

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE**

February 7, 2007

1:05 p.m.

MEMBERS PRESENT

SENATE JUDICIARY

Senator Hollis French, Chair
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

HOUSE JUDICIARY

Representative Jay Ramras, Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

SENATE JUDICIARY

All members present

HOUSE JUDICIARY

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

Overviews: Department of Law
Department of Corrections

HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

TALIS J. COLBERG, Attorney General Designee
Department of Law (DOL)
PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Presented DOL overview.

CRAIG TILLERY, Deputy Attorney General
Civil Division
Department of Law
PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Presented Civil Division overview.

LARRY OSTROVSKY, Chief Assistant Attorney General
Oil, Gas and Mining Section
Department of Law
Anchorage, AK

POSITION STATEMENT: Explained the Pt. Thompson lawsuit.

MARY ANNE HENRY, Deputy Attorney General
Criminal Division
Department of Law
Anchorage, AK

POSITION STATEMENT: Presented Criminal Division overview.

JOE SCHMIDT, Commissioner
Department of Corrections (DOC)
431 N. Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Presented DOC overview.

DWAYNE PEEPLES, Deputy Commissioner
Administrative Services
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Responded to questions regarding DOC.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the joint meeting of the Senate and House Judiciary Standing Committees to order at [1:05:48 PM](#). Present at the call to order were Representatives Holmes, Lynn, Samuels, and Coghill, Chair Ramras, Senator Wielechowski and Chair French.

OVERVIEW: Department of Law

CHAIR HOLLIS FRENCH announced that the first order of business is an overview from the Department of Law (DOL).

1:06:50 PM

SENATOR MCGUIRE joined the meeting.

TALIS J. COLBERG, Attorney General Designee, Department of Law, introduced Mary Anne Henry, Anne Carpeneti, Craig Tillery, Richard Svobodny, Deborah Behr, and Larry Ostrovsky.

ATTORNEY GENERAL COLBERG asked that the legislature remain mindful of the need for competitive salaries and compensation for staff. He wasn't expecting changes this session, but it is increasingly becoming an issue - particularly with support staff. He noted a recent staff member leaving for higher pay in the private sector. As senior employees reach retirement age there will be an increasing need to replace staff and it becomes an issue of competitiveness for getting and keeping employees. Unless it's addressed, this issue will sneak up in a very negative way. Don't let this issue get lost in the discussion of cuts, he said.

1:11:13 PM

REPRESENTATIVE GRUENBERG joined the meeting.

ATTORNEY GENERAL COLBERG said he shares the governor's concern about the deteriorated relationship between urban and rural populations in Alaska, and he wants to bridge that gap. He noted that the Rural Justice Commission is presenting opportunities to resolve this and other longstanding problems that Alaska faces.

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CRAIG TILLERY, Deputy Attorney General, Civil Division, Department of Law, said he would focus on the issues that affect policy considerations. He won't address child protection even though that is an incredible problem in the state; it will be more relevant to the budget committees.

MR. TILLERY said there are about 160 attorneys in the Civil Division with about 100 in Anchorage, 30 in Juneau and 20 in Fairbanks. There are some child protection attorneys in smaller communities where rapid access to the courts is needed. The Commercial and Fair Business section handles consumer protection, he said, including average wholesale pricing

litigation—"a scheme by which manufacturers publish essentially false prices for drugs. Those prices are then used as a reference for physicians in billing our Medicaid," he said, which the state reimburses. Alaska's Medicaid program spends about \$129 million annually on prescription drugs, he noted. The amount of illegal overages is significant, and the state is preparing for trial in 2008. One defendant is talking about a significant settlement already, he said.

CHAIR FRENCH asked if these fraud cases are being referred for criminal prosecution.

MR. TILLERY said it is just a civil proceeding at this point; it would be complex to do it as a criminal fraud case. He said Ms. Henry can address that, but such convictions can be tough because of the burden of proof. He noted that states all over the country are doing the same thing.

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SENATOR WIELECHOWSKI asked what is being done to protect consumers from utility rate hikes. He said there are representatives from industry but none for the consumer.

MR. TILLERY said he will get to that later, but in the consumer protection unit the attorney general serves as consumer protection for the state. "We deal with normal consumer problems," and he gave an example of car dealers falsifying list prices. Utilities are addressed by another section, and it is funded through the Regulatory Commission of Alaska (RCA). It was housed in the RCA until about four years ago, he stated. The attorney general serves as the public advocate and is very active in the Enstar case.

SENATOR WIELECHOWSKI asked him to speak to that case.

MR. TILLERY said the Regulatory Affairs and Public Advocacy section (RAPA) is involved on behalf of all ratepayers in the state. It generally participates in all significant rate cases, he said, but it will decline participation due to lack of resources or because there is not a case against a rate increase. Last year comments were filed in three dockets and testimony in eight cases, including five electric utility cases, a statewide refuse utility case, three natural gas cases, and one telecommunication case. As an example, RAPA filed expert testimony with AEL&P [Alaska Electric Light and Power] regarding a rate-change proposal, and a settlement was reached.

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SENATOR HUGGINS joined the meeting.

MR. TILLERY said RAPA filed for APES [Alaska Pacific Environmental Services] for interstate subsidiaries, and a settlement resulted in a reduction in rate increases for four communities. It filed expert testimony with the electric utility in Kake, which resulted in an 11.18 percent increase instead of the requested 55 percent. The section has three attorneys as well as economists and engineers to provide expertise.

MR. TILLERY said the Cook Inlet gas rate increase is because the old contract uses a price based on the Henry Hub index. The RCA objected to the use of the index at that time, but the contract was allowed to go through. After Hurricane Katrina, the Henry Hub increased and consumer prices rocketed. He said RAPA spent a lot of time analyzing a recent request for a new contract using the Henry Hub, and the RCA rejected it.

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MR. TILLERY said there are violations of the Consumer Protection Act. He spoke of warnings not being issued regarding side effects like weight gain and diabetes [for a certain medication], and it will cost Alaska's Medicaid agency millions of dollars in the future. The state sued and the trial will be in March, 2008.

MR. TILLERY said there is Vioxx litigation because the drug increases the risk of heart attacks. A number of class and individual actions have been filed, he stated. Alaska's Medicaid reimbursements for Vioxx from 2001 to the present are almost \$4 million, "and we filed a claim for the return of some of that money and for penalties under our consumer protection statutes." He anticipates it will be sent back to Alaska and the DOL will request a trial date then.

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MR. TILLERY said the Environmental Section primarily represents the Department of Environmental Conservation (DEC), and the most significant item is the BP corrosion issue, which is a joint effort with DOL's Oil and Gas Section. There were two spills due to pipe corrosion, which resulted from not following environmental safeguards, and the pipeline shutdown resulted in a significant monetary loss to the state. He said BP is cooperating and providing documents. The initial estimate was 200 million pages, and now it is 60 million pages of company documents that pertain to the state's request for information.

"We don't believe there are 60 million relevant pages out there, but we're going to be spending, unfortunately, a fair amount of money figuring that out." He said the state has engaged outside counsel. He noted that in the next year the DOL will retain more experts for the corrosion issues and the fiscal damage to the state from the lost production.

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CHAIR FRENCH asked if there is currently a dialog with BP and no litigation.

MR. TILLERY said yes. The documents are arriving electronically, he added. He hopes the program being used will be searchable.

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CHAIR RAMRAS asked about the Alaska Guarantee Fund and workers compensation companies that went bankrupt several years ago. "Has the state made any effort to try to recover from parent companies, associated insurance companies?"

MR. TILLERY said he didn't know but would find out.

CHAIR RAMRAS spoke of one of the companies that he had used, "and I paid for it in tens of thousands of dollars to the state through the Alaska Guarantee Fund, and there's a \$20 million balance in that fund, and I just wondered if the state had made any effort to try and recover from any parent entities." He also asked about the \$12 million that the governor has requested for outside counsel to litigate against Mercer, and if the Civil Division will provide oversight to recover from the PERS [Public Employee Retirement System] and TRS [Teacher Retirement System] problems of the last few years.

MR. TILLERY replied that outside counsel is engaged through the DOL using an appropriation from last year.

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MR. TILLERY said the Mercer case deals with the unfunded PERS/TRS liability of \$8.5 billion. A law firm call Paul/Weiss has been engaged. The firm has taken this type of case to trial and prevailed, he stated. It has evaluated the case, as well as four outside experts, and the state believes there are actionable claims against Mercer. It is likely that the DOL will recommend litigation if necessary, he said. It has requested \$12 million supplemental for the entire cost of seeing the case through appeal. The state extended a tolling agreement with Mercer and intends to talk with Mercer later this month.

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MR. TILLERY said the DOL is continuing to work on making Healey Clean Coal a productive effort.

CHAIR RAMRAS said as a ratepayer he does not want to see a lawsuit between GVEA [Golden Valley Electric Association] and the state. He asked if the state is headed that way.

MR. TILLERY said, "We are in a lawsuit now; we have filed a lawsuit. The object of our lawsuit is to resolve this so we can get that plant operating." He said mediation has been helpful, and he doesn't want the state to litigate because it will cost everyone a lot of money.

CHAIR RAMRAS said you will not be litigating against GVEA. "It's a member co-op utility, so you are looking at the person you would be litigating against. So I hope that the state will be very thoughtful in proceeding—and very forgiving in a mediation because it would be heinous for the state to file a suit against me and all the other ratepayers from GVEA." It will create a devastating divide in Fairbanks if it proceeds, he stated.

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SENATOR THERRIAULT joined the meeting.

REPRESENTATIVE SAMUELS asked if the money for all the lawsuits is included in the DOL budget.

MR. TILLERY said all are included in the budget, except for Mercer and the Oil and Gas litigation. He stated that Mercer is already in the supplemental budget, and there will be an Oil and Gas supplemental as well.

REPRESENTATIVE SAMUELS asked what cuts will come out of the DOL budget.

MR. TILLERY said the DOL is also involved in a 9th circuit petition regarding a rule on mercury emissions that will help GVEA and Healey Clean Coal. Right now, the EPA [Environmental Protection Agency] will prohibit those plants from operating based on a mistake in setting the mercury emissions limit.

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MR. TILLERY said he expects a decision in the Moore v. State school litigation that has concluded. He also noted issues of navigability and predator control, and "we continue to

essentially win on all of those cases." He said DOL is about half way through briefing on Federal Reserve Water Rights, and DOL is dealing with subsistence with respect to requests for reconsideration and appeals from the federal subsistence board regarding customary and traditional use determination. The major cases in oil, gas and mining include Pt. Thompson. He said the TAPS [Trans Alaskan Pipeline System] tariff case is ongoing; the hearings are finished, and DOL is in the process of post-hearing briefs.

CHAIR FRENCH asked about the Pt. Thompson timeline.

MR. TILLERY said there is an administrative appeal and an original action that was filed in court. "We've moved to consolidate; those have been granted. We filed a motion to dismiss that hasn't been decided."

CHAIR FRENCH said the nightmare scenario is that it would devolve into an Exxon Valdez-type litigation with no end.

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LARRY OSTROVSKY, Chief Assistant Attorney General, Oil Gas and Mining Section, DOL, said there are three administrative appeals on Pt. Thompson filed by Chevron, BP, and Exxon. Additionally, Exxon filed an original action. Administrative appeals usually move faster than original actions because they are based on an agency decision. The Department of Natural Resources (DNR) has assembled about 30,000 pages for the record and the court will set a briefing schedule. Administrative appeals can usually be handled within two years. Original actions take longer because there tends to be more motion work, he said. That's one reason the state filed to dismiss Exxon's original action and to consolidate the administrative appeals. The state wants to move expeditiously, but it is hard to predict.

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MR. TILLERY said the government's case with the Exxon Valdez was finished in less than two years. The private plaintiff case has lingered forever, he explained. There are some very high value income tax cases that are confidential. The TAPS quality bank is another issue.

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MARY ANNE HENRY, Deputy Attorney General, Criminal Division, said the issues are simple; "people continue to commit crimes and we continue to prosecute them." She said there are 13 offices with district attorney generals, and she is the head of

the department. There is a central office in Juneau and Anchorage. Each office has specific areas that it covers. There is also an office of special prosecutions and appeals, which is headed by Mr. Svobodny. There are eight appeals attorneys who handle all of the appeals in the state in order to be consistent in front of the Court of Appeals and the Supreme Court. There is one attorney handling misdemeanor appeals, she explained, and another attorney handling all the post conviction relief actions. The murder in McCarthy is still pending because of a claim of chemicals in the defendant's blood that caused him to commit the murders, she stated.

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CHAIR FRENCH asked when the McCarthy case took place.

MS. HENRY said she believes it was in the 1980s. Another ongoing litigation is the Faccio case. The Faccio's children started the group Victims for Justice after their parents were murdered. One of the victim's daughters asked Ms. Henry, "Doesn't this ever end?"

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REPRESENTATIVE SAMUELS asked, "How would we stop that?"

MS. HENRY said a statute was passed that put a two-year time limit on when a post conviction relief could be filed, but once it is filed it's handled as a civil case, she said.

REPRESENTATIVE SAMUELS asked if the statutes set up the process.

MS. HENRY said yes.

MS. HENRY said the Office of Special Prosecutions and Appeals (OSPA) has eight state-wide attorneys, often funded by the clients, who work on environmental crimes, fish and game crimes, welfare fraud, Medicaid provider fraud, permanent fund dividend fraud, and child support insurance fraud. There are two attorneys who work on special prosecutions that the District Attorney's office can't handle, prosecuting a police officer, for example.

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MS. HENRY said one of the attorneys in OSPA prosecuted the Whitewater case, which is well-known because of the recent pardon. The Greenpeace case in Ketchikan is being handled by that office too. She said statistics can give an idea of what is going on. There is also a cold case attorney; "that's recent and

that's going very well." There is also a rural prosecution unit made up of three attorneys and one paralegal. They travel to small communities for homicides and sexual assaults, she stated. Her office has been able to help Bethel with its several homicides in the last several months.

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MS. HENRY noted that "statistics in most areas are going up." New crimes are created by the legislature each session, "which is fine," but it requires money for more prosecutors.

CHAIR RAMRAS said he and Senator Bunde attended a sex offender policy management course, and he learned of a 12-year-old who raped another 12-year-old. He was told that Alaska criminal statutes are deficient for juvenile sex offenders. He noted that Alaska is building a juvenile residential psychiatric unit in Fairbanks and a quarter of it is for sex offenders. He asked if that is an area that ought to be addressed.

1:50:09 PM

MS. HENRY said there is a special prosecutor who only works on sex crimes and she is based out of Fairbanks. The problem with 12-year-olds is they are tried in juvenile court. Getting a waiver to try a child in adult court is difficult under the age of 16, she said. "If they're 12, we can try to waive them, it's not automatic, but we have a mini-trial and try to waive them into adult court, but that's up to a judge." The juvenile justice system will have jurisdiction over that child until he or she is 19. There are sex offenders at 15 years of age, and those four years of jurisdiction are usually not enough to go through the sexual offence program, she said. She clarified that she is not proposing lowering the age for automatic waiver, but that is the problem, "and I'm not sure that lowering the age any more would be acceptable."

CHAIR FRENCH requested knowledge of the scope of that problem for a future conversation.

CHAIR RAMRAS said, "They grow up to be adult sex offenders and then they don't get caught until they get caught in the adult cycle, and a lot of young lives are destroyed."

MS. HENRY said Theresa Foster, the state-wide prosecutor give a presentation on sexual assault and sexual abuse of a minor next Wednesday. Mr. Bodick, who represents the Department of Corrections, will be available by phone. He will explain what is going on with the polygraph issue, she stated.

MS. HENRY said getting new judges is a problem, particularly in Southcentral and in the valley, "and we're not getting new DAs." It forces them to be in two courtrooms at the same time. There was a question of why the state is not criminally prosecuting fraud cases, and it is because proving intent is difficult.

CHAIR RAMRAS noted the plethora of DUI [driving under the influence] offenses. He asked if therapeutic courts are successful, and if such cases are overwhelming the DAs office.

MS. HENRY stated the belief that 60 percent of those who use therapeutic courts do not recidivate for five years. Therapeutic courts are a good idea, she said, and it doesn't burden DOL too much, except that somebody has to be in the courtroom most of a day.

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CHAIR RAMRAS asked how many cases involve DUI and alcohol.

MS. HENRY replied that it is about 50 percent of misdemeanors, and the rest are related to domestic violence. There are two full-time prosecutors in the Anchorage office who only work on felony DUIs.

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SENATOR THERRIAULT said a public defender told him that he would expect to win 5 to 15 percent of his cases, but in Kenai the public defenders win 55 percent. He asked what the problem is.

MS. HENRY said she plans to go to Kenai. The problem is they are taking all the cases that police send, rather than screening out or declining any. She plans to reorganize the office so that someone screens the cases to determine if a case is provable or worth the time.

SENATOR THERRIAULT said the waste of time and money is disturbing, and it is putting citizens through the "meat-grinder" legal process unnecessarily. He said he needs to explain to constituents that it is prudent to not prosecute a case that won't be successful.

MS. HENRY said there is a lot of plea bargaining going on, but the public defender in Kenai won't bargain a case if he knows he's going to win at trial.

CHAIR FRENCH brought up the issue of gang violence. He asked if she had suggestions to strengthen laws dealing with it.

MS. HENRY noted that the material witness bill that requires somebody to give their identification is helpful. Until she saw the problems associated with Senator McGuire's requirement to report bill, she had hoped that it would help too. The thought was that "some of these people would report" when faced with being charged for a crime. She said witnesses refuse to talk and identify themselves when police respond to a gang shooting. Now they must identify themselves, she stated, and she is not sure if any more is needed. She said there are probably a couple of other tools to be found. There is one prosecutor newly assigned to the gang unit at the Anchorage police department.

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CHAIR FRENCH told Ms. Henry that she, as the state's top prosecutor, can be a public relations agent throughout the communities and schools to warn kids that there are aggressive prosecutors "waiting to take your case to trial, if necessary, and to punish you severely if you're caught with a gun or drugs." He urged her to use the power of her office to get the word out that prosecutors will make an offender's life miserable.

MS. HENRY agreed. She noted that there is a police-in-schools program and students could be informed that there is a prosecutor focused only on gangs and one focused only on guns and drugs. Perhaps that would help, she said.

CHAIR FRENCH said, "A new-marshal-in-town kind of approach."

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SENATOR HUGGINS noted that judges were added to Mat-Su and Fairbanks, and he asked if that has helped.

MR. HENRY said she thinks it will help the backlog. Civil judges were increased in Anchorage, but not criminal judges. A criminal judge will be added to Kenai and Palmer, she said.

SENATOR HUGGINS asked if planning a new prison and justice center in Mat-Su will be within the domain of the DOL.

MS. HENRY said, "To a certain extent, yes." She has an attorney working for her who represents the Department of Corrections, but he will be just a small part of the discussion.

The committee took an at-ease from [2:05:49 PM](#) to [2:15:25 PM](#).

CHAIR FRENCH reconvened the meeting and announced the next order of business is an overview from the Department of Corrections.

OVERVIEW: Department of Corrections

[2:15:40 PM](#)

JOE SCHMIDT, Commissioner, Department of Corrections (DOC), introduced Dwayne Peeples, Deputy Commissioner, and Sharleen Griffin, Director of Administrative Services. He recapped his professional history. Mr. Peeples oversees administration functions statewide, the budget, and the medical function. He noted that Sam Edwards is Deputy Commissioner of statewide operations. The DOC has three divisions: Institutions; Probation and Parole; and Administrative Services. He said it is a unified department, which means it holds and supervises pre-trial prisoners as well as sentenced prisoners. The pre-trial prisoners are new to the system, and "their life is in a different place than after they're sentenced," he said. New prisoners start developing relationship problems and they lose their property, and it is more stressful than after they have been in the system for awhile.

REPRESENTATIVE SAMUELS asked how many pre-trial individuals are first-time offenders.

COMMISSIONER SCHMIDT said he will find out.

[2:18:19 PM](#)

CHAIR FRENCH surmised that the difference between jail and prison is the length of stay.

COMMISSIONER SCHMIDT clarified that jail is for pre-trial, and prison is for sentenced people, no matter how many days or years are spent there.

REPRESENTATIVE COGHILL said DOC moves people across the state for pre-trial issues, "which has a huge detriment to any kind of programmatic approach that you might have for drug and alcohol rehab." He asked if the commissioner will focus on that, if the legislature could help, or if it is not fixable.

COMMISSIONER SCHMIDT said he will discuss that. He noted that \$1.5 million was reduced from his department in 2003, and DOC is in the process of rebuilding and evaluating. A current task is to keep prisoners from losing their place in a program just

because of a transfer. He suggested using common curriculum, but prisoners may be using the transfer as an excuse.

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COMMISSIONER SCHMIDT said there are 12 institutions, totaling 3,122 beds. The emergency capacity is 3,232 beds. There are 13 probation offices supervising 5,560 offenders. There are 15 contract jails throughout the state, totaling 153 beds. There are 7 community residential centers with 614 beds, but 100 beds were lost last year primarily due to vacancy, he said. Another 100 were empty in December, "and we don't want to go through that again, so what we're doing is pushing population management real hard for central office driving the facilities to fill these beds." If prisoners can be safely managed they should be in community beds, he opined. They can work and support their families. "We've already paid for the bed; if we don't we pay for the bed that's empty at the halfway house, we pay for the bed they are in in Alaska, and somewhere down the line we're sending people to Arizona and we're paying for that bed."

REPRESENTATIVE COGHILL asked if the specialty courts and the community residential centers (CRC) have lightened the loads for the probation officers. There are two different values of supervision, he said, and the workload is high. "Is there continuing training/education for the probation officers?"

COMMISSIONER SCHMIDT said he will address that later.

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COMMISSIONER SCHMIDT said there are 7 contract treatment centers with 26 beds. The Corrections Corporation of America (CCA) in Red Rock, Arizona is holding 1,060 of Alaska's prisoners.

CHAIR FRENCH asked why there are only 26 beds in 7 treatment centers.

2:24:36 PM

DWAYNE PEEPLES, Deputy Commissioner, Administrative Services, Department of Corrections, said there are 26 beds allotted in the different centers.

CHAIR FRENCH asked what the function is.

MR. PEEPLES said it is intensive, in-patient alcohol treatment. The services are supported through the Department of Health and Social Services (DHSS), Division of Behavioral Health.

REPRESENTATIVE COGHILL said the Oxford House "has a little bit of work there." He asked if it is outside the probation system, and said these were different from the halfway houses.

MR. PEEPLES said, "Akeela House, these YKHCs [Yukon Kuskokwim Health Corporation], these are not our normal CRCs. Some of these operations, they're alcohol therapy treatment facilities."

REPRESENTATIVE COGHILL said CIRI [Cook Inlet Region Incorporated] also proposes a Southcentral location.

MR. PEEPLES agreed.

[2:26:27 PM](#)

SENATOR WIELECHOWSKI asked what percentage of the prison population are heavy drug or alcohol users.

COMMISSIONER SCHMIDT said it is 92 percent nationally.

MR. PEEPLES said the Mental Health Trust is just completing a study of the beneficiary profile of the correctional system.

REPRESENTATIVE GRUENBERG said he would like that information broken down into alcohol, drug, and mental health. He would like to see different mental health categories, including paranoid schizophrenia, bipolar, and others. It will be helpful because the more we know about the people who wind up in prison the better we can help them, he stated.

CHAIR RAMRAS asked how many of Alaska's prisoners who are in Arizona, stay in Arizona, and how many of them must come back to Alaska as part of their probation or treatment. I'd just as soon export them, he said.

[2:29:57 PM](#)

MR. PEEPLES said the department returns all people to the point of arrest. Everybody in Arizona is returned to Anchorage and then put under probation, and Arizona strictly regulates that.

REPRESENTATIVE COGHILL said there must be a protocol for looking at mental health issues during intake.

REPRESENTATIVE GRUENBERG said he is not asking for major research.

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MR. SCHMIDT said the DOC processes 33,000 prisoners yearly, and more than 13,000 will have some type of mental health problem. Approximately 40 percent of Alaska inmates suffer from mental illness, traumatic brain injury, mental retardation, or developmental disability, and 18 percent have a serious chronic mental illness like bipolar disorder. Mental health employees see about 100 new patients each month who had previously been unidentified as having mental health diagnoses. They had more than 13,000 inmate contacts in 2005, which is a 23% increase from 2001.

REPRESENTATIVE GRUENBERG asked that that information be included, but to be careful because an individual may go through intake more than once. He also asked for information on the success of the prison system treatment.

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COMMISSIONER SCHMIDT said people with mental illness are incarcerated for twice as long as other offenders regardless of the level of offense. About 1 in 10 inmates with mental illness is either homeless or living in a motel at the time of arrest, he stated. About 14 percent of Alaska Mental Health Trust beneficiaries were diagnosed with mental illness for the first time within the DOC. "It appears that we're the first ones to ask the question. Obviously something terrible happened that landed them in jail, so now the system is asking why." He said some offenders want a diagnosis that can help in court.

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REPRESENTATIVE COGHILL said there are lingering affects of methamphetamine use that mirror mental health problems. Those will dissipate over time, he stated. "Some are genetic and some are self induced, like methamphetamine," he said.

COMMISSIONER SCHMIDT said that can be factored in.

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SENATOR MCGUIRE said there seems to be a direct correlation between the legislature eliminating community-based mental health and treatment programs and the spike in offender rates of those who are mentally ill. It is of concern because the legislature has a modus operandi of using community treatment and not institutionalizing people. But "to an extent, I think we have abandoned those people and so our jails are fancy mental health treatment facilities," he said.

CHAIR RAMRAS asked what sex offender treatment programs are in the corrections system and how many people are held for sexual offenses, particularly against children.

2:38:07 PM

COMMISSIONER SCHMIDT said that in the 1950s there were 560,000 mental patients in hospitals nation wide, and in 1980, there were 130,000, and in 2002 there were 61,000. From 1979 to 2005, "API [Alaska Psychiatric Institute] even reduced from 220 down to 78." He said that is due to modern medicine and a public philosophy of managing people in the community. If that community-based support doesn't materialize, then 13,000 end up in jail. Whether a person should be in jail or in a hospital is a big debate, but his job is to react when someone shows up in the DOC system. For reentry, the DOC mental health staff is doing more than anyone else, and they help with Medicaid qualification approval prior to release. The first 30 to 60 days after being released is crucial for recidivism, so by getting a person the medication and counseling prior to release, "we think they are less likely to re-offend." The Mental Health Trust agrees with that, he said. But there are a lot of mentally ill patients in the DOC system, so staff is stretched.

COMMISSIONER SCHMIDT said the electronic monitoring program is supervising 194 offenders, and 180 are in the Anchorage area and the others are in Kenai and Fairbanks. It has a 95 percent success rate. The failures are technical violations, like smoking marijuana or drinking. These are prisoners in the community, so public safety is an issue, but with a 95 percent success rate, he thinks the program should be "advanced." If a person can be productive and safely managed in the community and "if we can stop their behavior with electronic monitoring, then I think that's where they need to be."

2:40:38 PM

SENATOR McGUIRE spoke of a court opinion yesterday noting possible discrimination in the application of an ankle monitor. Only those with money could get one, she said, so the opinion was "throwing it out wholesale." It concerns her, she said.

COMMISSIONER SCHMIDT said the appellate court said that electronic monitoring won't count toward prison time. "It's when the court puts someone out in lieu of being in prison or being in jail awaiting trial, that time doesn't count. It's bail release; it's not people that are ours yet." He surmised that if the court deems that a person qualifies for electronic monitoring "at the front end, when they are the most volatile...I

think it's likely they'll qualify for the program on the tail end of the sentence, so we didn't see a huge impact there."

SENATOR McGUIRE encouraged the department to work with DOL. If there is a perceived inequity, "the other way to tackle that would be to subsidize those individuals that don't have access—the way we do with public defenders." She noted that it will cost the state either way.

COMMISSIONER SCHMIDT said the fee is waived in many cases. He sees how it could be perceived as discrimination, and he is not sure how many get the fees waived.

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CHAIR RAMRAS said he had a maintenance man with an ankle monitor and was very impressed with the program.

REPRESENTATIVE GRUENBERG asked for a copy of the opinion and suggested looking into it.

SENATOR HUGGINS asked if high school drop out rates could predict the future population of the prisons.

COMMISSIONER SCHMIDT said dropping out goes hand in hand with criminal activity; "there seems to be some common themes there." He said all facilities have GED [General Equivalency Diploma] and adult education programs. Often, the prisoners need to be pushed to get a GED but are thankful once they have it.

REPRESENTATIVE HOLMES said she heard that there was a relative lack of beds in halfway homes for women.

COMMISSIONER SCHMIDT said he would find out.

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CHAIR RAMRAS asked how much of the \$150 million budget cut will come out of DOC.

COMMISSIONER SCHMIDT said DOC will be cut by \$19.8 million. The department has come up with three different allocation plans.

CHAIR RAMRAS asked if the DOC has found savings.

COMMISSIONER SCHMIDT said it has.

SENATOR WIELECHOWSKI asked why all the offender population projections show an increase and what could be done to stem that increase.

COMMISSIONER SCHMIDT said the increase of 200 per month is based on "our growth," not on statewide population. The reasons are varied, and one is alcohol abuse. He suggested getting programs in place that work. He noted that DOC overlaps with mental health statistics. He asked the Mental Health Trust to help DOC diagnose the program. "Every time you find someone who says a program works, you can find someone who says it doesn't." Predicting the future is difficult, but "Jeff" suggested constructing a history for everyone and looking at how often they come to jail. Commissioner Schmidt suggested that everyone who can be in the community ought to be. He said recidivism for 45-year-old men is lower than for younger men.

REPRESENTATIVE GRUENBERG asked the commissioner to consider what kind of study ought to be done. He suggested a comprehensive funding approach with the DOC, mental health, and other departments. He said he will work on it with him. It is a solvable problem and Alaska should take a leadership role.

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COMMISSIONER SCHMIDT said measuring recidivism has to be part of it.

REPRESENTATIVE GRUENBERG said he is tired of hearing that no progress has been made.

COMMISSIONER SCHMIDT cautioned that some things don't work but if programs are built for results, some things will work.

SENATOR WIELECHOWSKI asked about an increase in gang members in the correctional system.

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COMMISSIONER SCHMIDT said he doesn't have that number, but the facilities are small and gangs can be identified and broken up. It is usually an easy fix. His intent in running DOC is to "tidy up the house."

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SENATOR HUGGINS asked about a large new prison proposed in his area. He said he has heard people say that by the time Alaska gets 2250 beds available, there will still be a shortfall. He also asked about bringing prisoners back from Arizona.

COMMISSIONER SCHMIDT said he is not projecting a shortage, "but we're going to be right on top of being full when it opens, and that will bring everyone back from Arizona." The facilities are at 103 or 104 percent, and he wants it down to 100 percent. The design has been changed from a single unit to a campus design where prisoners come to the service (dining, counseling, etc). "One advantage of having a sentenced facility is these guys are sentenced and they're settled." It is a more efficient operation to have the inmates come to the service rather than bring it all to them. Plans are still in process, but the final site will be Pt. McKenzie, and Sutton is the alternate. Staff numbers for the original concept was between 400 and 600. He is not sure what the change will be. The designers say that the budget limit is being met, except there is an argument over whether the borough or a private entity will bring in utilities.

CHAIR FRENCH adjourned the meeting at [3:02:13 PM](#).