

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 30, 2013

1:03 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW(S): DEPARTMENT OF CORRECTIONS

- HEARD

HOUSE BILL NO. 47

"An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 47

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(S): REPRESENTATIVE(S) FEIGE, CHENAULT

01/16/13	(H)	PREFILE RELEASED 1/11/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	JUD
01/30/13	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOSEPH SCHMIDT, Commissioner
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Provided information and responded to questions during the overview of the Department of Corrections (DOC).

RON TAYLOR, Deputy Commissioner
Office of the Commissioner - Anchorage
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Provided information and responded to questions during the overview of the Department of Corrections (DOC).

BILL MARTIN, Grand President
Alaska Native Brotherhood (ANB)
Juneau, Alaska

POSITION STATEMENT: Offered comments during the overview of the Department of Corrections (DOC).

REPRESENTATIVE ERIC FEIGE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As one of the joint prime sponsors, presented HB 47.

ACTION NARRATIVE

[1:03:41 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Keller, Gruenberg, Foster, and Lynn were present at the call to order. Representatives Millett, Pruitt, and LeDoux arrived as the meeting was in progress.

CHAIR KELLER mentioned that the committee would not become the sponsor of a bill currently sponsored by Representative Gruenberg, that being HB 60, and that members have been provided copies of a couple of court cases that he found to be of interest.

Overview(s): Department of Corrections

[1:05:31 PM](#)

CHAIR KELLER announced that the first order of business would be an overview of the Department of Corrections (DOC).

1:06:02 PM

JOSEPH SCHMIDT, Commissioner, Department of Corrections (DOC), after introducing accompanying staff, said the DOC has made a lot of systemic changes over the last five to six years; indicated that the DOC does grade and audit itself; and relayed that 95 percent of prisoners are released within their lifetimes, and that 50 percent of offenders are released in six months. He referred to a PowerPoint presentation, and indicated that included in the presentation would be information about: the DOC's mission and goals; the trends noticed; the makeup of the DOC's inmate populations; the DOC's intervention strategies and risk-assessment tools; the use of electronic monitoring; the Goose Creek Correctional Center; and the Probationer Accountability with Certain Enforcement (PACE) pilot program. He highlighted that in 2012, the DOC processed 40,300 bookings of 22,000 Alaskans - many were repeat offenders and almost 2,000 of them were inebriates; that there are just under 6,000 offenders incarcerated in the DOC's facilities and halfway houses, and via the use of electronic monitoring; that there are about 6,100 offenders out on probation or parole; and that from a statistical standpoint, the DOC supervises one out of every thirty-six adult Alaskans.

COMMISSIONER SCHMIDT, referring to the aforementioned PowerPoint presentation, relayed that the DOC's current mission statement - "The Alaska Department of Corrections provides secure confinement, reformative programs, and a process of supervised community reintegration to enhance the safety of our communities" - was put into effect in 2008; that the DOC's goals are to protect the public, reduce recidivism, delay the need for constructing a new prison, ensure that those incarcerated spend their time productively, and work collaboratively to achieve the aforementioned goals; that a graph on page 4 of the PowerPoint presentation reflects Alaska's recidivism rates at the end of 2006 according to a study conducted by the Alaska Judicial Council (AJC); that a graph on page 5 illustrates [from 2003 to the present and projected to 2020] the incarcerated offender population compared to the number of beds available; that contracting with other states to house Alaska's prisoners has been one method by which the DOC addresses the fact that there are more prisoners than beds; and that the opening of the Goose Creek Correctional Center will result in there being more beds

than prisoners for the first time in a long time, but then only for a brief amount of time. He proffered, however, that reducing Alaska's recidivism rates could also result in there being more beds than prisoners even further into the future.

COMMISSIONER SCHMIDT referred to pie charts on pages 6 and 7 of the PowerPoint presentation, and relayed that the percentage of prisoners incarcerated for non-violent offenses rose from 42 percent as of December 2002, to 62 percent as of December 2012; that the percentage of prisoners incarcerated for 37 months or longer rose from [6.94 percent] as of December 31, 2002, to [18.41 percent] as of December 31, 2012; and that the number of offenders incarcerated for sex offenses, which are considered to be violent crimes, is growing, but the number of sex offenders released back into the community has decreased from 137 in 2008 to approximately 55 in 2012. The sentence length for sex offenses has almost doubled, he added.

[1:22:30 PM](#)

RON TAYLOR, Deputy Commissioner, Office of the Commissioner - Anchorage, Department of Corrections (DOC), referred to page 8 of the DOC's PowerPoint presentation, and indicated that the DOC's strategies now include devoting its resources to moderate and high risk [offenders], targeting the factors that contribute to recidivism by such offenders, and focusing on specific techniques tailored to the individual offenders. The DOC's focus is now on changing [offenders'] behavior, collaborating with other agencies, using proven methods, measuring outcomes, and [promoting] offender success and hence improved public safety. The DOC, he relayed, has updated its [inmate custody] classification policies [so that the populations under the four levels of custody - minimum, medium, "close," and maximum - are more in line with what he called the "national norms"]; is emphasizing incentives that encourage compliance; has developed an offender management plan to assist offenders with reentry into the community; has received technical assistance for its Division of Probation and Parole from the U.S. Department of Justice's (DOJ's) National Institute of Corrections (NIC); and is in the process of modifying its risk-assessment protocols.

COMMISSIONER SCHMIDT, in response to questions, added that in classifying an offender with regard to what type of custody to place him/her under, his/her behavior, [criminal history, and risk potential are] the determining factors, not the crime charged, though that does factor in somewhat; and reiterated that the DOC's population averages at the different

classification levels now more closely resemble the national averages.

[1:29:26 PM](#)

MR. TAYLOR, turning the committee's attention to pages 11-12 of the DOC's PowerPoint presentation, explained that part of the DOC's strategy [towards reducing recidivism rates] now involves addressing the factors that offenders struggle with. Such factors include: having anti-social values, beliefs, reasoning, personalities, temperaments, and/or companions; having marital and/or family conflicts; having substance-abuse problems; being unemployed; and lacking education, training, leisure and/or recreational opportunities. Referring to page 13 of the PowerPoint presentation and to the pie chart included therein, he indicated that the DOC is now also focusing on the high number of probation violations: jail admissions for probation violations rose from 1,641 in 2002, to 2,737 in 2011; probation-officer caseloads - currently ranging between 50 and 110 cases per officer depending on the type of caseload - have increased over 20 percent during that same timeframe; and in 2011, 68 percent of petitions to revoke probation involved technical violations, and the other 32 percent involved violations of misdemeanor and/or felony law - in other words, new crimes were committed.

COMMISSIONER SCHMIDT, in response to a question, added that over the last 10 years, the DOC's prison population has grown 22 percent.

MR. TAYLOR went on to explain that the DOC has started expanding the availability of its various rehabilitative programs - which include programs pertaining to substance abuse, programs pertaining to education, and programs that are faith-based - and referred to page 14 of the PowerPoint presentation and to the table included therein illustrating for fiscal year 2012 (FY 12) the numbers of offenders served and the numbers of offenders that completed a rehabilitative program. The recidivism rate for offenders who successfully complete a substance abuse program is about 14 percent lower than for those who don't complete such a program.

[1:39:52 PM](#)

MR. TAYLOR referred to pages 16-17 of the PowerPoint presentation, and explained that electronic monitoring allows a prisoner to complete his/her sentence while out in the

community. When determining whether to allow a prisoner to use electronic monitoring, the commissioner considers, among other things, public safeguards, the prospects for rehabilitation, program availability, facility space, the nature/circumstances of the offense, the prisoner's needs, court recommendations, previous convictions, drug/alcohol usage, and any other criteria the commissioner deems appropriate. Currently, 329 inmates are using electronic monitoring, and the locations where electronic monitoring is available are Anchorage, Fairbanks, Juneau, Kenai, Ketchikan, Palmer, and Sitka.

MR. TAYLOR referred to page 19 of the PowerPoint presentation, and explained that the DOC's Probationer Accountability with Certain Enforcement (PACE) program began as a pilot program in 2010 in the Anchorage Superior Court and has since been expanded to Palmer and the domestic violence (DV) program in [Fairbanks]. The PACE program provides swift, certain, and proportionate sanctions to high-risk felony probationers who've already established patterns of non-compliance with court-ordered conditions of probation. A 2011 AJC preliminary evaluation indicates that the PACE program has been successful at reducing incidents of positive drug tests: under the PACE program, 66 percent of probationers remained free of positive drug tests during the first three months. In comparison, prior to enrolling in the PACE program, only 20 percent of those probationers remained free of positive drug tests during that same timeframe.

[1:42:28 PM](#)

MR. TAYLOR referred to page 21 of the PowerPoint presentation, and explained that the prisoner-reentry task force was formed for the purpose of seeking ways of reducing Alaska's recidivism rates and thereby improving public safety and the overall health of Alaska's communities. Three workgroups comprise the prisoner-reentry task force - the misdemeanor workgroup, the substance abuse workgroup, and the employment workgroup - and currently there are five regional reentry coalitions - Anchorage, Kenai, Dillingham, Juneau, and the Matanuska-Susitna ("Mat-Su") valley. The need for reentry services in Alaska's communities is great, he added.

MR. TAYLOR referred to pages 23-26 of the PowerPoint presentation, and explained that for FY 14, the Goose Creek Correctional Center will have 345 budgeted positions and an inmate capacity of 1536; at present, 120 positions have been filled and there are 420 inmates. It is anticipated that

between now and the first quarter of FY 14, almost all of Alaska's prisoners currently incarcerated in Colorado will have been transferred to the Goose Creek Correctional Center. As outlined in blue ink in the PowerPoint presentation, several types of services/programs are currently available at the Goose Creek Correctional Center, and, as outlined in black ink, other services/programs will become available in the future; these various services/programs include substance abuse services, educational services, vocational services, pro-social education services, chaplaincy services, mental health services, and sex offender services.

MR. TAYLOR, in response to questions, indicated that to facilitate prisoner reentry, the DOC has been giving employment presentations to various groups and at job fairs throughout the state; and that some of the aforementioned pro-social education services are based on national models.

COMMISSIONER SCHMIDT added that 36 percent of the DOC's prisoner population is Alaska Native, and that dealing with inebriates comes at great cost to the DOC.

MR. TAYLOR and COMMISSIONER SCHMIDT, in response to various requests, agreed to compile and provide additional statistics to members.

[2:03:16 PM](#)

BILL MARTIN, Grand President, Alaska Native Brotherhood (ANB) - after mentioning that the ANB was formed 101 years ago to advocate for civil rights, health, education, [welfare, employment, economic justice, and citizenship] for Alaska Natives - requested that the legislature [fund] a study to investigate why Alaska's Native population makes up such a disproportionately-high percentage of the DOC's incarcerated population. Currently, Alaska Natives comprise 18 percent of the state's population, but comprise 36 percent of the DOC's population. At the last ANB convention, this issue was greatly discussed, but lacking any definitive answers, [membership] thought it would be good to have a study conducted in order to find out why this disproportion exists. To that effect, [Resolution 24 was passed] requesting the Alaska State Legislature to fund a study to determine if there exists an inequity in detainment, sentencing, time in jail, and probation requirements for minority groups in Alaska and to recommend solutions. Once the resulting information is compiled, ways might be found to address the problem, and the ANB expects to be

a partner in those efforts. In response to a question, he noted that the McDowell Group has performed work for the ANB in the past and is quite knowledgeable with regard to the Alaska Native "situation," at least in Southeast Alaska.

The committee took an at-ease from 2:11 p.m. to 2:14 p.m.

HB 47 - INJUNCTION SECURITY: INDUSTRIAL OPERATION

[2:14:25 PM](#)

CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 47, "An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained."

REPRESENTATIVE LYNN moved to adopt the original version of HB 47 as the working document.

REPRESENTATIVE LYNN then objected.

[2:15:33 PM](#)

REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, as one of the joint prime sponsors of HB 47, offered his beliefs that over the past several years there have been cases in which preliminary injunctions or orders staying the operation of a permit have been issued against companies engaged in the development of resource extraction or in other large industrial operations that had already been granted a permit, and that such companies had to endure uncertainty and delay. [Litigating such cases] can cost hundreds of thousands of dollars, and thus the threat of having a preliminary injunction issued could act as a deterrent to investing in such projects. When preliminary injunctions or orders staying the operation of a permit are issued, it is the subsequently-laid-off workers who feel the most immediate impact. He assured the committee that HB 47 would not be applied in situations involving wrongfully-issued or poorly-written permits, or when permittees are violating the terms of their permits - in those situations it would still be up to the permitting agency to [rectify the situation].

REPRESENTATIVE FEIGE said HB 47 parallels the requirements of Rule 65(c) of the Alaska Rules of Civil Procedure; Rule 65(c) reads:

(c) **Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the state or a municipality or of an officer or agency thereof, or unless otherwise ordered by the court, in domestic relations actions or proceedings.

REPRESENTATIVE FEIGE said HB 47 doesn't set a specific security amount, and was written to work with Rule 65(c), not change it. He offered his beliefs that although the court already has the authority to require that security be given, this isn't occurring in most cases, and that the bill itself doesn't mandate that the court require that security be given but instead simply directs the court, when determining what amount of security to require, to consider the costs that may be incurred, the damages that may be suffered, and an amount for the payment of wages and benefits for employers, contractors, and subcontractors. As used in HB 47, the term, "industrial operation" is defined as including a construction, energy, or timber activity, and oil, gas, and mineral exploration, development, and production. He offered his understanding that most preliminary injunctions involve federal permits and are settled out of court to avoid costs and [project] delays, and that in one instance wherein a federal court recently issued an injunction that was later lifted, 200 people were out of work for about a month and half. In that instance, he surmised, the lost wages and lost [project] time had an impact on Alaska's citizens and on the companies and employees involved in that project, a railroad spur-line.

[2:21:04 PM](#)

REPRESENTATIVE LEDOUX questioned the need for the bill, given that [under Rule 65(c),] the court already has the authority to require that security be given.

REPRESENTATIVE FEIGE offered his hope that as an expression of legislative intent, passage of HB 47 would influence future court decisions. In response to another question, he confirmed

that a direct change to the Alaska Rules of Court would require an affirmative two-thirds vote.

REPRESENTATIVE FOSTER pointed out that as currently written, HB 47 does mandate that the court shall require that security be given: language on page 1, lines 1-3, says in part, "**An Act requiring a party ... to give security**"; and language on page 1, lines 7-9, says in part, "A party ... shall give security"].

REPRESENTATIVE FEIGE referred to the language on page 1, lines 8-9, of HB 47 that says in part, "shall give security in an amount the court considers proper"; offered his belief that the court would have the discretion to simply choose a security amount of zero; and reiterated that the bill is not intended to change Rule 65(c) - the bill simply adds a stipulation that the amount the court considers proper could include an amount for the payment of wages and benefits for employers, contractors, and subcontractors. "We would, as a legislature, ... like to see judges ... require actual cash bonds more often," he added in conclusion.

CHAIR KELLER ascertained that no one else wished to testify on HB 47.

[HB 47 was held over, with the motion to adopt HB 47 as the working document left pending.]

[2:26:13 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:26 p.m.