

SENATE FINANCE COMMITTEE

March 6, 2014

5:06 p.m.

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CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 5:06 p.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair  
Senator Kevin Meyer, Co-Chair  
Senator Anna Fairclough, Vice-Chair  
Senator Mike Dunleavy  
Senator Donny Olson

MEMBERS ABSENT

Senator Click Bishop  
Senator Lyman Hoffman

ALSO PRESENT

Senator John Coghill, Sponsor; Jordan Shilling, Staff,  
Senator John Coghill.

SUMMARY

SB 64        OMNIBUS CRIME/CORRECTIONS BILL

SB 64 was HEARD and HELD in committee for further consideration.

#sb64

SENATE BILL NO. 64

"An Act establishing the Alaska Sentencing Commission; relating to jail-time credit for offenders in court-ordered treatment programs; allowing a reduction of penalties for offenders successfully completing court-ordered treatment programs for persons convicted of driving while under the influence or refusing to submit to a chemical test; relating to court termination of a revocation of a person's driver's

license; relating to limitation of drivers' licenses; relating to conditions of probation and parole; and providing for an effective date."

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SENATOR JOHN COGHILL, SPONSOR, introduced himself. He pointed out that he had been trying put a high felony theft threshold in place. He stated that there was a cost to the commission, and felt that the cost was very important. He stressed that there were some sentencing structures that needed review and comments. He remarked that some of the Driving Under the Influence (DUI) laws were in need of review. He felt that there were some very important alcohol issues in Alaska. He wanted to put together a funding structure for those that recently leave jail. He wanted to create an avenue for post-jail accountability, in order to decrease recidivism in the state.

Co-Chair Meyer looked at the felony threshold, and felt that \$750 was a small amount for a felony. He understood that it was expensive to prosecute felony cases, but still expressed concern. He wondered if that number was flexible. Senator Coghill stressed that there were some groups in Alaska who felt very strongly that if that portion of the bill was \$1000, the bill would not pass. He felt that it should be higher, but agreed to keep it at \$750 in order to protect the small businesses.

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Co-Chair Meyer queried the difference in cost between a misdemeanor case and a felony case. Senator Coghill agreed to provide that information.

Co-Chair Meyer noted that the Department of Law (DOL) could provide a response. Senator Coghill stated that there was a substantial cost difference between a misdemeanor and a felony.

Vice-Chair Fairclough shared that Fred Meyer and small businesses expressed opposition to raising the felony threshold to \$1000. She felt that the businesses were against the increase, because there was a fear that police officers would not respond to a misdemeanor. She would like to hear more detail of the specific concerns about raising the threshold. Senator Coghill replied that there was a

police officer who had testified that they did not respond to misdemeanors, but another group of police officers said the opposite of that statement. He stated that higher level crimes would often take the focus off of the property crime issues. He stressed that property crimes and misdemeanors were on the list of police concerns.

Vice-Chair Fairclough stressed that the victims of property crime clearly had an issue. She felt that the issue should be examined in order to increase the threshold. She stressed that the state must contribute a significant amount of money in order to process the felony property crimes. She hoped that the purpose of the business opposition to the threshold increase was not to put people in jail. She felt that the businesses had a higher calling for accountability, and encouraged a conversation with the businesses. She added that she knew it would not be a simple solution or a simple problem. Senator Coghill responded that the situation was complicated. He stated that some misdemeanors required a year in jail and a \$10,000 fine. He stated that felony cases allowed businesses more leverage, but he stressed that it was extremely difficult for a felon to obtain employment.

Co-Chair Kelly pointed out that he never had an electronic device disrupt the committee.

Co-Chair Kelly queried the difference between the cost of felonies and non-felonies. Senator Coghill agreed to provide that information.

Co-Chair Meyer asked for a detailed description of the legislation.

Senator Coghill stated that he had instructed his staff to rapidly discuss the sectional analysis of the bill.

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JORDAN SHILLING, STAFF, SENATOR JOHN COGHILL, presented a sectional analysis of version D of SB 64 (copy on file).

Section 1:

This section clarifies that a person commits the crime of custodial interference in the first degree if that person is a relative of the child and removes that child from the state and keeps the child from its

legal custodian, despite not having a legal right to do so.

Section 2:

This section makes it a crime of custodial interference in the second degree if a nonrelative of a child knowingly and unlawfully represents themselves as having a legal right to take or keep a child. This section establishes a class A misdemeanor for an attempted child abduction, rather than the lesser crime of criminal mischief.

Section 3:

This section clarifies that an affirmative defense of necessity does not apply to a prosecution for custodial interference if the period for which the person held the child exceeded 24 hours if that was the amount of time necessary to report that the child has been neglected, abused, or is in physical danger.

Senator Dunleavy wondered how schools were aware if there was a custody dispute between a student's parents. Mr. Shilling replied that the schools may not be aware of a custody dispute.

Vice-Chair Fairclough stated that there were levels of custodial agreements that the school was occasionally notified about.

Senator Coghill announced that once a person tried to violate the permitted person's approved list, the bill stated that it was a criminal mischief issue.

Senator Olson wondered if the administration had considered the felony threshold increase. Senator Coghill did not know the answer.

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Senator Olson stressed that there were some issues in rural Alaska regarding property theft felonies. He remarked that some of those convicted felons had a difficult time obtaining employment outside of rural Alaska.

Senator Coghill announced that he had not had issues with the administration or the legislature regarding the

increased felony threshold. He stressed that the issue was with the business owners.

Senator Olson felt that business owners did not vote in the legislative body.

Vice-Chair Fairclough remarked that there were several bills that attempted to help small business with reductions of corporate income tax.

Mr. Shilling continued to discuss the Sectional Analysis.

Section 4:

This section will increase the minimum amount of property or services for the crime of theft in the second degree. Theft in the second degree is a class C felony and carries a maximum sentence of up to five years in prison and a fine of up to \$50,000.

Section 5:

This section will increase the minimum amount of property or services for the crime of theft in the third degree. Theft in the third degree is a class A misdemeanor and carries a term of imprisonment of not more than one year and a fine of up to \$10,000.

Section 6:

This section will increase the minimum amount of property or services for the crime of theft in the fourth degree. Theft in the fourth degree is a class B misdemeanor and is punishable by imprisonment of not more than 90 days and a fine of not more than \$2,000.

Section 7:

This section will increase the minimum amount of merchandise for the crime of concealment of merchandise for a class C felony, and class A and B misdemeanors.

Section 8:

This section will increase the minimum amount of property that identification marks are removed from for a class C felony and class A and B misdemeanors.

Section 9:

This section will increase the minimum amount of unlawful possession of property for a class C felony and class A and B misdemeanors.

Section 10:

This section will increase the minimum amount of a bad check for a class C felony and class A and B misdemeanors.

Section 11:

This section will increase the minimum amount of the fraudulent use of an access device for a class C felony and class A misdemeanor.

Section 12:

Clarifies that, if the property crime felony threshold is adjusted, the new threshold does not retroactively apply to prior offenses.

Section 13:

This section will increase the minimum amount of property damage and expenses as a result of the loss of use of a vehicle.

Section 14:

This section will increase the minimum amount of property damage for the crime of criminal mischief in the third degree. Criminal mischief in the third degree is a class C felony.

Section 15:

This section will increase the minimum amount of property damage for the crime of criminal mischief in the fourth degree. Criminal mischief in the fourth degree is a class A misdemeanor.

Section 16:

This section will increase the minimum amount of property damage for the crime of criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a class B misdemeanor.

Section 17:

This section will increase the minimum amount of property damage for the crime of criminal simulation for a class C felony and class A and B misdemeanors.

Section 18:

This section will increase the amount of the value of the property for the crime of misapplication of the value of property for a class C felony and class A misdemeanor.

Section 19:

This section will increase the minimum amount for the crime of defrauding creditors under certain conditions for a class A misdemeanor, and class C felony.

Section 20:

This section establishes a 24/7 Sobriety program that would be available to defendants out on bail who have been charged with alcohol-related or substance abuse-related offenses that are unclassified felonies, class A felonies, sexual felonies, or crimes involving domestic violence. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.

Section 21:

This section establishes a 24/7 Sobriety program that would be available to defendants out on bail who have been charged with DUI or refusal. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.

Section 22:

This section establishes a 24/7 Sobriety program that would be available to defendants out on bail who have been charged with crimes involving controlled substances or imitation controlled substances. The program requires twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.

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Mr. Shilling continued to discuss the Sectional Analysis.

Section 23:

An incarcerated person shall receive credit against a sentence of imprisonment for each day spent in a residential treatment facility, provided the person is confined at all times to the grounds of the facility, other than for employment, vocational training, community volunteer, or purposes directly related to the person's treatment, so long as the periods they are permitted to leave the facility are expressly limited as to both time and purpose by the treatment program.

Section 24:

This section establishes a 24/7 Sobriety program as a condition of probation that can be ordered, which includes twice-a-day alcohol monitoring and establishes a means to provide notification of a violation to the probation officer, prosecutor's office, or local law enforcement agency within 24 hours.

Section 25:

The judicial council shall provide staff and administrative support to the Alaska Criminal Justice Commission.

Co-Chair Kelly wondered if the testing was always person-to-person. Mr. Shilling responded that the testing did not always occur person-to-person. He explained that South Dakota had been the pioneer of the program, and had 90 percent of participants doing in-person testing. Some of the participants lived in rural environments which were inconvenient enough to require electronic monitoring such as ankle bracelets. He announced that the program would work anywhere in Alaska with a telephone land line and local law enforcement.

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Co-Chair Kelly felt that there could be a device that incorporated with the internet. Mr. Shilling stated that there were some devices that functioned wirelessly.

Mr. Shilling continued to discuss the Sectional Analysis.

Section 26:

The commissioner shall establish the P.A.C.E. program for felons with conditions of probation that include not consuming drugs or alcohol and who have been identified as being at moderate to high risk by a risk-needs assessment. The program shall include random drug and alcohol testing and requires a probation officer to file a petition to revoke probation by the next business day if the probationer fails to appear for an appointment or tests positive for drugs or alcohol. Subsection (g) also contains the program requirements for 24/7 Sobriety.

Section 27:

This section directs the parole board to establish the P.A.C.E. program for parolees with conditions of parole that include not consuming drugs or alcohol and who have been identified as being at moderate to high risk by a risk-needs assessment. The program shall include random drug and alcohol testing and requires a parole officer to file a parole violation report by the next business day if the parolee fails to appear for an appointment or tests positive for drugs or alcohol.

Section 28:

The parole board may require, as a condition of special medical or mandatory parole, a parolee must submit to the P.A.C.E. program.

Section 29:

The commissioner shall establish a program to conduct assessments of the risks and needs of offenders sentenced to serve a term of incarceration of 30 days or more.

Section 30:

This section establishes the Recidivism Reduction Grant Fund. The commissioner of corrections may make grants from the fund for programs that have, as a primary focus, rehabilitation and reduction of recidivism through transitional re-entry for persons recently released from correctional facilities. To qualify for a grant under this section, a program shall include case management, sober living, treatment, employment, and a cap on residential placements of 1 year. The commissioner shall prepare

an annual report for the legislature by January 15 of each year.

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Senator Coghill stated that recidivism was a cost driver. He stated that the issue was in the current version through the Department of Corrections (DOC). He explained that the granting and accountability measures resided in the Department of Health and Social Services (DHSS) section. He stressed that some of the department functions and costs may be more specifically defined in revised versions of the legislation.

Co-Chair Meyer wondered if that language be included in a later committee substitute. Senator Coghill replied in the affirmative.

Mr. Shilling looked at the fiscal note, and remarked that DOC did not have a staff to run a grant fund. Therefore, the DOC fiscal note estimated a six position increase. He felt that moving the grant fund to DHSS would not require a substantial cost increase, because DHSS already had an infrastructure to support the grant fund management.

Mr. Shilling continued to discuss the Sectional Analysis.

Section 31:

The Alaska Criminal Justice Commission is established in the Office of the Governor. The commission consists of 12 members as follows:

- (1) the chief justice of the Alaska Supreme Court or another active or retired justice of the supreme court or court of appeals
- (2) an active or retired superior court judge designated by the chief justice
- (3) an active or retired district court judge designated by the chief justice
- (4) a member of the Alaska Native community designated by the Alaska Native Justice Center
- (5) the attorney general or designee
- (6) a private attorney appointed by the governor
- (7) a chief of a municipal law enforcement agency appointed by the governor
- (8) the public defender
- (9) two members of the senate appointed by the president of the senate

(10) two members of the House of Representatives appointed by the speaker of the House of Representatives

The commission shall elect a chair and the Alaska Judicial Council shall provide staff and administrative support to the commission.

Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized for boards and commissions.

A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission.

The commission shall meet at least quarterly and shall keep a record of its proceedings and make these records available for public inspection.

Sec. 44.19.645. Powers and duties of the commission.

The commission shall evaluate the effect of sentencing laws and practices on the criminal justice system. In formulating its recommendations, the commission shall consider:

- (1) statutes and court rules
- (2) sentencing practices
- (3) uniformity and proportionality in sentencing
- (4) alternatives to traditional incarceration
- (5) the use of parole and probation
- (6) the effectiveness and availability of rehabilitation programs
- (7) crime and incarceration rates
- (8) the relationship between sentencing priorities and correctional resources
- (9) the effectiveness of the state's current methodologies for the collection and of data

The commission may retain the services of consultants to assist the commission.

The commission may compile information concerning sentencing practices.

The commission may recommend legislative and administrative action.

Sec. 44.19.646. Methodology.

The commission shall solicit and consider information and views from a variety of constituencies and base recommendations on the following factors:

(A) the seriousness of each offense in relation to other offenses

(B) the effect of an offender's prior criminal history

(C) The need to rehabilitate criminal offenders

(D) The need to confine offenders to prevent harm to the public

(E) The extent to which criminal offenses harm victims and endanger public safety

(F) The effect of sentencing in deterring an offender or other members of society from future criminal conduct

(G) The effect of sentencing as a community condemnation and as an affirmation of societal norms

(H) The elimination of unjustified disparity in sentences

(I) The resources available to agencies in the criminal justice system

(J) The effect of sentencing on reducing the rate of recidivism in the state

The commission shall submit to the governor and the legislature an annual report and recommendations by January 1 of each year.

Section 32:

This section establishes a sunset of June 30, 2019 for the Alaska Criminal Justice Commission.

Section 33:

APPLICABILITY

Section 34:  
TRANSITIONAL PROVISIONS

Section 35:  
This section clarifies that the Department of Corrections may begin adopting regulations to implement P.A.C.E. and 24/7 Sobriety immediately upon passage of this bill.

Section 36:  
This section establishes a delayed effective date for Section 29.

Section 37:  
This section clarifies that the Department of Corrections may begin adopting regulations to implement P.A.C.E. and 24/7 Sobriety immediately upon passage of this bill.

Section 38:  
This section establishes an effective date of July 1, 2014 for the remaining sections of the bill.

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Co-Chair Meyer asked for explanation of the fiscal notes. Mr. Shilling explained the fiscal notes.

Co-Chair Meyer asked about the 31 new positions. Mr. Shilling replied that the 31 positions were requested in separate sections of the fiscal note.

Mr. Shilling addressed the PACE program in the fiscal note.

Mr. Shilling looked at the third page of the fiscal note number 7, which mandated that DOC conduct additional assessments. He explained that probation officers were used in the correctional institutions, and they conduct assessments.

Mr. Shilling stressed that there were some incorrect assumptions in the fiscal notes, and felt that there should be continued examinations of the fiscal impact.

Co-Chair Meyer wondered if there were additional fiscal notes. Mr. Shilling replied that there was a fiscal note from the Court System for \$320,000 for the commission.

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Co-Chair Meyer wondered if the sponsor agreed with the fiscal note. Mr. Shilling responded that it was a matter of policy.

Senator Olson wondered if the fiscal note would be impacted with a possible felony threshold increase. Senator Coghill agreed to provide information regarding the cost of felonies versus misdemeanors.

Senator Olson felt that addressing probation violation issues in rural Alaska could be fairly expensive. Mr. Shilling replied that the program would only be applied in the most practical locations.

Senator Coghill stated that cost saving outweighed the less-volume cases.

Vice-Chair Fairclough looked at zero fiscal note component number 768 from the trial courts. She noted that the changes would impact the court if there was a result in a significant number of cases that moved from the superior court, where felony cases were handled, to district courts, where misdemeanors were handled. The note stated that the majority of property cases were already handled in the district court, previously dismissed, or resolved early in the case. Senator Coghill replied that there were still other costs to the state.

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Vice-Chair Fairclough wondered if there were auditing requirements for the commission. Mr. Shilling replied in the negative. Senator Coghill furthered that auditing requirements should be included in a forthcoming committee substitute.

Co-Chair Kelly felt that the felony threshold provision could have a sunset, in order to reexamine the issue at a later date.

Co-Chair Meyer wondered if the Court System should weigh in on the sunset of the provision. Senator Coghill responded that there was an applicability measure that must be considered regarding the timing of law enactment and date of prosecution.

Co-Chair Kelly stressed that the felony threshold was so low that it had created unforeseen problems. He was in favor of removing the felonies from the convicted persons' records. Senator Coghill replied that \$1000 was within normal states' operations.

Co-Chair Meyer remarked that some people did not have the mental capacity to understand their actions, which result in felony convictions. Mr. Shilling replied that most of the programs were evidence-based programs. He stated that currently the department was experiencing a drop in recidivism.

Co-Chair Meyer wondered what was done with those individuals who could not afford the \$10 per day program. Mr. Shilling replied that other states did not have an issue of a person's ability to afford the cost of the program.

Co-Chair Meyer hoped that the state did not need to set up a fund to help pay for the cost of the program.

SB 64 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

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The meeting was adjourned at 6:06 p.m.