

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 15, 2007

1:12 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Max Gruenberg

OTHER LEGISLATORS PRESENT

Representative Mark Neuman

COMMITTEE CALENDAR

OVERVIEW(S): SEX OFFENDER MANAGEMENT IN ALASKA

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

TERESA FOSTER, Sexual Assault Prosecutor
Special Prosecutions Unit
Office of Special Prosecutions & Appeals
Department of Law (DOL)
Fairbanks, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

SAM EDWARDS, Deputy Commissioner
Office of the Commissioner - Anchorage
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

DONNA WHITE, Director
Division of Probation and Parole
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

JOHN BODICK, Assistant Attorney General
Legal Services Section-Anchorage
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

RICK SVOBODNY, Chief Assistant Attorney General
Office of Special Prosecutions & Appeals
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Assisted with the overview regarding sex offender management in Alaska.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:12:40 PM](#). Representatives Lynn, Holmes, Coghill, Samuels, and Ramras were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress. Representative Neuman was also in attendance.

OVERVIEW(S): SEX OFFENDER MANAGEMENT IN ALASKA

[1:12:57 pm](#)

CHAIR RAMRAS announced that the only order of business would be the overview regarding sex offender management in Alaska.

1:17:06 pm

TERESA FOSTER, Sexual Assault Prosecutor, Special Prosecutions Unit, Office of Special Prosecutions & Appeals, Department of Law (DOL), explained that her position was created about three years ago in order that there be someone in the DOL focusing specifically on sexual offenses - both children and adult cases - and serious domestic violence (DV) issues connected with sexual offenses; focusing on multidisciplinary training and training within the DOL; addressing policy issues; and carrying a specialized caseload when offices around the state are faced with cases that are either too complex for [an outlying] office to handle or contain conflict issues. An example of the latter would be police officer sex offenders being charged by [outlying] offices.

MS. FOSTER relayed that she'd recently done a quick survey of [the DOL's] prosecutors around the state regarding the new sentencing legislation passed last year - it provided for a huge increase in sentencing [for sex offenses] - and received near unanimous feedback that the DOL's prosecutors are very happy with that increase, are finding it to be a very effective tool, and are expecting that over time they will be able to measure a decrease in sex offenses merely by having some of the "perpetual repeat offenders" put in prison for a long period of time during which they won't be able to commit new offenses. However, because that law is so new, there are as yet very few cases that have been both charged and sentenced under the new law, and so it is hard to know at this point how things will play out and what the impact will be.

MS. FOSTER said that what prosecutors are finding in the short run - with the recent change in sentencing - is that there is a lot of pressure from the defense to reduce charges or compromise cases in order to avoid even the first-offense, low-level "sex penalties" because they are so high; when prosecutors have evidentiary issues because of investigative problems, [reductions or compromises] have always been an option in terms of doing plea agreements, but it's department policy to not compromise cases just to avoid dealing with high sentences. The end result is that there will be more cases going to trial, and the [cases] going through the negotiation process "are staying there" longer and are becoming difficult to resolve.

MS. FOSTER said that this is going to require better and more complete investigations of both adult and child sexual assault

cases, and this will put even more of a burden on already-limited investigative resources, particularly given that the number of sexual assault cases outside of the major municipal areas exceeds, in raw numbers, the number of sexual assault cases in municipal areas. For example, even though the population in the municipality of Anchorage is approximately 10 times greater than the population in the Bethel region, during the last four years there were more sexual assault cases referred from the Bethel region than were referred from the municipality of Anchorage during that same time period, and yet the police and investigative resources provided to municipal areas far exceeds those provided to rural areas.

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MS. FOSTER, in response to questions, explained that under the sexual abuse of a minor statutes - AS 11.41.434 through AS 11.41.440 - it is against the law to have sex with a minor if those involved are of certain ages and it is the sex act itself that is the crime regardless of whether it results in pregnancy, and that although physicians and their staff are mandated reporters, some medical facilities will avoid asking the name of the man so as not to be put in a position of having to report that a crime of sexual assault of a minor has occurred. In other words, although some people are required to report instances of sexual assault of a minor, they are under no legal obligation to ask how old the man in a particular situation is.

MS. FOSTER, In response to further questions, referred the committee to the statute governing mandated reporters - AS 47.17.010 - and relayed that an entity's profit or nonprofit status makes no difference in whether its employees are considered mandatory reporters; that the age of consent to sexual activity is 16; that in order for the crime of sexual assault of a minor to occur, the offender has to be at least four years older than the victim, who in turn must be under the age of 16; and that incestuous sexual relationships are illegal.

MS. FOSTER, returning to the issue of sex offender management, said that two of the big problems in rural areas of the state - which is where the vast majority of sex offenders are located - is that sex offenders are getting lower sentences - and thus being returned to the community sooner - and that there isn't any sex offender treatment available in most rural communities.

CHAIR RAMRAS spoke about the lack of trained medical professionals in the state, about having attended the "National

Legislative Briefing on Sex Offender Management Policy in the States" conference in Arkansas, about how unsuccessful psychiatric treatment is for sex offenders, and questioned how it can be expected - given Alaska's limited resources - that offering treatment in rural communities will help. He also questioned how many registered sex offenders there are in Alaska, and how many unregistered sex offenders there may be. He offered his understanding that there is only one trained polygraph [examiner] available in Alaska, and so even if the state does come up with a good management plan for sex offenders, it has no way to monitor them.

[1:32:16 pm](#)

MS. FOSTER said she doesn't know the number of registered sex offenders in Alaska but would research that issue, and noted that one can search the sex offender registration web site and sort by zip code; many registered sex offenders have rural addresses, and in a community of 200 people, for example, there might be three or four registered sex offenders. The delivery of services outside of Alaska's hub areas is extraordinarily expensive - people who provide sex offender treatment are specialized, it's an unpopular field, and it's hard to keep such people employed out in remote areas - and there isn't currently an efficient delivery system in place for such services. Furthermore, the DOL is finding that many judges don't even bother ordering sex offender evaluation and treatment as a condition of probation for these offenders, and so the locations where the largest number of sex offenses are taking place are locations that have the lowest amount of treatment if any.

MS. FOSTER, in response to a question, said statistics regarding recidivism rates vary widely, though there is some belief that certain kinds of treatment - those that are behavioral focused or cognitive focused or thinking-error focused - are more effective than other kinds of treatment. Although sex offenders are incurable, if there are enough controls on them, they will be disinclined to act on their desire to have inappropriate sexual contacts. However, most studies measure success by recidivism rates - how often somebody re-offends after he/she has been through a particular kind of treatment - and use a three- to five-, occasionally eight-, year measurement period, but for the first part of the measurement period an offender is in jail and so won't be re-offending, and that leaves only a short part of the measurement period during which to determine an offender's recidivism rate.

MS. FOSTER went on to say that when the measurement periods are less than 10 years, she is not persuaded by claims that there's been a significant lowering of recidivism rates, particularly for sex offenders who offend over a lifetime. Furthermore, there are a lot of studies which indicate that many sex offenders have multiple victims that were never disclosed, and the offenders were never caught and arrested for those offenses; this sort of information is now becoming known through the use of polygraph testing. Essentially, recidivism studies only illustrate that an offender has not been caught and arrested for another offense, not whether the person isn't re-offending.

MS. FOSTER, in response to comments, said that in looking at both adult and child sexual abuse cases, the vast majority of sex offenses occur between those who know each other, and that exclusion-zone approaches generally create more problems than solutions. In response to a question, she explained that when the DOL is referred a case from law enforcement and determines that the basic elements of the offense provide probable cause, that doesn't necessarily translate into a case that can be proven beyond a reasonable doubt once it goes to trial. Especially with sex crimes - regardless of the age of the victim - one of her main training themes with law enforcement, medical personnel, and prosecutors is to corroborate the victim's statement with extraneous evidence; this is because such cases boil down to it being the statement of one person against the statement of another person. When [law enforcement] takes the time to follow up on the initial disclosure and corroborate the victim's information, it builds a much stronger case, but when law enforcement, because of a lack of resources, isn't able to garner that additional information, the DOL may know that it has a righteous case but because of concerns about the level of proof, the DOL may be willing to compromise and allow a lesser plea in order to provide the victim with at least some accountability.

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MS. FOSTER, in response to comments, relayed that [the DOL] does have a multidisciplinary approach to adult sexual assaults through use of a sexual assault response team (SART); a victim advocate, a law enforcement officer, and a medical provider all come together - generally where the victim's medical examination takes place - and gather the necessary information from the victim. This is considered best practices for this field of investigation. In response to a question, she said that there are functioning SARTs in most of Alaska's large communities and

in a lot of smaller communities, and that different communities handle its SART differently; all, though, will have a private setting in which to conduct the interview and most of the exams are done by sexual assault nurse examiners (SANEs), which have been specially trained in all aspects of the physical exam, the collection of forensic evidence, in victim trauma issues, and in providing after care.

MS. FOSTER, in response to another question, said that the use of SARTs has proven to be really helpful in procuring needed medical information without further traumatizing the victims. In terms of victim response, shelters are still relaying to the DOL that many victims still don't report their assaults. One difference between adult victims and child victims is that adult victims can choose not to report while still receiving services. One problem that can then arise is that an adult victim may chose at first not to report but then have a change of mind later but the forensic evidence is no longer available. She offered her understanding that victims who've gone through a SART process have relayed that they have felt it to be a better and more supportive process.

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REPRESENTATIVE COGHILL said he's been told by the Fairbanks police department that it has logistical problems with storing the evidence that officers have collected.

MS. FOSTER said she has found that similar space and storage problems are occurring throughout the state. Especially with jurors' expectations being so high with regard to the importance of forensic evidence, being able to store all the evidence in sexual assault and DV cases for long periods of time would be the ideal given that the perpetrators in such cases often re-offend.

MS. FOSTER, in response to questions, said she is not aware of any kind of "tiering" of Alaska's sex offender population in terms of the sex offender registry. In general, the statutes provide for two types of registration: in addition to being registered upon release from prison, class B felony sex offenses and below and single sex offenses warrant an additional registration period of 15 years starting after an offender is off of probation, and [class A and unclassified felony sex offenses] and multiple sex offenses warrant a lifetime registration period. The sex offense registry lists the offense that a person must register for, but doesn't show all of a

perpetrator's offenses. There is also quite a bit of evidence coming in which illustrates that sex offenders cross over into multiple categories of offenses and therefore can no longer be classified as particular types of offenders.

MS. FOSTER noted that most sex offenders are able to hide their abnormal sexual interests, and so although sex offenders may appear to be "normal" and do come from every walk of life, her belief is that these people are not "normal" at all but rather are simply able to blend in very well, and this makes them very dangerous.

CHAIR RAMRAS expressed an interest in hearing any suggestions for legislation that would be helpful in identifying, managing, or prosecuting offenders.

2:04:50 PM

SAM EDWARDS, Deputy Commissioner, Office of the Commissioner - Anchorage, Department of Corrections (DOC), relayed that a three-part containment model is currently being used by the DOC; this model involves treatment, supervision by probation officers, and polygraph examinations. In response to earlier comments, he clarified that there are no certified treatment providers in Alaska's rural areas - such providers are located exclusively in Anchorage, Fairbanks, Juneau, and Kenai - and that although there are two individuals who are certified to conduct [sex offender polygraph exams], neither have conducted the requisite number of sex offender polygraph exams so as to be able to function on their own. Currently the DOC is using a polygraph examiner from Washington who flies up to conduct sex offender polygraph exams in the [DOC's] pilot program.

MR. EDWARDS acknowledged that having enough treatment providers and [qualified] polygraph examiners is critical to the program's implementation - scheduled for July 1 - and so the DOC is working with the university to offer a master's certification program for providers of sex offender treatment, and this looks promising because a provider could be certified after two weeks of education specific to sex offender treatment. The DOC is also looking to have the two in-state polygraph examiners be supervised by an out-of-state polygraph examiner until they have successfully completed the requisite number of sex offender polygraph exams - approximately 150 exams. In response to questions, he said that it takes at least an hour to conduct a polygraph exam, and that the examiner seeks information specific to the sex offender.

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DONNA WHITE, Director, Division of Probation and Parole, Department of Corrections (DOC), added that the DOC primarily uses two different types polygraph exams: one type focuses on the offender's sexual history, and the other type - called a maintenance monitoring polygraph - focuses on the offender's recent behavior. During each polygraph exam, only three questions are asked. In response to comments, she confirmed that recent information garnered from polygraph exams indicates that offenders commit far more offenses than just what they've been charged with.

MS. WHITE, in response to a question, said that Alaska's polygraph examination program does not "grade" offenders; instead, probation officers for sex offenders use a risk management tool called a Static-99 - which categorizes people as high-, moderate-, or low-risk offenders - and is part of best practices and helps the DOC determine what level of supervision a particular sex offender needs. She explained that prior to a polygraph exam, an offender's probation officer and treatment provider discuss what issues have arisen for the sex offender, and then polygraph exam questions specific to that offender are developed. There is a pre-polygraph exam during which the offender is asked general questions, then there is the polygraph exam itself during which the aforementioned specific questions are asked, and then there is a post-polygraph exam during which follow up questions are asked.

MS. WHITE, in response to a question, said polygraph exams are given to offenders after they are placed on probation/parole and released back into the community. In response to a further question, she said that currently, because approved treatment providers are only located in Anchorage, Juneau, Fairbanks, and Kenai, only sex offenders in those areas will be subject to polygraph examinations after July 1.

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JOHN BODICK, Assistant Attorney General, Legal Services Section- Anchorage, Criminal Division, Department of Law (DOL), relayed that Alaska's model is based on Colorado's model, and that the DOC's pilot project is testing almost 30 sex offenders. One legal issue that has arisen is what to do when the offender, during the exam, indicates that he/she has committed a new offense, since the Fifth Amendment says that the state can't

compel individuals to be witnesses against themselves. In Colorado, offenders are given immunity for any information they divulge during a polygraph examination, thus freeing them to provide more information to authorities. Alaska has chosen not to take that approach, and the commissioner of the DOC has expressed a preference for all new offenses to be reported, but if an offender raises a Fifth Amendment argument, the state couldn't proceed further in questioning the offender about the new offense, and prosecution for that new offense would be precluded if the state did proceed with questioning. This means that the State can't explore new criminal behavior or the person's full sexual history, which is important in determining treatment and structuring preventative mechanisms.

MR. BODICK, in response to questions, opined that when sex offenders raise a Fifth Amendment argument during a polygraph exam, it is appropriate to consider those offenders to be untreated and uncontained and hence warranting [longer] stricter probation/parole supervision to ensure public safety. In response to another question, he indicated that the administration has determined that it would not be in the state's best interest to provide immunity to sex offenders for any information garnered via a polygraph exam. In response to a further question, he said that the benefit to granting immunity is that the state would simply get more information about the offender's history, thus allowing the probation/parole officer to better manage the offender. Again, the administration has chosen not to take that approach, and will instead be attempting to prosecute an offender for any new offenses he/she commits. In conclusion, he characterized Colorado's polygraph exam system as a good one, and surmised that it may take some time to get Alaska's polygraph exam system up and running and resolve any problems with it.

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RICK SVOBODNY, Chief Assistant Attorney General, Office of Special Prosecutions & Appeals, Department of Law (DOL), confirmed Mr. Bodick's comments regarding immunity.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), offered the following suggestions: make it a separate crime when sex offenders on probation start exhibiting pre-curser type behaviors that are known to lead to recidivism and are against

conditions of probation; and provide significant extra investigative resources for rural areas of the state.

MR. SVOBODNY mentioned that interviews with sexual assault victims in rural areas of the state are currently conducted by phone because of a lack of resources, and opined that such interviews should be conducted in person.

MS. CARPENETI offered further suggestions: that more people involved in the process of investigating and prosecuting sex offenses - people such as victim advocates, treatment providers, investigators, prosecutors, and medical personnel - should get together in order to help identify the biggest needs in solving the overall problem; that the state should revisit the issue of providing sex offender treatment in jail because most offenders will eventually get out of jail and thus the more treatment that's provided earlier the better.

MS. FOSTER, in response to comments and a question, said that sex offender programs and tools that work in other parts of the country, although appropriate to look at and glean from, won't necessarily work in Alaska as a whole because of its size and population distribution. In general, though, the more officers that are out there looking for certain offenses to be committed, the more offenders that are going to be caught, and surveillance of sex offenders can be a very effective tool, though it is labor intensive, which translates into "expensive."

MS. CARPENETI mentioned that in Alaska it is a crime to fail to register as a sex offender.

MS. FOSTER said that crime includes failing to notify authorities regarding a change of residence.

REPRESENTATIVE DAHLSTROM surmised that that crime is not enforced because of a lack of resources.

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MS. FOSTER argued that it is enforced, but acknowledged that is often enforced only when the person is picked up or contacted by the authorities for some other reason.

MR. SVOBODNY added that a compliance problem can arise when a sex offender is living on the street and doesn't have an address that can be listed in the sex offender registry.

REPRESENTATIVE LYNN relayed that he'd found that a new neighbor of his was an out-of-compliance sex offender, but nothing was done even months after he notified the authorities of the offender's whereabouts.

MS. FOSTER acknowledged that she too has had difficulty getting an officer to file a report and charge an offender she knew to be out of compliance.

MR. SVOBODNY, in response to comments and questions, said that the juvenile sex offender statistic is higher than previously thought; that most large communities have a facility that specifically deals with juvenile sex offenders and possible future juvenile sex offenders; and that Alaska is a resource-poor state with regard to treating such juveniles. If such juveniles are not dealt with while they are juveniles, he concluded, it can almost be guaranteed that they will simply turn into adult sex offenders.

CHAIR RAMRAS asked the administration's representatives to provide the committee with a report outlining what the legislature can do to address Alaska's sex offender problem, as well as with statistics categorized by community.

MS. FOSTER, in conclusion, relayed that about four years ago she'd interviewed a sex offender born in 1914 who was still offending.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:01 p.m.