that he had failed to reveal to them he had a concealed weapon with him.

CHAIRMAN TAYLOR said the charge they brought against him was failure to disclose, as a permit holder, that he was actually carrying.

SENATOR THERRIAULT asked if the restriction placed on him for possessing a firearm was because he was adjudicated to have a mental condition and while he is getting treatment that prohibition is put on him.

CHAIRMAN TAYLOR said he did not think he had been adjudicated yet. He noted Mr. Judy testified he was under probation for the criminal charge he was convicted of. That probation will run for three years. If he is still exhibiting bazaar behavior it was hoped that someone would file to have him declared or found to be mentally incompetent and for that reason not to be able to handle firearms. That would prevent him under both Federal and State law from even possession of a firearm.

SENATOR THERRIAULT inquired if the only restriction placed on him stemmed from the concealed carry law.

TAPE 02-03 SIDE B

CHAIRMAN TAYLOR answered that he would not be under probation if he had the gun strapped on his hip and was talking about computer chips being inserted in his head and standing in the rain hoping the rain would wash away all the evil chemicals inside him. There would have been no reason they could have arrested him other than for some overt or bazaar or dangerous behavior because he would have been perfectly legal at that point since no one has adjudicated him or committed him. This law worked very well to make certain that person was no longer on the street with a gun.

JOE NAVA, Fairbanks firearm safety and marksmanship provider, said he supported the bill because it was aimed at the good guys in this country. He agreed with Mr. Judy that the concealed carry people do not cause problems and he called them the good guys. He informed the committee he was an instructor in Fairbanks and trained people for the state and was a course provider for the DPS. He had been training firearm safety and marksmanship in Alaska for 40 years and training instructors for 30 years.

MR. NAVA said he worked very closely with the ladies in Anchorage who administered the program. The program allowed him and other instructors around the state to bring gun safety training to over 18,000 people who would not have gotten it otherwise. That reduced firearm accidents. He said if people didn't know that educational training reduced accidents they would not be in schools trying to teach children how to behave in their future life so they won't come to grief.

He said the concealed carry law in Alaska had reduced the crime rate. He checked the crime rate in the Juneau Library through the reports sent in by DPS for 1995 through 1998. From 1995 through 1998 all crimes against a person had gone down in double-digit percentages. He added it may or may not have all been the result of the concealed carry program but he was certain the concealed carry program had some effect because you could see the same statistics in all the other states.

He explained he trained concealed carry applicants and as the course provider was suppose to have the most up to date information and he could only get that from the website. He had a sheet from the website dated the first of February and it listed seven states and did not say anything about any others. He said that seven had been there for a long time without change.

The problem he had was with the information given to the people and the course providers. People get information from the instructors when they take the class. He has to present what he can get off the website and if that is not up to date and correct then he is not giving correct information to his students. He said he checked the website the first day of February and it said permits must be renewed in person. That had been on the website since the law was changed in August of the year 2000. He sent emails to DPS reminding them of the change but the answer he got was they were going to update the regulations and then change the information on the website. He believed the information on the website should be accurate and updated and it should not take a year and a half to do it.

He discussed the stack of law papers that DPS gives to every applicant when they pick up their application and thought that needed to be rewritten also. He said the first ten pages of that packet were correct, it quoted the law, but the next ten pages on regulations had not been updated. He wanted somebody to update the information and website to comply with the law so he can give the best information possible to his students.

SENATOR DONLEY requested copies of DPS correspondence with the other states including the dates to be added to the record for when this legislation goes to the House.

LIEUTENANT GRIMES believed they could provide most of that. She thought they had it collected in a notebook.

CHAIRMAN TAYLOR said they would make that part of the background material that moves with the bill.

SENATOR DONLEY moved SB 242 from committee with individual recommendations. There being no objection, the motion passed.

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SB 223

SB 223-PRISONERS:PAROLE/GOOD TIME

SENATOR DONLEY, Sponsor SB 223, explained it was a revisit to an issue. The intent of the legislation is to increase the percentage of incarcerated individuals in Alaska that at the time they are released would at least have their General Equivalency Diploma (GED). The public policy reasoning behind it was that studies had shown the number one factor in recidivism on the part of released prisoners from correctional facilities is their ability to read and write, their educational level, which makes common sense. The inability to read and write greatly inhibits their ability to find a job and meaningful employment. People that come out of the correctional facilities with a GED are going to have a better chance in the future to sustain themselves and find jobs and get employment.

He explained the Sponsor Substitute version, in the packet, would allow prisoners, who failed to get their GED, 1/12th of the good time sentence reduction instead of the current statutory 1/3rd sentence reduction available to them. The proposed Committee Substitute (CS) would allow them to get 1/6th of their good time sentence reduction as opposed to 1/3rd. With the 1/6th they would be eligible for half of their statutory good time sentence reduction if they failed to get their GED. He said that was about 17%, which is very close to the national standard of 15% that had been adopted by 30 states and the federal government as a minimum time prisoners are suppose to serve. Alaska currently had a very generous good time law, twice the national standard. For people who don't get their GED it would be more generous than the national standard by 2%.

He said with the understanding that is what the proposed CS would do, he moved the CS be adopted.

CHAIRMAN TAYLOR said the motion was for the committee to adopt the document 2/5/02, 97/J. Hearing no objection CSSSSB 223 (JUD) was adopted.

CHAIRMAN TAYLOR asked if two people go to jail, one had not accomplished his graduation from High School or a GED and the other one had graduated from High School, how would this effect them.

SENATOR DONLEY answered anyone who had graduated or had a GED would still be eligible for the full 1/3rd off for good time. Those people who had not would have to get their GED, unless they fit the exemption criteria, before they would be eligible for the full 1/3rd. If they did not they would only be eligible for 1/6th.

CHAIRMAN TAYLOR asked for whom he had exemption criteria.

SENATOR DONLEY explained the exemption criteria included people who are mentally or physically incapable of obtaining a diploma or its equivalency, they don't speak English as their primary language, or due to the prisoners age or social background the commissioner determines the prisoner cannot reasonably be expected to meet that educational requirement.

CANDACE BROWER, Program Coordinator Department of Corrections (DOC), said DOC also believes that education is an important factor in rehabilitation of offenders and they take that mission very seriously. DOC is opposed to SB 223 primarily because it would increase costs for the state they do not think necessary. They have in place educational programs in all of their facilities. They provide adult basic education, which is literacy programming as well as GED, Vocational Rehabilitation and other educational programs. She thought they did a pretty good job.

She explained at Lemon Creek they have what is called a GED Dorm. When offenders are incarcerated at Lemon Creek the probation officer meets with the offender to determine what kind of schooling they have. If they say they have a GED or a diploma that is verified, particularly if they are going to get into taking away good time. If they need to get a GED or diploma they go into what is called the GED Dorm. In that dorm there is no television and no extra benefits and during the week they are required to study and prepare for the GED.

People in this program who are unable, and there are a large number of offenders who are unable to reach the sixth grade level, don't go to that dorm because it would not be appropriate for them to be in that particular group. She gave that as one example of the things they do to provide education to offenders.

She explained at Spring Creek Correctional Center they have a youth offender program. They have a separate unit for youthful offenders and one of the requirements of that program is they attend school. They are in school everyday. The schooling is provided by the Kenai School District. They also have had commencement ceremonies at Highland Mountain Correctional Center for the women. They celebrate people's successes in education and take it very seriously.

MS. BROWER explained this would be a more punitive angle toward receiving education and they believe, as does most of the educational community, incentive is a better way to go. Most other correctional places do incentives such as provide additional visitation, increased telephone calls, payment to attend school and give additional time off to somebody who achieves their diploma or GED rather than take away what other people would ordinarily receive. DOC preferred that method and she thought that would be less costly with the same result as SB 223.

She said the committee was aware DOC facilities suffered from overcrowding and there were over 700 inmates in Arizona. When DOC met in 2002 in front of the House Finance Committee they had 300 more offenders incarcerated than the previous year. She thought some increase in numbers had to do with legislation enacted that increased misdemeanor offenses to felony offenses and lengthened sentences. She thought the bill would increase sentences for people who would not be committing further crimes. DOC simply did not have room for an increased population and they were doing a good job.

MS. BROWER discussed another problem. On January 1, 2002 the GED testing had been completely overhauled. Tests taken before January 1 would not count towards a GED unless they had completed their GED by December 31st. Everyone as of January 1 had to start over again. They were not sure of the effect of the new test because it is a more rigorous program and battery. They did not know what kind of an effect that is going to have on the offenders and how well they are going to be able to succeed.

She was concerned about litigation. If there was a liberty interest involved, offenders who are violated for not getting their GED or diploma would likely go before the Parole Board for a revocation hearing which would require the use of a Public Defender and cause other problems.

She was concerned that many of their offenders are subject to

court ordered treatment programs such as substance abuse treatment, sex offender treatment, and batterers programs. Some of the programs are full time and require the complete attention of the offender. She asked if this legislation would interfere with their court ordered treatment. For example if someone is court ordered to do sex offender treatment and they also have this legislation hanging over their head would they have to choose sex offender treatment over getting their education. Or if they were court ordered into substance abuse treatment would they have to choose getting sober or getting an education. She was not sure how that would affect people who already had court orders for other important treatment.

She appreciated Senator Donley's Committee Substitute that would increase the percentage of good time to 1/6th. She said when somebody is on mandatory parole often times that is the only supervision they have when they are released. With reduced good time they would not be on supervision as long as they would have otherwise. With the problem of overcrowding if there is a way that offenders can get back into the community safely on supervision she thought that was a preferred method.

CHAIRMAN TAYLOR said DOC was using all the different carrot devises as incentives to get their GED.

MS. BROWER said they do encourage people to get their GED but they certainly do not give them extra privileges or extra time off.

CHAIRMAN TAYLOR said they were not using any of the carrot devises or very few of them that other states are using such as paying people to get their GEDs, giving them extra time off once they get one, giving them additional privileges that they might not have in the institution because they have accomplished that. He asked what incentives were DOC using, just saying it is a good idea to get their GED and they would provide some help.

MS. BROWER answered she was not sure what everybody does in each institution but it is required at Spring Creek in the youthful offender program to be in school or they can not be in that program.

CHAIRMAN TAYLOR said that was only for people under a certain age.

MS. BROWER believed it was twenty-two. At Lemon Creek it is a requirement that they be in the GED Dorm if they are capable.

CHAIRMAN TAYLOR said he knew it was required but it was like prison work programs. There is no requirement to work, it is provided for them and many choose to do it because it gives them some activity during the day.

MS. BROWER said one of the things they do get if they get a GED is television, whether that is a good incentive or not. Sometimes people are encouraged to do better just because it is better for them. They actually do want to get better.

CHAIRMAN TAYLOR asked if they had any negative incentive right now. He asked if failure to get their GED had absolutely no impact one way or the other on the amount of time they are going to serve, when they are going to get out, or their conditions of probation.

MS. BROWER said no although conditions of probation generally have an educational requirement if the judge deems that necessary as do conditions of parole.

CHAIRMAN TAYLOR asked the percentage of people currently released from our institutions that did not have a GED.

MS. BROWER said she was not sure.

CHAIRMAN TAYLOR asked if she knew whether DOC was measuring or keeping track of educational levels, whether they were achieving something within the institution, and how many they were releasing that did not avail themselves of these program.

MS. BROWER said not availing themselves of the program is probably a difficult question to answer. She had some statistics for how many people were enrolled in GED programming in 2000, 2001 and the first six months of 2002.

CHAIRMAN TAYLOR said some take advantage of it and the legislature had put money into the program to make certain there were funds available so people could get learning opportunities while incarcerated. He asked of those released what percentage did not have their GED other than the excused group. He asked what percentage of the group of people Senator Donley had targeted with the bill were not entering into the programs and probably would not without some additional incentive.

MS. BROWER said she was not sure they had an answer to that question. She was not sure whether or not they track.

CHAIRMAN TAYLOR asked if the new GED testing requirement related

in anyway to the testing requirements imposed by the legislature on high school students.

MS. BROWER answered GED testing is nationwide.

CHAIRMAN TAYLOR said it was terrific they had an institution in the state that was using a national test that could be verified and validated.

He noted she had said litigation might be a problem. He said this legislation would only apply to people being sentenced after it takes effect. So it would be some years out before there would be a significant fiscal impact. He noted the DOC fiscal note was \$60,000 going to \$708,000. He said the \$60,000 was contractual and in 2007 there would be a very large impact. He said that would be people who refused to go through the program and DOC would have to keep them longer.

SENATOR DONLEY said a new fiscal note on the Committee Substitute had not been done.

CHAIRMAN TAYLOR asked if the increased cost was because DOC sensed they would be keeping some people in prison longer and it would be more expensive than having them on probation.

MS. BROWER said that was right.

CHAIRMAN TAYLOR asked if they had higher recidivism rates because inmates did not have a GED. He asked if DOC wouldn't want to keep them longer because they are the ones that are more likely to offend if turned loose.

MS. BROWER said she supposed they would want to keep them longer she just did not know how affective punishment was as opposed to positive reinforcement.

CHAIRMAN TAYLOR said Ms. Brower was concerned if they kept them longer there would be a shorter period of parole. He asked if that was a cost concern or a rehabilitation concern.

MS. BROWER said it was a rehabilitation concern.

SENATOR THERRIault wanted to know if Senator Donley had information on why those that have a GED have a lower recidivism rate. Was it because they got an education or are those people who naturally move up into the GED already less inclined to be repeat offenders.

SENATOR DONLEY said he did not know. He explained in national studies it is very clear that the number one correlating fact of a person's recidivism is whether they can read and write. It could be when they were first incarcerated they were a better candidate for rehabilitation in the first place. It could be that when they get out they can actually get a job because they can read and write or it might be a combination of all those things. It was nationally recognized that education is the number one factor in success of not committing another crime when released from a correctional institution.

SENATOR THERRIAULT noted Ms. Brower said the bill designated who would check the prisoner's high school or GED records but had indicated DOC already does that.

MS. BROWER said the Lemon Creek Correctional Center did but was not sure if they did Department wide. If they require a prisoner to prove they have their GED or diploma DOC will be doing that.

SENATOR THERRIAULT asked Senator Donley, since the fiscal note was written to the original bill, did he have an idea how the Committee Substitute would impact those numbers.

SENATOR DONLEY said the number as far as time of incarceration would be halved so the \$341,300 would be \$170,000. The first \$5,500 was contractual services to administer the test of basic education. This legislation puts the burden on the inmate to come forward and show proof they already have their GED. They could wipe that cost out by placing the burden on the inmate. He said it sounded like they were already doing that at Spring Creek and wanted to know what they were doing at the other facilities. They would have to see how Spring Creek does it and how much it cost them there.

He said there was an estimated \$46,800 in contractual service for additional teaching and tutoring services in addition to current expenditures. He said that might be a legitimate cost and probably worth it because there is nothing in the fiscal note anticipating the savings on the back end for the decreased recidivism.

He addressed the issues brought up by Ms. Brower. He said the January 1st GED testing did not have anything to do with the bill other than it might be a little bit tougher to get a GED in the future in Alaska.

He said the issue of being violated for not getting a GED was reverse thinking. The bill said they get 1/6th unless they get

their GED then they get 1/3rd off. The Department was in the mentality that somehow it is the right of prisoners to have the 1/3rd good time. He thought that was reverse thinking. Good time should be a reward for good behavior and this is part of the good behavior so it is not taking it away from them it is what they didn't get.

He said the issue of conflict with other court orders, they have 24 hours locked up in prison, so unless they are all consuming, not being able to take sex offender or alcohol treatment and go to school seemed inconsistent and not a very persuasive argument. He said a lot of people do it on the Internet and don't have to have special classes to do it.

SENATOR DONLEY addressed the idea that they would be cutting down on time in the community for assessment and transition. He said good time was never intended for that function. That is what parole is intended to do and that is up to judges who can issue mandatory parole. If the judges know that getting a GED may affect the total amount of good time they should be sentencing people to a certain amount of parole to give them transition time into the community. He said it is really bad public policy to assume good time is given to everybody so the only way we can have a supervised period to go back in society is if they give them good time. He thought good time should be given as a reward for good behavior and not because they want an integration period back into society. Mandatory parole should be part of the judicial function and require a period of supervision.

SENATOR COWDERY thought education helped the parolees to adjust to the outside environment. The prisons are already overcrowded. He asked if they had any figures on what percentage return in connection with their education level.

MS. BROWER said she did not have any numbers on that.

CHAIRMAN TAYLOR asked if DOC did not track any of that.

MS. BROWER said they are implementing a new data gathering system that will track information much better than they have been able to do in the past. They hoped to be able to track those things more closely.

CHAIRMAN TAYLOR said the question was based on the statistic that nationally those who cannot read or write have a greater propensity to repeat and return to institutions. Senator Cowdery was asking how many of these folks are coming back and at what levels over a given period of time. He thought they needed to

find and utilize every technique they could to make certain that a person having once been in an institution never wanted to come back again and maybe modified their life style and life choices so they did not come back again.

MS. BROWER said how many come back because they don't have their education is a complicated question. How many come back because they have a substance abuse problem or other issues that have not been dealt with may be more critical in Alaska because that is a tremendous problem they try to address on a regular basis.

BRUCE RICHARDS, Special Assistant, Office of the Commissioner DOC, said Senator Donley mentioned what is known around the country as "truth in sentencing" where DOC in Alaska is required to provide a 33% mandatory parole. Some states have a 15%. Even though Alaska is more generous in their good time the sentences here are longer. Last August when the Department of Justice came out with their statistics most of the states in the country actually had a decline in their prisoner population and Alaska was one of five that had an increase. They had 300 more people than at that time last year.

He pointed out that in the testimony on SB 242, Concealed Handguns people were talking about crime reduction. If that was the case the populations were still rising in DOC. There are some things that are different in Alaska and he believed it was sentencing.

MR. RICHARDS said with the Committee Substitute the incarceration costs under FY 06, 07 and 08 would change. The \$341,000 would become \$175,000 and the \$648,000 would also be \$175,000. There was a holding over of people on the second year that would no longer exist under the 1/6th. The total number in FY 06 would be \$235,300 and hold the rest of the way out.

He wanted to respond to Senator Taylor's question about what DOC does for incentives. Television was called an incentive but it actually was something that everybody had. Senator Donley's No Frills Prison Bill removed that portion so now in order for an inmate to have television they would have to obtain a GED or diploma.

SENATOR DONLEY said everybody in Alaska correctional facilities had access to common area television. The provision was whether or not they have a television in their own cell.

MR. RICHARDS discussed spitting time between court ordered programming and getting a GED on the Internet. A piece of the No

Frills Bill specified inmates are not allowed to have a connection to the Internet.

SENATOR DONLEY said that was a connection to the Internet in their own cell and they still have access to computers in common areas.

MR. RICHARDS said they do not provide Internet at all.

SENATOR DONLEY said they could access computers and have a program like a CD Rom that had what they needed to get their GED in a common teaching area.

MR. RICHARDS said they could do that in places where they had computers. He thought they did that in some places.

He said because of overcrowding people are transported and moved all the time just to keep the facilities at their caps as much as they can. They are not able to do that everyday but everything is interrupted all the time. He noticed the bill allowed, under section (A) page 2 lines 12 & 13 "if the program is made available". One of their big problems was the constant moving of prisoners to maintain the population at different facilities.

SENATOR TAYLOR said most people who go out on their own and get their GED do it while they are feeding their kids, doing the laundry and going to work everyday. They get a couple of books, take them home, work on them in the house and they cannot afford a computer. He said for somebody to suggest to the committee that some poor prisoner, who had a sex violation, might not be able to do his entire sex violators treatment program and still be able to get a GED too was kind of tough to swallow.

He commented on the current policy within DOC attempting to comply with Judge Hunt's order on housing. He said it is a standard higher than most any other state had. He could not believe the level of travel and transportation and how many hours of State Trooper time was being wasted as they bounced prisoners from one facility to another based upon how many came in the night before. He said it was a bazaar situation and he had yet to see the Administration put in one single bill to build a prison.

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MR. RICHARDS said Senator Taylor's comment, that there had been no leadership by the governor and no bill had been put forward, there actually had been Regional Correction Expansion bills

introduced by the governor in the past. Some of those turned out, they have a new Anchorage jail opening up this year.

MR. RICHARDS pointed out that the majority of business in DOC takes place in the Anchorage bowl area. Most of those people are pre-trial inmates and they only have a limited number of bed spaces for those people. In order to get people through the judicial system and through the process they need to be in that location. Some of those people don't stay where they are because their court dates may be far enough down the road that they can move them out to Palmer or down to Wildwood because there are new people coming in.

SENATOR TAYLOR said he understood that. He appreciated the clarification of it because he had painted with too broad a brush on that. He understood that is the biggest part of the population that has to keep moving.

ROSE MUNAFO, Criminal Justice Planner Department of Corrections, said Senator Donley had mentioned they might not need to do the test of adult basic education. She believed he felt the inmates would be required to provide them with documentation of their educational level but the reason they do that test is because it is a requirement by the GED testing service. When they enroll anyone in Adult Basic Education classes they have to do a base line evaluation of their educational level.

SENATOR DONLEY said the fiscal note assumes there are 200 new inmates, 8% are incapable and 35% already have their GEDs so they are going to have 111 to test. DOC is already testing some of those so why would they have to have the full \$5500 for 111 if they are already doing that process, for example, at Spring Creek for all of them.

MR. RICHARDS said they are anticipating increased participation in the GED program because of this legislation for people who are going to want to get the full 1/3rd good time. Which would result in an additional test that they probably would not be providing.

MS. MUNAFO said it costs roughly \$50 per person.

SENATOR TAYLOR said that made good sense because there may very well be a resident body of people within the institutions that would then want to participate.

He asked if the population in their institutions was, 3500 or 4000.

MR. RICHARDS said there were approximately 4600 people in custody.

SENATOR DONLEY said he was all for them applying for a GED and getting an education but this bill would not be an incentive towards people already in just for new people. If it inspired the existing people, that would be wonderful.

MS. MUNAFO said she did the program management for inmate education and a few other programs so that is why she was there.

SENATOR TAYLOR thanked her and said he believed one of the greatest aspects of rehabilitation they can offer to people who are incarcerated is to get them some education and get them the ability to read and write and maybe they will be able to handle their lives a little better when they get out. He appreciated what the people with DOC were doing.

SENATOR DONLEY told Ms. Munafo his staff would be in contact with her to try and work out a new fiscal note based on the new Committee Substitute.

SENATOR DONLEY made the motion to move CSSSSB 223 (JUD), the newly adopted J version from committee with individual recommendations.

SENATOR TAYLOR said the record should note Senator Ellis had left but they still had a quorum.

SENATOR THERRIAULT said that is with a new fiscal note.

SENATOR TAYLOR hearing no objection moved CSSSSB 223 (JUD) from committee with individual recommendations and with a new fiscal note as testified to. Meeting was adjourned at 3:15 p.m.

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