

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 28, 2013

1:37 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Donald Olson

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 2

Commending and supporting actions taken by the Office of the Governor, the attorney general, and the commissioner of natural resources to protect the state from federal government incursion into the care and management of state resources and to promote the economic prosperity of the state; and urging the United States Congress and the President of the United States to limit federal government overreach into management of state resources.

- HEARD AND HELD

OVERVIEW: DEPARTMENT OF CORRECTIONS

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SJR 2

SHORT TITLE: LIMIT FEDERAL INTERVENTION IN STATE

SPONSOR(S): SENATOR(S) DYSON

01/16/13	(S)	READ THE FIRST TIME - REFERRALS
01/16/13	(S)	JUD
01/28/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JOSEPH SCHMIDT, Commissioner
Department of Corrections (DOC)

Anchorage, AK

POSITION STATEMENT: Delivered an overview of the Department of Corrections.

RONALD TAYLOR, Deputy Commissioner

Department of Corrections

Anchorage, AK

POSITION STATEMENT: Participated in the overview of the Department of Corrections.

ACTION NARRATIVE

[1:37:23 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Dyson, Wielechowski, McGuire, and Chair Coghill.

SJR 2-LIMIT FEDERAL INTERVENTION IN STATE

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CHAIR JOHN COGHILL announced the consideration of SJR 2, and stated that he did not intend to move the resolution today.

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SENATOR FRED DYSON, Alaska State Legislature, sponsor of SJR 2, introduced the resolution speaking to the following sponsor statement:

The State of Alaska's future prosperity hinges on the responsible development of its abundant natural resources. Unfortunately, Alaska has entered a period of extraordinary efforts by certain federal agencies and environmental groups to lock up Alaska's resources.

SJR 2 affirms the broad support of Alaskans and their elected representatives for the strategy and efforts of the Governor, attorney general and commissioner of natural resources to protect Alaska's economic freedom from federal government overreach in the management of state resources; and urges Congress and the President of the United States to restrain federal intervention into state resource management that threatens our security and prosperity.

SENATOR DYSON informed the committee of Commissioner Sullivan's belief that expressions of the legislature can be of value when an issue goes to court, because it demonstrates that the people of Alaska support the decisions of the executive branch. He relayed that during the statehood debate Congress recognized that the best hope that Alaska had to support itself was to have control over its natural resources. As a result, 100 million acres were committed to Alaska at statehood. He noted that the packets contained expressions of support from a consortium of Alaska Native corporation executives.

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CHAIR COGHILL questioned whether the resolution might have greater impact if it identified a particular congressional committee in the "copies" section.

SENATOR MCGUIRE suggested adding the energy and lands committees to the "copies" section, and incorporating a statement about control over natural resources being a premise for granting statehood.

SENATOR COGHILL recommended including a "resolve" that highlighted the times that the state had supported the federal government.

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SENATOR DYSON opined that it would add credibility to the state's efforts. He offered to prepare a committee substitute or switch to a committee resolution.

CHAIR COGHILL said he didn't have a preference and didn't mind acknowledging the sometimes cooperative and helpful relationship between the state and federal government. He opined that a focus of the 28th Legislature would probably be how to work in the federal system.

[SJR 2 was held in committee.]

OVERVIEW: DEPARTMENT OF CORRECTIONS

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CHAIR COGHILL announced the next order of business would be an overview by the Department of Corrections (DOC). He expressed particular interest in the issues of prisoner reentry and recidivism.

JOSEPH SCHMIDT, Commissioner, Department of Corrections (DOC), introduced himself and staff members Ron Taylor, Leslie Houston, Kevin Worley, and Mike Matthews. He stated that DOC had made many systemic changes in the past five years and it was time to evaluate those changes.

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COMMISSIONER SCHMIDT relayed that when he first became commissioner, he reviewed the January 2007 "Criminal Recidivism in Alaska" study by the Alaska Judicial Council and it became DOC's roadmap. When he learned that 95 percent of prisoners are released in their lifetime, he understood the importance of reducing recidivism. He emphasized that preventing the next crime is one of the most important things that DOC can do.

COMMISSIONER SCHMIDT said that one of the changes that DOC made was to upgrade the in-custody classification system that consists of minimum, medium, close, and maximum custody offenders. Before the upgrade, the close custody population was oversized and the medium custody population was undersized. After the upgrade, the medium custody population became larger and the close custody population became smaller. He noted that medium offenders are still in secure facilities.

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SENATOR DYSON asked for an explanation of the differences between the categories.

COMMISSIONER SCHMIDT responded that a minimum custody offender may be approaching release and his or her behavior is such that halfway house placement, furlough, or electronic monitoring are possibilities. He then explained that the new system is based on behavior and time while factoring in the crime. The emphasis is how the prisoner is doing with regard to programming, changing, and trying. For example, a first time DWI who is very problematic could have a higher custody score than someone convicted of murderer who is behaving.

SENATOR DYSON asked the difference between medium custody and close custody.

COMMISSIONER SCHMIDT said he couldn't give a specific answer because the scoring matrix changes with the offender. Generally, a prisoner whose behavior is more dangerous will score towards close or maximum custody. He noted that there were between 60 and 70 maximum custody offenders in the state. Responding to a

further question, he confirmed that the classification considers danger to other prisoners and officers.

COMMISSIONER SCHMIDT reviewed DOC 2012 statewide statistics. Twenty-two thousand individuals were booked for 40,340 crimes. About 2,000 were Title 47, an inebriate on the street who may freeze to death.

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SENATOR WIELECHOWSKI asked which communities put people in jail for being drunk on the street or homeless.

COMMISSIONER SCHMIDT clarified that Title 47 is not a criminal charge, and that individuals were picked up in Anchorage, Fairbanks, and Bethel in equal numbers.

SENATOR WIELECHOWSKI asked if the individuals are treated like prisoners.

COMMISSIONER SCHMIDT replied there is a maximum 12-hour hold but the individual may be released sooner if he or she sobers up or someone picks them up.

SENATOR WIELECHOWSKI asked if the individuals have their fingerprints and picture taken, like prisoners.

COMMISSIONER SCHMIDT said there is a booking process and everybody has their picture taken, but he wasn't sure about fingerprints. He reiterated that it is not a criminal commitment.

Continuing the data summary, he reported that just under 6,000 offenders were in prisons, halfway houses, or on electronic monitoring, and just more than 6,000 offenders were out on probation or parole. He highlighted that the initial recidivism numbers are encouraging for the individuals that go through a substance abuse program. The overall recidivism rate without a program plan is 66 percent. The recidivism rate for the group of about 800 individuals that went through a substance abuse program was down 14 percent from the overall rate.

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RONALD TAYLOR, Deputy Commissioner, Department of Corrections (DOC), confirmed the commissioner's statement that the 2007 Alaska Judicial Council recidivism study was the impetus for change within DOC. He said the study indicated that 48 percent of individuals returned to prison due to new crimes or technical

violations within one year of release. DOC is looking at programs to push that number farther out so that fewer individuals are returning to the system in that period.

MR. TAYLOR reviewed increasing costs.

- The DOC operating budget has increased from about \$167 million in 2005 to more than \$323 million in 2013.
- The cost to construct the Goose Creek Correctional Center was about \$250, and the annual operating costs will be about \$51 million.
- The cost to incarcerate an inmate in 2005 was \$110 per day, whereas the cost in 2013 is \$147 per day.
- Medical care costs in Anchorage have increased 56.2 percent in the past decade, whereas the national average has increased just 29.8 percent. (Alaska Economic Trends, July 2012)

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SENATOR DYSON asked if the increases in incarceration rates track the increases in population in the state.

MR. TAYLOR offered to follow up with the information.

SENATOR DYSON asked the degree to which personnel costs increased between 2005 and 2013.

MR. TAYLOR offered to follow up with the information.

SENATOR WIELECHOWSKI noted that the recidivism data was from 2007, and asked if updated numbers were available.

MR. TAYLOR answered that this was the most recent data available.

CHAIR COGHILL asked to be kept apprised of new methodologies.

SENATOR DYSON asked if Medicare and Medicaid funds were available to the prison population.

MR. TAYLOR replied that was something DOC was working on.

SENATOR DYSON asked if federal law prohibited inmates from qualifying and asked the record to reflect that the commissioner shook his head.

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SENATOR WIELECHOWSKI noted the current debate about whether Alaska should accept the Medicaid expansion, and expressed interest in knowing if that would affect corrections costs.

MR. TAYLOR offered to provide the information.

CHAIR COGHILL instructed Mr. Taylor to send the information through his office.

MR. TAYLOR reviewed the institutional inmate populations from 2003-2012 and projected to 2020. In 2003 the inmate population was 3,789 and in 2012 it was 4,851, a growth rate of slightly less than 3 percent per year. Based on that growth rate and the number of beds available in 2013, a new prison will be needed by 2016. He said that DOC is looking at programming that could help bend the curve and push that out farther.

SENATOR WIELECHOWSKI asked what the plan is in 2013 to address the looming, significant bed shortage.

MR. TAYLOR responded that there isn't a shortage in 2013 and by the first quarter of the next fiscal year most of the Alaska inmates housed in Colorado will have been returned to the state.

SENATOR WIELECHOWSKI asked what the plan is for 3-5 years from now, because it takes time to build a new prison.

MR. TAYLOR answered that the programming and resources that DOC is putting into effect intend to push the projected bed shortage out further than 2016. He added that the growth rate is beginning to slow down.

CHAIR COGHILL summarized that the expectation is that the programmatic approach will bend the curve.

MR. TAYLOR reviewed probation violation statistics. He said the jail admissions for probation violations increased from 1,641 in 2002 to 2,755 in 2010. During the same time, probation caseloads increased over 20 percent. In 2011, more than 50 percent of the 6,000 probationers had a Petition to Revoke Probation (PTRP) filed in their case. Because [68 percent] were for technical violations, DOC will focus on ways to do a better job of dealing with these violations moving forward.

SENATOR WIELECHOWSKI asked for a definition and examples of technical violations.

MR. TAYLOR explained that a technical violation occurs when someone violates a requirement of probation. Examples include missing a required appointment with a probation or parole office or failure to comply with required substance abuse testing.

CHAIR COGHILL asked if DOC was looking at a different type of accountability than returning the violator to jail.

MR. TAYLOR said yes, and he would expand on that later in the presentation. He continued to inform the committee that 42 percent of inmates were incarcerated for non-violent crimes in 2002 and that increased to 62 percent in 2012. This is consistent with national trends, but Alaska's increase is more profound.

SENATOR DYSON asked if many of the non-violent crimes involved substance abuse.

MR. TAYLOR answered yes, and more involved drugs than alcohol.

SENATOR DYSON asked if that included assault such as hitting someone while driving drunk.

MR. TAYLOR clarified that an assault charge is not non-violent. Continuing the presentation, he reviewed drug and alcohol statistics. In 2002, 15.39 percent of offenders in Alaska were incarcerated for drug or alcohol offenses. By 2011, incarcerations for those offenses increased to 19.08 percent. [Other categories of offenses were parole/probation, person, property, public order, sex offense, transportation, and weapons.]

SENATOR DYSON asked for the definition of a transportation offense.

MR. TAYLOR offered to follow up with the definition. Continuing the presentation, he displayed 2002 and 2012 statistics for length of stay from admission and highlighted that all offenders are staying in custody longer. In 2002, 6.94 percent of offenders were in custody for 37 months or more and that increased to 18.41 percent in 2012.

CHAIR COGHILL asked if the statistics were for both violent and non-violent offenders.

MR. TAYLOR clarified that it was for all persons in custody.

SENATOR COGHILL asked if the expectation was that most of those in custody for 37 months or more were non-violent offenders.

MR. TAYLOR offered to follow up with the information.

MR. TAYLOR said DOC has been following the three principles of effective correctional intervention for several years.

- Risk Principle - Devote time, energy, and resources to moderate and high-risk cases.
- Need Principle - Identify and target the criminogenic needs of moderate and high-risk offenders. These are the dynamic risk factors that, when changed, will change the probability of recidivism.
- Responsivity Principle - Design program efforts around behavioral and cognitive-behavioral techniques. Tailor the efforts to the individual abilities, strengths, style, culture, and personality of the client.

MR. TAYLOR said the focus is on behavior change, collaborative efforts to reduce recidivism, and the use of proven methods. Outcomes are measured rather than inputs and the focus is on offender success and improved public safety, not offender failure.

MR. TAYLOR reviewed risk assessment.

- DOC has updated its classification policies to emphasize behavioral incentives that encourage compliance with programming and other expectations.
- The Offender Reentry Policy has an Offender Management Plan (OMP) that provides a roadmap for the prisoner to determine the best programs and the means of measuring readiness for reentry into the community.
- The Division of Probation & Parole has received technical assistance from the National Institute of Corrections (NIC) to improve the system and modify the current risk assessment protocols.

[2:16:11 PM](#)

CHAIR COGHILL suggested DOC keep legislators apprised of programmatic needs in a community.

MR. TAYLOR reminded the members that when DOC changed its in-custody classification system, it was more in line with national trends. He highlighted that 44 percent of inmates are minimum

custody, which includes electronic monitoring and halfway house beds; 35 percent are medium custody; and 16 percent are close/maximum custody, which is close to the national average.

MR. TAYLOR reviewed the probation/parole risk levels. He explained that DOC reviewed the Level of Service Inventory-Revised (LSI-R) scores from the past year, and based on the best practices model found that about 60 percent of individuals were over supervised. According to the model, the bulk of probationers and parolees should fall in the low/moderate to moderate categories. They should have received services while in custody or have their needs targeted for substance abuse or other programming when they are out of custody.

SENATOR WIELECHOWSKI referenced the high levels of probation violations, technical violations in particular, and asked what DOC was doing specifically to address that.

MR. TAYLOR said the assessment process has shown that it will require more than just the probation and parole office to address the issue. Efforts to date have been to reach out to the Parole Board and court to look at how to narrow the number of conditions to supervise a person effectively while tying that to the criminogenic needs of the individual on supervision. DOC has also had preliminary discussions with the court and Parole Board about acceptable alternatives to sending a violator back to jail. He concluded that, "You've hit on one of our big areas that we're going to have to redesign here in the future."

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SENATOR DYSON asked if DOC has the authority to exclude certain areas for someone on probation or parole and require them to wear a tracking device to monitor compliance.

MR. TAYLOR replied the department does not have that authority unless the Parole Board or the court ordered it as part of a violation. He added that, depending on the type of case, DOC could allow a person serving an initial sentence the opportunity to serve part of their time on electronic monitoring.

SENATOR DYSON expressed interest in hearing a debate on the personal liberties versus DOC's efforts to look at less expensive, transitional alternatives.

MR. TAYLOR said DOC's approach is to help individuals achieve success as they move through the system and transition into the community and family support system.

SENATOR DYSON offered legislative help if statutory or court rule changes were necessary.

SENATOR MCGUIRE stated that she had given thought to introducing legislation similar to federal law to prohibit a felon from associating with any other felon for at least a year after release from custody. She also described the electronic monitoring that Alaska Pretrial Services offers and encouraged DOC to use that sort of innovative technology as much as possible.

MR. TAYLOR said individuals on probation and parole are already prohibited from associating with other felons. With regard to the second point, he said Alaska Pretrial Services offers active GPS monitoring and DOC has opted to use a passive GPS system due to staffing and cost issues.

SENATOR DYSON asked the difference between active versus passive GPS tracking and the cost differential.

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MR. TAYLOR explained that active monitoring provides real-time tracking and response capability 24/7. With passive monitoring the tracking information is automatically downloaded to the service provider through a phone modem in the individual's house. DOC is able to access the information the next day and respond accordingly. He offered his understanding that the service provider was located in Colorado.

CHAIR COGHILL said the committee would delve into that further, because it was his understanding that the offender pays most of the cost of active monitoring. He reiterated the importance of letting legislators know what action items are most important in the next budget cycle.

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MR. TAYLOR listed the criminogenic factors that DOC is reviewing as part of an individual's program design that addresses needs and lessens the likelihood of their returning to the system. These include anti-social values, anti-social companions, anti-social personality or temperament, and family and/or marital issues.

SENATOR DYSON asked if DOC was able to analyze individuals for mental health issues. He specifically mentioned autism and fetal alcohol spectrum disorders (FASD).

MR. TAYLOR reported that DOC has a separate behavioral unit to address needs of individuals in custody.

SENATOR DYSON asked if individuals with FASD receive specialized treatment or housing.

MR. TAYLOR offered to follow up.

SENATOR DYSON said, "Don't spend any effort on it; we can come back to it next year."

SENATOR MCGUIRE asked for follow-up information about treatments for traumatic brain injury. She expressed excitement about the shift in resources and hope that the behavioral unit would use things like Topamax, Wellbutrin, and antidepressants to treat addictions, because they change the molecular structure in the brain. That discussion needs to continue because, "Some of it is about changing behavior, but some of it truly is chemical and the way that people are wired genetically," she stated.

MR. TAYLOR said DOC's expanded rehabilitative programing includes those for substance abuse, education, and those that are faith-based. He confirmed the commissioner's earlier statement that the recidivism rate was reduced 14 percent for the pilot group that completed a substance abuse program. He highlighted the expanded capacities for the LSSAT outpatient program, the RSAT residential program, and the aftercare services. He said DOC has served individuals in adult basic education and vocational education programs. He offered to provide a list of vocational education programing provided in each institution. National data shows that vocational education programing reduces recidivism by 8.3 percent.

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CHAIR COGHILL discussed employment barriers and questioned how many participants in the vocational programs were felons and how many were misdemeanants.

MR. TAYLOR said he didn't have those specifics, but there are 492 different barriers associated with persons in custody with felony or misdemeanor convictions.

CHAIR COGHILL suggested he think about it because the legislature could be more helpful if it understood more.

SENATOR WIELECHOWSKI encouraged Mr. Taylor to track data about program successes as closely as possible, because policy makers find it very useful.

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SENATOR DYSON commented on the difficulty of providing job training to prisoners that move frequently due to bed shortages. He expressed hope that Goose Creek would help solve this problem.

MR. TAYLOR reviewed the Probationer Accountability with Certain Enforcement (PACE) program. He explained that this pilot program started in Anchorage in July 2010 with 70 high-risk felony probationers. A preliminary evaluation by the Alaska Judicial Council showed that 66 percent of probationers were free of any positive drug tests during their first three months in the program. Prior to enrolling in PACE only 20 percent of those probationers were free of a positive drug test. The program has expanded to the Palmer area, and a misdemeanor domestic violence PACE program is operating in Fairbanks.

CHAIR COGHILL asked if DOC was satisfied with the timing between notice of an infraction and subsequent action.

MR. TAYLOR said yes. DOC has an excellent partnership with the Anchorage Police Department and the PACE committee meets on a regular basis to sort out those issues.

CHAIR COGHILL asked if probationers were assigned to the program or entered voluntarily.

MR. TAYLOR replied they're assigned.

He reviewed the Prisoner Reentry Task Force. He explained that the purpose of the task force is to reduce the recidivism rate in Alaska and improve public safety and the overall health of Alaskan communities. The three formal work groups include the misdemeanor work group, the substance abuse work group, and the employment work group. The misdemeanor work group addresses the high recidivism rates for misdemeanors and the difficulties associated with providing programming for short-term prisoners. The substance abuse work group has been instrumental in identifying gaps in substance abuse services and aftercare. The employment work group has collaborated with the Department of Labor and Workforce Development (DOLWD) on apprenticeship programs and ways to reduce or eliminate employment barriers for individuals released from custody.

The task force has also established regional reentry coalitions in Anchorage, Kenai, Mat-Su Valley, Dillingham, and Juneau to look at the problems in the individual communities including access to housing, employment, and resources such as substance abuse programing. He noted that he attended a reentry fair in Anchorage and recognized that DOC has to do a better job of providing communities peer support and family support for probationers, parolees and those being released from custody.

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SENATOR DYSON expressed appreciation for what the department has done working with faith-based organizations.

CHAIR COGHILL advised that the committee would look at some of the reentry barriers going forward.

SENATOR DYSON asked the difference in cost between active and passive monitoring.

MR. TAYLOR said he would follow up with the information, but active monitoring is obviously more expensive.

SENATOR DYSON said he was sensitive to the cost benefit ratio, but didn't like the idea of DOC having less than the very best if there is a significant difference in effectiveness.

CHAIR COGHILL expressed interest in receiving the information, and asked Commissioner Schmidt if he had closing comments.

COMMISSIONER SCHMIDT thanked the committee for the opportunity to talk publicly about the direction DOC is going.

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SENATOR WIELECHOWSKI expressed interest in receiving a breakdown on drug offenses, specifically the type of drug and category of offense.

COMMISSIONER SCHMIDT said he would be happy to return for another hearing that has a more specific focus and to discuss what data can and cannot be captured.

CHAIR COGHILL commented on the balance between reducing recidivism and protecting public safety, and observed that the universe of programs available to DOC is somewhat a mystery.

SENATOR DYSON spoke to the success of the PACE program and smart sentencing and how they can affect prison populations and the potential need for a new prison in 7-8 years. He enumerated some of the problems of the criminal justice system. Prescriptive sentencing has incarcerated more people for longer than appropriate, some crimes are felonies that shouldn't be, and felons have no recourse to remove a felony conviction from their record.

SENATOR MCGUIRE emphasized the importance of rehabilitation because most prisoners will someday be released back into the community. She also congratulated Commissioner Schmidt on one of the most meaningful moves forward she'd ever seen from the Department of Corrections.

CHAIR COGHILL stated that while he was supportive of rehabilitative efforts, he was also sympathetic to those who have been offended and aware that victims often do not have the opportunity for the many resources that will be put into those who have offended

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:56 p.m.