

ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE
WASILLA, ALASKA
July 25, 2013
10:27 a.m.

MEMBERS PRESENT

SENATE JUDICIARY

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

HOUSE JUDICIARY

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster - via teleconference
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt

MEMBERS ABSENT

SENATE JUDICIARY

Senator Donald Olson

HOUSE JUDICIARY

Representative Max Gruenberg

OTHER LEGISLATORS PRESENT

Senator Johnny Ellis
Senator Hollis French
Representative Geran Tarr
Representative Josephson
Representative Bryce Edgmon
Representative Shelley Hughes

COMMITTEE CALENDAR

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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 64

SHORT TITLE: OMNIBUS CRIME/CORRECTIONS BILL

SPONSOR(s): JUDICIARY

02/27/13	(S)	READ THE FIRST TIME - REFERRALS
02/27/13	(S)	STA, JUD
04/04/13	(S)	STA AT 9:00 AM BUTROVICH 205
04/04/13	(S)	<Bill Hearing Postponed>
04/09/13	(S)	STA RPT CS 1DP 1NR 1AM NEW TITLE
04/09/13	(S)	DP: DYSON
04/09/13	(S)	NR: GIESSEL
04/09/13	(S)	AM: COGHILL
04/09/13	(S)	STA AT 9:00 AM BUTROVICH 205
04/09/13	(S)	Moved CSSB 64(STA) Out of Committee
04/09/13	(S)	MINUTE(STA)
07/25/13	(S)	JUD AT 10:00 AM WASILLA

WITNESS REGISTER

SENATOR JOHNNY ELLIS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Briefed the committees on what led to today's meeting.

JERRY MADDEN, former Chair

Corrections Committee

Texas House of Representatives

POSITION STATEMENT: Discussed the mission to keep from building any new prisons in Texas.

JUSTICE WALTER CARPENETI
Alaska Supreme Court
Juneau, Alaska

POSITION STATEMENT: Discussed why SB 64 is needed, what it should cover, and what must follow.

CARMEN GUTIERREZ, former Chair
Alaska Prisoner Re-entry Task Force
Anchorage, Alaska

POSITION STATEMENT: Discussed her work on the Alaska Prisoner Re-entry Task Force

KIMBERLY MARTUS, Manager
Tribal Court Enhancement
Bristol Bay Native Association (BBNA)
Dillingham, Alaska

POSITION STATEMENT: Discussed the culture-based prisoner re-entry program that the Bristol Bay Native Association established in 2012 after acquiring federal grant monies.

LARRY COHN, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Provided an overview of the work of the Criminal Justice Working Group (CJWG).

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

POSITION STATEMENT: Provided statistics on the Alaska prison population and recidivism.

STEVEN KING, Criminal Justice Planner
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Provided information related to recidivism rates in the context of SB 64.

WALT MONEGAN, President
Alaska Native Justice Center (ANJC)
Anchorage, Alaska

POSITION STATEMENT: Discussed the Alaska Native Justice Center re-entry program in the context of SB 64.

CHAD HUTCHISON, Staff

Senator John Coghill

POSITION STATEMENT: Provided an overview of SB 64, version O.

ALISON LAWRENCE, Senior Policy Specialist
Criminal Justice Program
National Conference of State Legislatures (NCSL)
Washington, D.C.

POSITION STATEMENT: Discussed the provisions of SB 64 and justice reinvestment, focusing specifically on the proposed sentencing commission and the PACE Program.

JESSE WIESE, Policy Analyst
Justice Fellowship
Prison Fellowship Ministries
Lansdowne, Virginia

POSITION STATEMENT: Discussed corrections spending and criminal justice reform in the context of SB 64.

JUDGE JAMES N. WANAMAKER - retired
Partners For Progress
Anchorage, Alaska

POSITION STATEMENT: Discussed Partners For Progress and therapeutic justice in the context of SB 64.

JANET MCCABE, Chair
Partners For Progress
Anchorage, Alaska

POSITION STATEMENT: Provided information about Partners For Progress and therapeutic justice in the context of SB 64.

BILL SATTERBERG, Attorney
Fairbanks, Alaska

POSITION STATEMENT: Suggested changes to SB 64 and provided examples of how working on a problem piecemeal creates unintended consequences.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 64 on behalf of the Alaska Court System.

ACTION NARRATIVE

[10:27:14 AM](#)

CHAIR JOHN COGHILL called the joint meeting of the Senate and House Judiciary Standing Committees to order at 10:27 a.m. Present at the call to order were Senators Wielechowski, Dyson, McGuire, and Chair Coghill; Representatives Pruitt, LeDoux, Lynn, Foster - via teleconference, Millett, and Chair Keller.

SB 64-OMNIBUS CRIME/CORRECTIONS BILL

CHAIR COGHILL announced consideration of SB 64. [CSSB 64(STA), version 28-LS0116\0, was before the committee.]

[10:34:02 AM](#)

SENATOR JOHNNY ELLIS briefed the committees on what led to today's meeting. He noted that faith-based organizations, community nonprofits, training programs such as Nine Star, and the Parnell Administration were represented. He stated that the hearing was in part a result of discovery that tough-on-crime conservative Republicans nationwide are pushing for corrections reform to reverse the skyrocketing growth of state prison budgets. He observed that people with left-of-center political views for years have been interested in rehabilitation and a smarter approach to justice. He highlighted that conservative Republicans are leading this effort in an extraordinary way to do better across the state. He described this as "a magic moment" in American political history for making progress together.

SENATOR ELLIS reported that a host of conservative states have begun to implement new approaches to smart justice because their state budgets can no longer support past practices. He said that, in this area, leaders like Grover Norquist are right on track looking for better more cost-effective measures than simply continuing to incarcerate more and more non-violent offenders at unsustainable public expense. He stated agreement with the principles and goals articulated in the Right on Crime website and acknowledged that the conservatives are right about corrections reform. He described Newt Gingrich, Ed Meese, William Bennett, Governor Jeb Bush, and Texas Representative Jerry Madden as a few of the leaders who have joined Mr. Norquist in this initiative. This matters in Alaska because the state's high recidivism rate and rapid growth in its prison population is a recipe for fiscal disaster, he said.

[10:37:47 AM](#)

SENATOR ELLIS highlighted that the 2011 report by the Alaska Judicial Council showed that Alaska is among a handful of states that has the highest prison population growth in the nation and

an alarming recidivism rate. In 1982, 1 out of 92 Alaskans were incarcerated. In 2009, 1 out of 36 Alaskans were incarcerated and two-thirds were back in custody within 3 years of their release. He emphasized that if the state's prison population continues to grow at the current rate of 3 percent per year, Alaska prisons will be at capacity in 2016. He noted that the most recent Alaska prison, [Goose Creek], cost \$250 million and has operating expenses of \$50-\$60 million per year. However, if Alaska follows the example set by Texas, it won't have to build another prison in the next three years. That state has paved the way on correction reform with great success.

SENATOR ELLIS described the hearing today as an important step toward a smarter, evidence-based, fiscally prudent corrections system. He said this is an opportunity to learn from experts on the ground in Alaska and from one of the best minds in the country on corrections reform.

SENATOR ELLIS introduced former Republican member of the Texas House of Representatives Jerry Madden and reviewed his career accomplishments. Under his leadership, Texas adopted cost-effective, evidence-based, corrections reform that includes treatment, rehabilitation, and re-entry programs while still providing the necessary corrections structure to protect public safety. This is a smarter use of public dollars, he said. Senator Ellis welcomed Representative Madden describing him as one of the nation's foremost experts on corrections reform and a great American.

[10:41:59 AM](#)

CHAIR COGHILL welcomed Jerry Madden.

JERRY MADDEN, former Texas House of Representatives Corrections Chairman, stated that he is a West Point graduate who thinks like a soldier and an engineer. He explained that he served for 20 years in the Texas Legislature and that he had no experience with corrections for the first 12 years. It was therefore quite a surprise when in 2005 the Speaker informed him that he would be the chairman of the Corrections Committee. When he asked what he was supposed to do the Speaker said, "Don't build new prisons; they cost too much." Representative Madden said that became his mission. He emphasized that having a well-defined mission is critical so that everyone can look to it and work toward it. He passes that advice along to other states that are looking at corrections reform.

REPRESENTATIVE MADDEN explained that in 2005 about 150,000 people were in prison in Texas, some 400,000 were on probation, and 75,000 were on parole. These numbers were projected to rise, just like the forecast in Alaska and almost every other state, he said. Looking for solutions, he forged a working relationship with a minority Senator who had worked unsuccessfully on criminal justice issues for a number of years.

[10:46:54 AM](#)

REPRESENTATIVE MADDEN said there are two choices when addressing a rising prison population and building another prison isn't an option: either open the door and let people out or figure out a way to slow the numbers of people coming in. He acknowledged that, in Texas, letting people out was not politically advisable so the only workable alternative was to slow the numbers of people coming in.

A review of the statistics showed that the people working in probation had some good ideas, and with more money they could probably do something to reduce prisoner numbers. Because new money wasn't available, the only viable alternative was to change things within the system and use those public dollars on things that work. This strategy has become known across the country as justice reinvestment or smart justice.

[10:50:59 AM](#)

REPRESENTATIVE MADDEN said the Texas Legislature passed legislation to implement this strategy, but it was vetoed primarily because it shortened the terms on probation time. However, the bill did have some good provisions like expanding specialty courts and returning money to communities to keep people from going to prison. During the Interim, legislators worked on the legislation focusing on how to break the cycle. Some of the things that were identified were jobs, technology support for people working in parole, mental health treatment programs, and substance abuse treatment programs.

REPRESENTATIVE MADDEN explained that the Texas Parole Board previously was granting parole to people if they completed an 18 month drug treatment program. The problem was that there was an 18 month waiting list to get in the program. In Texas, the hard bed cost per prisoner per year is about \$20,000 so the cost savings would be tremendous if 5,000-10,000 prisoners could be released 18 months earlier. Paying for 10 more prisoners to go through the program saved enough money to pay for expanding the program, he said.

[10:54:42 AM](#)

REPRESENTATIVE MADDEN discussed cost saving programs that keep people from entering the system the first time. The numbers show that spending money on the education system is more cost-effective than spending money on a person after people have entered the justice system. Texas also changed its juvenile system. Over the long term, investing in families and early childhood saves money, he said.

At the start of the 2007 legislative session, the Texas Legislative Budget Board projected there would be 17,700 more prisoners in the state by 2012, and 8-9 new prisons would be needed to house these people. This would cost the state about \$250 million plus annual operating costs of \$40,000 to \$50,000 per prison. At about the same time the statisticians returned the numbers that showed that reinvestment in smart justice programs would work and stabilize the prison population for the next five years. He said it was gratifying to see that the \$500 million that the governor had included in his budget to build 3 new prisons could instead be spent on education, transportation and other things to benefit the state as a whole.

REPRESENTATIVE MADDEN said the result of implementing justice reinvestment and smart justice programs is that between 2011 and 2013, Texas housed 7,000 fewer prisoners. Parole rates were much higher, parole revocations declined 40 percent, juvenile probations declined 30 percent, and the arrest rate dropped 10 percent. In 2011, the legislature closed one prison and in 2013 voted to close 2 more. In 2011, \$100 million was cut from the juvenile system yet it is better and more effective. This is where "Right on Crime" started, he said.

[11:00:07 AM](#)

REPRESENTATIVE MADDEN described bringing together liberal and conservative think tanks to rewrite the probation bill so that it would be palatable to both parties. The original legislation was broken into 3 separate bills and the ideas that were developed began to radiate around the country. Since then other groups have come together to work on these ideas. Texas was the first to implement these reforms, and now other states are following this path and making even better changes. He said these are smart policies that make the public safer, are friendlier to addictions, and cost less money.

[11:02:25 AM](#)

REPRESENTATIVE MADDEN discussed some of the smart things that Texas did within the system that have been helpful in other

states. He also offered suggestions and observations specifically related to SB 64: expand the proposed sentencing Commission to include the entire criminal justice system because the charge language is broader than just sentencing; ensure a broadly based commission; include specific representation for alcohol abuse; look at the legislation that Georgia and South Dakota passed; and do a risk analysis of the prisoners. He said there are two types of prisoners: the ones we're mad at and the ones we're afraid of. For the ones we're mad, change their behavior so we're no longer mad at them. He noted that the legislation passed in Ohio, North Carolina, South Carolina, and Georgia provides good examples in this area.

[11:08:38 AM](#)

REPRESENTATIVE MADDEN emphasized the importance of leadership when working on justice reinvestment and implementing smart justice programs. He noted that some states have done it with legislative leadership and others with a combination of the legislative, executive and judiciary. It's also important to make sure something works and is done properly. Finally, it's important to have the courage to make further changes if something doesn't work as planned.

REPRESENTATIVE MADDEN discussed specialty courts and suggested adhering to the standards set for these courts. He concluded that the process to pass smart justice legislation is demanding but it is the right thing to do.

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CHAIR COGHILL thanked Representative Madden for his recommendations.

SENATOR MCGUIRE commented on the value of an outside perspective. She asked, based on the legislation passed in Georgia and South Dakota, if he had a recommendation for expanding the proposed sentencing commission to the "justice reinvestment commission" or the "justice reinvestment in victims' rights commission."

REPRESENTATIVE MADDEN suggested she look at the legislation in those states because they did have specific names for their commissions. He reiterated that those states addressed the entire system, not just sentencing.

[11:16:32 AM](#)

SENATOR DYSON expressed appreciation for the comments regarding victim restitution. He noted that prison fellowship wants to see

the victim restored as much as possible to their pre-event state and the perpetrator restored in their relationships and a productive lifestyle. He said his sense is that making restitution helps that offender's attitude about re-entry and forgiving themselves. He opined that Alaska is doing an appalling job of restoring the victim and getting the offender into the restoration cycle. He asked for recommendations.

REPRESENTATIVE MADDEN agreed that victim restitution is very difficult and suggested looking at how North Carolina defined ways to provide restitution. He noted that prison fellowship opened his eyes to the fact that it's difficult for somebody who is back in the community to get out of the cycle of poverty and that affects other social programs in the community. He emphasized that these things should be part of the discussion.

CHAIR COGHILL said the committee would look at and rethink the nonviolent "barrier crimes."

SENATOR DYSON asked if he had experience expunging felony convictions from someone's record after they're released in order to facilitate re-entry.

REPRESENTATIVE MADDEN said he worked on an expungement bill in 2011 and it was a difficult process, but his belief is that a person who actually changes should be given help.

[11:23:30 AM](#)

REPRESENTATIVE LEDOUX asked if he would recommend large or gradual legislative changes.

REPRESENTATIVE MADDEN replied the states that have done it would recommend going big, because the climate may change and there may only be one chance.

SENATOR COGHILL thanked Representative Madden and welcomed Justice Carpeneti.

[11:26:53 AM](#)

JUSTICE WALTER CARPENETI, Alaska Supreme Court, Juneau, Alaska, stated that none of the decisions of the legislature are more important than protecting the safety and security of Alaskans, providing for the opportunity of all citizens to reach their full potential, and doing these things in a cost-effective way. Establishing the conditions that allow justice to be done is one of the highest functions of government, and the sponsors of SB

64 deserve the thanks of all Alaskans for proposing legislation that seeks to further these goals, he said.

JUSTICE CARPENETI said he would break his remarks into three areas: why this legislation is needed, what it should cover, and what must follow.

He suggested members look at the materials in the research summary on the cost of crime from the Institute of Social and Economic Research (ISER) to understand why this legislation is needed. It points out that Alaska's prison population remains among the fastest growing in the nation. There were five times more inmates in 2007 than in 1981 and the number has doubled since then, during a time when crime rates dropped by about 30 percent. The fact that the Department of Corrections budget is approaching \$300 million and the cost of the last prison was \$250 million clearly demonstrates the need.

JUSTICE CARPENETI discussed his thoughts on what a sentencing commission should cover. He said crime and the proper response to it is a very complicated area, and the approach that the legislature takes must recognize that reality. This is not a one-size-fits-all situation, and there is no silver bullet.

JUSTICE CARPENETI said he believes that the legislation should address in-prison, before-prison, and after-prison programs; sentencing; and offender risk and needs assessment tools.

The ISER report shows that a lack of availability of prison treatment programs is an impediment to progress, just as Representative Madden discussed. He suggested the legislature look at programs designed to change prisoners' cognitive thinking, because the evidence shows that this is an area where the most progress can be made. He highlighted the importance of looking at community-based treatment programs as well as what happens before prison. He noted that Representative Madden discussed the importance of programs for juvenile offenders, and Figure 7 in the research summary provides data from the Judicial Council study on how expanding specific programs would contribute to reducing growth in numbers of inmates. The evidence shows that the high return programs are the ones that start the earliest. Pre-school programs for at-risk children and programs for juvenile offenders demonstrate that the return can be very high if resources are put in the right place. He said Carmen Gutierrez would talk about after-prison programs and re-entry. This important area can't be overlooked.

JUSTICE CARPENETI addressed probation, parole, and sentencing. He said the Probation Accountability and Certain Enforcement (PACE) Program was started in the last several years and should be considered carefully. With regard to sentencing, he said he believes it is important to incorporate offender risk and needs assessment tools. He noted that he addressed this in detail in his 2012 State of the Judiciary speech.

11:32:05 AM

JUSTICE CARPENETI reviewed specific provisions in SB 64. Referencing the powers and duties of the commission found on page 4, he suggested it would be safer to include the specific language about risk and needs assessments if legislators agree that this is a really important tool for judges to have. He noted that in his State of the Judiciary speech last year he reported that the National Conference of Chief Justices in 2011 endorsed a resolution encouraging state and local courts to incorporate offender risk and needs assessments in the sentencing process. He described it as an area that holds promise. Directing attention to subsection (5) on page 4, he said the language might be interpreted to include the means to enhance the effectiveness of probation and parole programs like PACE, but it might be safer to include that specifically in the legislation.

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JUSTICE CARPENETI suggested that legislators might look at the field of collateral consequences of conviction (barrier crimes) and noted that the Uniform Law Commission recently adopted a proposed uniform law on collateral consequences of conviction. He said the number of statutes that affect a person after emerging from prison is astonishing and there is need to be much more focused in addressing the risks and the areas that need risk protection. Protection beyond that point makes it much tougher for somebody to go through the re-entry process for no purpose.

JUSTICE CARPENETI read the following excerpt from the Executive Summary of the Alaska Sentencing Commission report from 1990:

Across the country governors, legislators, and corrections officials are trying to manage corrections systems that seem out of control. Prisons are overcrowded, incarceration rates are climbing, and corrections budgets are growing rapidly. Sentencing practices have come under increasing attack for being

inequitable and inconsistent and for making inefficient use of limited correctional resources.

During the last decade, Alaskans had the largest percentage increase in prison population in the country. It has used its oil wealth to keep pace with this increase by building new prison facilities, but it cannot continue to do so indefinitely. Other states have found that trying to build prisons fast enough to keep up with the rising incarceration rates is a losing proposition.

Prison overcrowding points out the need to take a balanced approach to management of the corrections system. Offenders who present the most serious threat to public safety, the violent criminal and serious recidivist clearly should be in prison. On the other hand, prison is not the only means by which offenders can be punished. Limited prison capacity dictates the need to create a continuum of non-prison corrections programs tailored to the less serious offender.

JUSTICE CARPENETI said the critical point of the forgoing is that it was published in 1990. He applauded the current effort, but cautioned against allowing the work product to end up as yet another report that ends up on a shelf for an ex-Chief Justice to dig up 23 years from now.

He concluded that after study the next critical step is action, and that is the legislature's power and responsibility.

[11:37:26 AM](#)

CHAIR COGHILL offered his belief that the risk and needs assessment is probably a key element. He asked how credible the current risk assessment is and how it plays out in the courtroom.

JUSTICE CARPENETI replied it's difficult under the current statutory scheme. He offered his understanding that most of the risk assessment that's done now is done in corrections. He reiterated that the Conference of Chief Justices strongly backed the idea of the use of risk and needs assessment at the time of sentencing. He said the current sentencing structure doesn't provide the opportunity at a very high level, and the proper balance is one of the things that the proposed commission can look at.

CHAIR COGHILL summarized that corrections does a risk and needs assessment, but it becomes a different issue for sentencing.

JUSTICE CARPENETI clarified that the point he was trying to make is that under the current statutory scheme the ability to use a risk and needs assessment tool is probably very limited.

11:40:05 AM

SENATOR DYSON said his sense historically is that a huge percentage of cases are pled out so judges aren't able to use discretion about the appropriateness of the sentence. He asked if presumptive sentencing is one of the things that legislators need to look at with the proposed sentencing commission.

JUSTICE CARPENETI agreed that is one of the things to look at, because a judge isn't able to do much judging when the presumptive scheme has steadily narrowed the discretion of the sentencing judge. He noted that in his last State of the Judiciary speech he said that most judges will accept a negotiated plea that is within a larger or smaller zone of reasonableness, but negotiated pleas transfer the discretion of the judge first to the prosecution and then to the defense.

SENATOR DYSON commented that the statistics seem to show that perpetrators that confess and take responsibility for their misdeeds do disproportionately poorer in the sentencing process than someone who has the means to retain an effective defense attorney. Further, it appears that for some it is a cultural norm to face their mistake when caught and start the reconciliation process. He asked if that is a pattern and, if so, what can be done about it.

JUSTICE CARPENETI replied he wasn't sure it's a pattern. He said a lot is involved in the decision to enter a plea and either confess guilt or enter a no contest plea, and he didn't agree with the observation that people who step forward and take responsibility earlier do more poorly. He suggested it would be necessary to ask the district attorneys their view. He relayed his personal experience as a defense lawyer was that the clients who were able to step up and accept that they were guilty and give him the opportunity to negotiate on their behalf did the best in terms of how they came out overall. A person going into jail while maintaining his or her innocence, even knowing that wasn't true, did not set themselves up for reform.

11:45:15 AM

SENATOR FRENCH discussed the dramatic change in sentencing policy announced yesterday by the Department of Law and how that will affect the discretion that trial judges will have in the sentencing decision. He asked Justice Carpeneti his idea on how moving the risk and needs assessment up to the sentencing phase will play out, if it will take the form of a pre-sentence report, and who would do that work.

JUSTICE CARPENETI replied he had never sentenced somebody after a risk and needs assessment, but in the states that have adopted the approach the probation and parole office does the work-up and presents to the court what the use of that tool would indicate the appropriate sentence or range of sentence should be.

[11:47:08 AM](#)

CHAIR KELLER said he can understand the risk analysis as a tool, but he struggles to understand the needs portion. He asked what that tool would look like and if it would be a self-reporting survey.

JUSTICE CARPENETI replied there are three principles involved. First, the supervision and treatment levels should be determined by the offender's risk of reoffending. Second, the need principle calls for targeting the provision of services with specific risk factors that will most likely contribute to a new offense. Third, the responsivity principle specifies that treatment interventions must employ cognitive social learning strategies. These approaches are designed to change behavior and are directed at an offender's specific risk factors.

He continued to explain that the person answers a long series of questions and that information is developed into a matrix of possibilities. There is a fair amount of discretion in applying this tool to the person involved, but this is the result of a lot of research over the years. This gives a sense of the risk the person presents, the needs the person has and if they can be met within the system, and how responsive the person is expected to be.

[11:50:31 AM](#)

CHAIR COGHILL thanked Justice Carpeneti and introduced Carmen Gutierrez.

[11:51:27 AM](#)

CARMEN GUTIERREZ, former Chair, Alaska Prisoner Re-entry Task Force, provided her credentials. She explained that the

Department of Corrections (DOC) has a three part mission: 1) provide secure, safe confinement; 2) provide rehabilitative programs; and 3) provide a process of supervised community re-entry. When she was hired by DOC the commissioner specifically tasked her to work on re-entry. She relayed that Chair Coghill invited her to talk about the Alaska Prisoner Re-Entry Task Force and her comments would focus on what the task force has achieved to date.

She explained that early in 2010 the Criminal Justice Working Group formed a subcommittee called the Alaska Prisoner Re-Entry Task Force. The task force developed a mission to reduce Alaska's recidivism rate and thereby improve public safety and the overall health of Alaska's community. The membership is a broad cross section of state and community members. One of the first goals of the task force was to draft Alaska's first five-year strategic re-entry plan. It was to be a working document that would evolve over time. One of the best outcomes achieved by virtue of the work of the task force is a growing awareness across the state that Alaskans are not getting good value for the criminal justice dollars spent. For example, two out of three Alaskans return to jail within three years of release, and the 2013 corrections budget is up to \$323 million compared to \$167 million in 2005.

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MS. GUTIERREZ reported that in 2002, 42 percent of the people in prison were non-violent offenders and 58 percent were violent. In 2011, 62 percent of the people in prison were non-violent offenders and 38 percent were violent. She questioned whether this is making good use of very expensive hard prison beds. She said she's very mad at the citizens that don't follow the law by using drugs and commit theft to support their drug habit, but she doesn't fear them. Nevertheless, she said, under the current presumptive sentencing scheme, many Alaskans are going to prison for two to four years for that kind of behavior.

MS. GUTIERREZ noted that the task force initially was Anchorage centered, but members quickly recognized that needed to change because every community in Alaska has its own unique set of resources and unique set of problems. With support from the Alaska Mental Health Trust Authority and the Alaska Judicial Council the task force was able to hire a project coordinator, and she established community re-entry coalitions in the Mat-Su Valley, Juneau, Bristol Bay region, Kenai, Fairbanks, and Anchorage.

The goal of the community coalitions is to 1) identify the community-based re-entry resources available; 2) make sure local parole officers are aware of these resources; 3) identify the gaps; and 4) develop strategies to fill the gaps. Filling the gaps doesn't necessarily mean more money, but more efficient use of existing resources. However, until communities are prepared to these receive these people, the recidivism numbers may not improve.

MS. GUTIERREZ said the task force identified several primary areas to focus on and created specific workgroups to address substance abuse, housing, and employment. She noted that in many cases the state's corporate landlord will not rent to convicted felons.

[12:04:58 PM](#)

MS. GUTIERREZ discussed collateral consequences. She explained that the Justice Center is funding the National Collateral Consequences Inventory, and the American Bar Association is reviewing statutes and regulations in every state to identify the existing barrier crimes. She relayed that when she contacted the director of that project she learned that the inventory for Alaska would be completed last. With written encouragement from Senator Coghill, Senator Ellis, Justice Bolger, and Attorney General Geraghty, Alaska was moved to the top of the list. The list is available online and shows that Alaska has more than 500 barrier crime statutes and regulations. This does not include federal barriers. She posed a hypothetical example to illustrate that a conviction for drug possession at age 23 will follow that person throughout their life and limit opportunities for housing, employment, and things like becoming a foster parent.

[12:09:46 PM](#)

MS. GUTIERREZ explained that misdemeanants represent the largest group of offenders that come through the criminal justice system, but there is but no effective means of dealing with that behavior. Judges and prosecutors have said that the single greatest deterrent in trying to work with these individuals is that there are no community-based treatment programs for this population. These offenders need to change their criminal thinking through cognitive behavioral treatment programs but there aren't any so they're sent to prison instead. The consequence, according to statistics from the Judicial Council Study, is that misdemeanants are rapidly becoming felony offenders.

Justice reinvestment is an opportunity to identify the drivers of the prison population and reinvest a small portion of the money to build the next prison into other proven strategies that will reduce the number of people entering prison. This is what Texas has been so successful in doing.

[12:11:57 PM](#)

MS. GUTIERREZ concluded her comments by quoting excerpts from the speech President George Bush delivered when he signed the Second Chance Act of 2007. The intent of this legislation was to fund demonstration re-entry projects across the nation.

The country was built on the belief that each human being has limitless potential and worth. Everybody matters. We believe that even those who have struggled with a dark past can find brighter days ahead. One way we act on that belief is by helping former prisoners who've paid for their crimes - we help them build new lives as productive members of our society.

The work of redemption reflects our values. It also reflects our national interests.

The bill I'm signing today, the Second Chance Act of 2007, will build on work to help prisoners reclaim their lives. In other words, it basically says: We're standing with you, not against you.

[12:13:56 PM](#)

REPRESENTATIVE MADDEN suggested that the judiciary chairs schedule hearings to learn about the Second Chance Act programs that come to the State of Alaska.

CHAIR COGHILL thanked Ms. Gutierrez and introduced Ms. Martus.

[12:14:20 PM](#)

KIMBERLY MARTUS, Tribal Court Enhancement Manager, Bristol Bay Native Association (BBNA), Dillingham, Alaska, stated that BBNA serves 31 villages in the Bristol Bay region, and in 2012 acquired a federal grant to develop a culture-based prisoner re-entry program. The goal is to reduce recidivism, improve outcomes for returning prisoners, and increase public safety in the region. She relayed that BBNA is a member of both the Alaska Prisoner Re-entry Task Force and one of the prisoner re-entry community coalitions.

She agreed with Senator Ellis that the search for new approaches and evidence-based programs is uncharted territory. In addition to culture-based programs, BBNA also hopes to address peer mentoring for released prisoners, family reunification while in and after prison, and re-entry as soon as a person enters the prison system. She noted that the literature says that one factor that leads to successful re-entry is family contact and visits. It has been difficult for families from rural Alaska to visit prisoners in urban areas and even more difficult for prisoners who have been incarcerated outside of the state. The program will also have components to addresses anti-violence training, and substance abuse with a family and community focus.

MS. MARTUS said there are no evidence-based cultural programs for Alaska Natives or other indigenous groups so the idea is to build on the traditional "Men's House" model that is used for men to support and interact with each other.

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The hope is that these efforts will lead to funding of a data reporting center and funds for a facility that could provide residential treatment. For many people, Alaska Natives in particular, the recovery process doesn't start until after the person is released from prison so these programs and services are very important.

MS. MARTUS noted that the funding BBNA will pursue is only available to tribes and tribal organizations from the U.S. Department of Justice. She highlighted that the federal funds that BBNA is leveraging to make improvements to the state justice system is costing the state nothing. This helps stretch the limited state justice funds in rural Alaska.

12:20:41 PM

MS. MARTUS discussed why developing these programs is important from the rural, Alaska Native perspective. According to the Alaska DOC 2012 Offender Profile, 66.8 percent [sic.] of offenders who are incarcerated are Alaska Natives, and 47.5 percent of juvenile offenders are Alaska Natives, yet Alaska Natives comprise only 17 percent of the overall population.

She said that Alaska Natives collectively shoulder the majority of the over 400 collateral consequences that are codified in state statutes. This affects civil life, civic life, citizenship, voting, employability, housing, and eligibility for public entitlement programs. There are also collateral consequences on commercial fishing occupations and wildlife

guiding, because some licenses are no longer available to someone with a conviction history.

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MS. MARTUS discussed the difficulties that small, interconnected and extended rural Alaska families face when a family member is incarcerated in urban Alaska. She said that entire communities are affected, and anecdotally relayed that extended families are sometimes comprised of both perpetrators and victims.

MS. MARTUS emphasized the importance of funding additional recidivism studies for Alaska Natives compared to the overall population to better define the size and scope of the problem.

CHAIR COGHILL noted that Senator French pointed out that DOC data indicates that Alaska Natives represent 37 percent of the prison population, not 67 percent.

MS. MARTUS clarified that the statistics she cited were from the Alaska DOC 2012 Offender Profile.

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CHAIR COGHILL recessed the meeting.

[1:32:20 PM](#)

CHAIR COGHILL reconvened the meeting and welcomed Mr. Cohn.

LARRY COHN, Executive Director, Alaska Judicial Council, Alaska Court System, Anchorage, Alaska, expressed appreciation for being invited to give a brief overview of the work of the Criminal Justice Working Group (CJWG). He explained that the CJWG is comprised of commissioners and other top policymakers in state agencies that intersect with the criminal justice system. The CJWG was formed in 2007 and the members collaborate on ways to improve the criminal justice system. The group is currently co-chaired by Justice Bolger and Attorney General Geraghty, and meets about nine times a year. The two main committees in the working group are the efficiencies committee and the prevention/recidivism committee.

The efficiencies committee tries to find ways to make the system work more efficiently. One of the first projects the committee undertook was to address the increasing time it takes to dispose of and resolve criminal cases. The consensus was that the major contributing factor is the time it takes to exchange discovery in criminal cases. A determination was made that it would be very useful to conduct discovery electronically. A pilot project

was implemented in Juneau earlier this year and by most accounts it is operating successfully. A manager has been hired and the project will be evaluated and outcome measures identified in terms of the staff time saved, agency resources saved, and the impacts on case dispositions.

MR. COHN said the efficiencies committee also took on an audit project of the way that public defense attorneys accepted criminal cases. There was concern from some legislators that defendants appeared to be getting lawyers at public expense that they didn't deserve. The Court System identified 400 cases that were arraigned in one week and the Judicial Council reviewed them to see whether the judges were following the rules for appointment of public council. The information was provided to the court to do background checks on the defendants to see if they were truthful about their financial resources. In addition, a survey was done of private attorneys who represent criminal defendants to determine whether the criminal rules for the appointment of public counsel were still current, because they were 15 years old.

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Another area the efficiencies committee has worked on is information sharing between agencies. It is important for research and other purposes that agencies be able to share data in the criminal justice system in a way that is efficient yet secure and confidential. Members of the Criminal Justice Working Group have received some training on the new national standards called Global Reference Architecture (GRA), and are working with the reconstituted Criminal Justice Information Advisory Board, which is housed in the Department of Public Safety. The goal is to develop uniform standards among agencies so that an individual is identified the same way in all agencies.

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The minor offense subcommittee is helping to define more efficient ways to handle traffic violations. The Therapeutic Court Subcommittee coordinates agency funding and looks for ways to maximize the effectiveness of those courts. The Judicial Council has interviewed stakeholders to make sure that courts are operating at maximum capacity. That subcommittee is also looking for ways where some offenders may be able to get their driver's license back and find employment in a way that is consistent with public safety; at resolving issues that came up with a jail closure; and the feasibility of a justice center in Bethel that might house the Court System, district attorney, and public defender.

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MR. COHN described the work of the recidivism subcommittee. In 2007, the Judicial Council published a study of about 2,000 offenders who were charged with a felony in 1999 and had been released from jail for at least three years. These people were followed and provided data for the often cited statistic that two-thirds were reincarcerated within three years of release. That contributed to the formation of the Criminal Justice Working Group and in large measure has been the impetus for the work that the recidivism subcommittee has done in the area of prevention.

The subcommittee reviewed a Washington State meta-analysis that looked at hundreds of evaluations of programs and alternative ways to deal with recidivism other than incarceration, and identified the most cost-effective programs. These ranged from childhood and early family intervention through juvenile justice. With funding from the legislature, the subcommittee worked to put this information into an Alaskan context to identify the most cost effective alternatives in Alaska. That has helped guide the work since then. The committee has a keen interest in continuing the recidivism data and at their request the Judicial Council did further recidivism studies, which were published in 2011. It tracked 23,000 offenders released to Alaska communities in 2008 and 2009, including misdemeanants. That turned out to be significant, because misdemeanants have higher recidivism rates than felons. It also turns out that people convicted of lessor, C felonies, have higher recidivism rates than those convicted of more serious felony offenses.

The data was analyzed in a number of ways such as the demographics of the offender, type of offense, and location of the offense. The report suggested that the state's efforts to address recidivism could be most effective if it targeted less serious offenders, violent property offenders, youthful and minority offenders, and offenders in Anchorage and Southeast. It showed that early intervention and dealing with people when they're misdemeanants pays off.

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MR. COHN noted that Ms. Gutierrez discussed the Prisoner Re-Entry Task Force, which was formed by the recidivism subcommittee. He thanked Chair Coghill, Senator Ellis, Justice Carpeneti, and Attorney General Geraghty for working with the American Bar Association to highlight Alaska's interest in the National Collateral Consequences Inventory.

He noted that the committee asked the Judicial Council to evaluate Alaska's Therapeutic Courts and also the DOC substance abuse program. Therapeutic Courts were analyzed in Anchorage, Bethel, Juneau, and Ketchikan and they found the programs were promising, particularly for graduates.

MR. COHN discussed the Probationer Accountability with Certain Enforcement (PACE) Program. He explained that it is a pilot program that began in Anchorage and is modeled on Hawaii's Project Hope Program. It deals with offenders who are chronic probation violators by providing swift and certain punishment. The Judicial Council evaluated the pilot project in Anchorage and found that it appeared to be successful. However, several areas were identified that needed more data. The program has been expanded to Palmer and Fairbanks, which focuses on domestic violence cases. He expressed hope that the council would be able to follow up on these programs to evaluate their worth.

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MR. COHN said the working group also has a competency subcommittee that examines cost effective ways to deal with high recidivism rates of defendants who are found to be incompetent to stand trial. The committee has also become interested in a study by the Division of Juvenile Justice. In 1996 the legislature changed the law and waived into the adult system certain juveniles who are charged with more serious offenses. The study shows that juveniles that are handled in the adult system have higher recidivism rates than those who are handled in the juvenile justice system. That finding needs more study and discussion, he said.

MR. COHN said the Judicial Council supports the efforts to form a sentencing commission and other provisions in SB 64. He highlighted that a constitutional responsibility of the council is to conduct studies to improve the administration of justice in Alaska and to report periodically on those studies and recommendations to the legislature and the Alaska Supreme Court. He offered his belief that the Judicial Council has been a useful resource in the area of research. However, he read the annual reports from the previous sentencing commission issued in 1990-1993 with mixed emotions. As Justice Carpeneti touched on, those reports could have been written last week. Many of the same problems that were identified then persist today, including prison overcrowding and high recidivism rates.

MR. COHN noted areas where progress has been made since the early 1990s: eliminating disparities in sentencing; more evidence about what works and what does not work; using a single identifier for offenders to make it easier to follow them through the system; more and better programs; and more information on recidivism. These factors can be attributed to a climate change for ways to deal with recidivism without locking more people up for longer periods of time. He described the bipartisanship that the legislature has manifested and the collaboration in the Criminal Justice Working Group as a fortuitous event that makes it more likely that the proposed sentencing commission will be more successful than the previous one. If the commission is convened, the Judicial Council would be happy to provide staff and administrative support. A fiscal note has been submitted.

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REPRESENTATIVE LYNN asked why recidivism rates for misdemeanants are higher than recidivism rates for felons.

MR. COHN said the answer involves some speculation, but one difference is that misdemeanants who are placed on probation are not under supervision. That might be an area to review, he added.

CHAIR COGHILL asked about the working relationship and authorities of the Criminal Justice Working Group and the proposed sentencing commission.

MR. COHN emphasized the importance of collaboration and highlighted the potential resource of the Judicial Council.

CHAIR COGHILL thanked Mr. Cohn and introduced Mr. Taylor. He asked him to clarify whether Alaska Natives represent 67 percent of the prison population or 37 percent.

1:59:59 PM

RON TAYLOR, Deputy Commissioner, Department of Corrections (DOC), Anchorage, Alaska, stated that Alaska Natives represent 37.16 percent of the correctional population for males and just under 36 percent for females. He directed attention to the PowerPoint included in members' packets and opined that Commissioner Schmidt has brought the Department of Corrections forward in terms of looking at evidence-based practices, restoring lost programs, and ensuring that the programs that are in place are appropriate. He reviewed the department's mission statement and highlighted the goals to protect the public;

reduce recidivism; delay the need for the construction of a new prison for sentenced offenders; ensure that incarcerated offenders spend their time in custody productively; and work collaboratively with stakeholders to achieve the foregoing goals.

MR. TAYLOR offered additional statistics. In 2012, DOC booked 40,347 offenders into its facilities. As of December 31, 2012, 5,955 offenders were in prison, a halfway house or on electronic monitoring. An additional 6,143 offenders were on probation or parole. There are 13 facilities statewide and 13 field probation offices. DOC has 15 regional and community jail contracts with a bed capacity of 157, and 8 contract halfway houses with a bed capacity of 839. Electronic monitoring programs are operated in 7 communities with a capacity of 385. He noted that in some locations DOC has doubled and tripled the use of electronic monitoring and halfway houses.

December 33, 2012 demographics show that males represent 88 percent of the population in institutions, 82 percent in halfway houses, and 78 percent on probation/parole. What is surprising is the growth rate of the female population. Since 2003, the female population has grown just over 6 percent, which is triple the growth rate of the male population in the same time period. Age demographics have remained fairly constant except that the 50 and older population is increasing, which has caused medical care costs to increase tremendously. The race and ethnicity data shows that Alaska Natives are overrepresented in the correctional system. Alaska Natives represent 37 percent of the population in institutions, 32 percent in halfway houses, and 26 percent on probation/parole.

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REPRESENTATIVE LYNN asked why the Alaska Native population is so over represented in the correctional system.

MR. TAYLOR replied that was not his area of expertise; he was reporting the data that DOC captured.

REPRESENTATIVE LYNN observed that Alaska Natives and African Americans comprise 47 percent of the population.

MR. TAYLOR responded that all minorities represent over 50 percent of the population.

CHAIR COGHILL said the disparity becomes very apparent when the numbers are compared to the representation in the general population.

MR. MR. TAYLOR concurred.

REPRESENTATIVE LEDOUX asked if he could speculate on the reasons for the growth in the population.

MR. TAYLOR deferred the question to prosecutors or public safety representatives.

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MR. TAYLOR reviewed types of offenses in the institutions and halfway houses. He highlighted that offenses are against a person such as assault and disorderly conduct represent just over one-fourth of the population in institutions followed by the sex offender population, probation/parole violations, and property offenses. By comparison, the numbers show that alcohol offenses are filling the halfway houses followed by person crimes, property, and probation/parole violations. He highlighted that no sex offenders are going to halfway houses; those individuals are in custody and they're staying much longer. Sentences have doubled in the last decade and 40 percent fewer are released to supervision than just five years ago. Over the last year, the institutional sex offender population has increased one percent.

[2:10:08 PM](#)

REPRESENTATIVE MILLETT asked which offense has the highest recidivism rate.

MR. TAYLOR suggested that the Judicial Council study would be the best reference for recidivism rates.

CHAIR COGHILL surmised that alcohol offenses, probation/parole violations, and property violations would represent a good percentage.

REPRESENTATIVE MADDEN added that nationwide it's generally young drug offenders that have the highest recidivism rate. That is the case in Texas.

[2:11:19 PM](#)

MR. TAYLOR discussed the three principles of effective correctional intervention: risk, need, and responsivity. He said the Department of Corrections is very averse to risk, and will

err on the side of keeping a person in custody or on probation/supervision longer or returning them to jail at a higher frequency than simply having a more willingness to work with that person. Although that has been the case in the past, DOC has come to understand that if the risk isn't tied to the need, people are returning to the system with the same unaddressed issues. It's up to DOC to do a better job of addressing those needs when the individual is in the institution or when they're out on probation and parole.

[2:12:44 PM](#)

MR. TAYLOR discussed the principles of assessing risk. He explained that DOC reviewed and updated the classification system, emphasizing behavioral incentives that encourage compliance with programming and other expectations. He confirmed Ms. Gutierrez's statement that in the last 10 years the institutional population has shifted from a violent population to a nonviolent population, yet the classification tools didn't shift. The result is that people are incarcerated at a higher frequency and more highly scrutinized when they were on probation and parole. DOC's offender re-entry policy now includes an Offender Management Plan (OMP) that provides a roadmap for prisoners to determine what programs are needed and will provide a means of measuring a prisoner's readiness for re-entry into the community. In addition, Probation and Parole has received technical assistance from the National Institute of Corrections (NIC), and is in the process of modifying the current risk assessment protocols. These officers are receiving better training in assessment to ensure that risk is assessed and needs are being met. Parole board members are also being educated to make better conditions based on risk and needs.

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REPRESENTATIVE MILLETT referenced her earlier question about reoffenders, and commented that there must be some analysis of the reoffender population to successfully gear programs to reduce recidivism.

MR. TAYLOR replied that DOC uses the risk assessment tools to determine the moderate to higher risk cases. Under the previous system, too much time and money was being spent on lower risk persons and not enough on the persons who really needed the services.

MR. TAYLOR concluded the presentation with an overview of the substance abuse programs that DOC offers.

- The assessment and referral services include a comprehensive substance abuse needs assessment. These are conducted in the Anchorage Correctional Complex, MatSu Pretrial Facility, and in the Anchorage community. Up to 1,000 offenders per year can be served.
- The Alaska Native Based Substance Abuse Treatment (ANSAT) is a pilot program that uses traditional Alaska Native values combined with cognitive behavioral principles. This 4-6 week program focuses on individual sessions and increased group hours each week. These pilots are conducted in the Anvil Mountain Correctional Center (AMCC) and the Yukon Kuskokwim Correctional Center (YKCC). These programs have a capacity to serve over 160 offenders per year.
- The Life Success Substance Abuse Treatment (LSSAT) is a medium intensity, out-patient, cognitive behavioral treatment program. This program is offered in 8 institutions with a capacity to serve over 500 offenders per year; and in 5 Alaska communities with a capacity to serve over 450 offenders per year.
- The Residential Substance Abuse Treatment (RSAT) is an intensive inpatient treatment program that uses a cognitive behavioral approach. This program is offered at the Hiland Mountain Correctional Center (HMCC) in Eagle River, the Goose Creek Correctional Center (GCCC) in Wasilla, and will be offered at the Spring Creek Correctional Center (SCCC) in Seward in FY14.
- The community based aftercare program is designed to complement the offender's custodial treatment. The length and requirements of the program are based on individual needs. Aftercare programs are offered in Anchorage, Juneau, Kenai, and Palmer. The combined capacity is over 800 offenders per year.

MR. TAYLOR highlighted that DOC has followed substance abuse program completers for 2.5 years and the evidence shows a 14 percent reduction in recidivism. He reported that DOC is doing a much better job of getting people into programing. The data shows that 65-69 percent of the people who enter programing actually complete it. Community program referrals are also showing increased success. About 53-55 percent of people who reenter the community are following up with aftercare, which is well above the 30 percent national average.

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CHAIR COGHILL asked if DOC is doing assessments to find out whether a success in Anchorage translates to success in Fairbanks, Barrow or other locations.

MR. TAYLOR deferred the question to Mr. King.

STEVEN KING, Criminal Justice Planner, Department of Corrections (DOC), Anchorage, Alaska, confirmed that DOC looks at recidivism rates by program and location.

CHAIR COGHILL asked if he could get specifics from the recidivism task force.

MR. KING said yes.

[2:19:33 PM](#)

SENATOR WIELECHOWSKI asked if DOC had started to identify the gaps that led to the tragic Jerry Active case in Anchorage so that nothing similar ever happened again.

MR. TAYLOR replied DOC has taken an exhaustive look at itself, and speaking for himself he would never have predicted the tragedy. Secondly, when DOC has a person in custody they're assessed and offered programming, but inmates can't be forced. In that case the person met institutional compliance but not the programmatic compliance that needed to happen. Once the man returned to the community, there was no time for probation or parole officers to work with him. DOC is certainly looking at whether it can close a gap of transitioning between institutional and field probation officers.

CHAIR COGHILL said the handoffs are very important and legislators will continue to look at accountability.

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SENATOR DYSON offered his understanding that, in January 2014 under Obama Care, the state will have access to Medicaid, Medicare and perhaps Indian Health Service funds for healthcare for the prison population.

MR. TAYLOR replied a different deputy commissioner with DOC is working with the Department of Health and Social Services (DHSS) on that topic.

REPRESENTATIVE LEDOUX expressed disbelief that there was nothing in the former prisoner's background that could make DOC anticipate his actions.

MR. TAYLOR clarified that there was nothing in the man's background that indicated he would do what he did.

CHAIR COGHILL expressed interest in learning better ways to look at programs and the sentencing structure to attain the best outcomes possible. He forewarned that the next questions for DOC would focus on programing.

CHAIR COGHILL thanked Mr. Taylor and introduced Mr. Monegan.

[2:26:38 PM](#)

WALT MONEGAN, President, Alaska Native Justice Center (ANJC), Anchorage, Alaska, reported that ANJC has had a re-entry program for about the last 7 years and it can serve about 300 applicants. About 10 percent of the participants graduate from the program, and the recidivism rate is about 20 percent. He said he supports the program and he came to support SB 64, because it's a sincere step to address the issue of seeking equity for everyone. He noted that an Alaska Judicial Council publication on criminal recidivism says that age and economic status are the most important factors related to recidivism. The next most important factors affecting an offender's chance of returning to the justice system were whether the offender had mental health, alcohol, or drug problems, whether the offender had a criminal history prior to 1999, and whether the offender was an Alaska Native. What's worse than that is the number of Alaska Native youths that are adjudicated or convicted of a new offense during the first year of release from judicial services. The recidivism rate is 39 percent, which eerily approximates the percentage in prison, he said. Also alarming is that children in foster care show a predisposition to later passage into the justice system, and about 50 percent of all the children in the state's foster care system are Alaska Native.

MR. MONEGAN said he supports SB 64 because he senses a growing awareness among policymakers that big changes are better than small ones. This legislation offers a better approach than in the past, and combining agency resources can result in more widespread improvements. He concluded that everything that is said here today is important, but what is done from here on out is what will be the measure.

CHAIR COGHILL thanked Mr. Monegan and asked Mr. Hutchison to provide a brief overview of SB 64

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CHAD HUTCHISON, Staff, Senator John Coghill, provided a brief overview of SB 64, version O. The bill creates the Alaska Sentencing Commission, modifies law relating to licenses, and creates new duties for the Department of Corrections and Parole Board.

Section 1 discusses credits against a sentence for time spent in a treatment program.

Section 2 creates the Alaska Sentencing Commission. The membership will be from the House and Senate; active or retired judges of various levels; the Native community; the departments of corrections, public safety, and health and social services; the Public Defender Agency; the Office of Public Advocacy; and a victim rights advocate. The intent of the commission is to create and evaluate recommendations for improving criminal sentencing practices. The commission shall consider the statutes and Court Rules, sentencing practices, crimes and incarceration rates, and effectiveness. Recommendations shall be based on seriousness of each offense, prior criminal history, and resource availability.

He noted that the State Affairs Committee changed page 2, lines 16 and 17. The commission will be established in the Office of the Governor rather than in the Alaska Court System. On page 2, line 18, the second change was to add a victim rights advocate representative to the membership. On page 2, lines 25-31, the judge memberships were changed to either active or retired. Previously they all had to be active. On page 3, lines 1-2, changed the member from the Alaska Native Justice Center to a member of the Alaska Native community, appointed by the governor. Page 3, lines 8-9, changed the membership from the director of juvenile justice to the commissioner of health and social services or designee. Page 3, lines 14-15, added the victims' rights advocate to the membership of the commission. Page 3, lines 16-17, added the provision that the Alaska Native community member and the victims' rights advocate serve at the pleasure of the governor. Page 3, lines 21-22, changed staff and administrative support from the Alaska Judicial Council to the Office of the Governor.

Section 3 discusses terminating a revocation of a license for a DUI or refusal. A license can be revoked a minimum period depending on whether the person is a misdemeanor or felon, or if the person successfully completes a court-ordered treatment program, has good behavior, and has successfully driven under the limited license for the minimum period.

The State Affairs Committee changed on page 6, lines 3-16, the conditions terminating a license revocation for a DUI.

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Section 4 outlines when a court may grant limited license privileges. These may be granted if the revocation was for a DUI or a refusal; if the person is participating in a court-ordered treatment program; if the court grants the limited license for a minimum time of either the period of revocation while the person is participating in the court-ordered treatment program or for 5 years for a person convicted of a felony DUI or refusal. That includes the period of revocation while the person was participating in the court-ordered treatment program. The person also has to provide proof of insurance, must agree to be free from drugs and alcohol, and pay the cost of testing for the substances. The court shall revoke a limited license if the person is charged with or convicted of a DUI or a refusal or tests positive for the use of alcohol or a controlled substance.

Of particular note is the 5-year time period for felony DUI or refusal.

Section 5 outlines the procedure a person needs to perform in order to go through the process. The person must enter a plea of guilty or no contest; the court has the option of providing incentive for completing the recommended treatment successfully, and may reduce the sentence or fine or license revocation. The State Affairs Committee made no changes to Section 5.

Sections 6 and 7 deal with DUI revocations for felonies.

The State Affairs Committee made changes to Section 6 on page 8, lines 11-27. A person's license shall be restored if they have driven successfully under a limited license for at least 5 years, haven't been convicted of a criminal offense since the license was revoked, and the person provides proof of financial responsibility.

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Section 7 has the same language that was described in Section 6.

Sections 8 and 9 address the extension of the PACE Program. They direct the commissioner of the parole board to establish programs for probationers and parolees. It does include random drug testing and requires the supervising officer to file a petition to revoke probation if the probationer is in violation.

It allows the court to give prompt notice of a violation and take action as necessary. The State Affairs Committee clarified the language in Section 8.

Section 10 addresses applicability and changes.

Section 11 provides transitional provision.

Section 12 provides an immediate effective date.

[2:48:07 PM](#)

CHAIR COGHILL summarized that the bill addresses three issues: the scope of the sentencing commission, its membership, and its recommendation authority. He asked the House members to bring suggestions forward and noted that an earlier suggestion was to include an attorney in private practice to the membership. He noted that the PACE Program will have attached cost outside of the pilot project and the question is if the cost will mitigate other costs.

REPRESENTATIVE TARR suggested it would be helpful in future meetings to talk to probation officers to find out why probation violations are so high. She also asked for some discussion about community support for individuals leaving an institution and reentering a community.

CHAIR COGHILL agreed to address those issues in a future meeting. He noted that written testimony from Alison Lawrence from the National Conference of State Legislatures (NCSL) was included in the packets. She also asked to testify.

[2:51:43 PM](#)

ALISON LAWRENCE, Senior Policy Specialist, Criminal Justice Program, National Conference of State Legislatures (NCSL), said she would discuss the provisions of SB 64 that relate to justice reinvestment, focusing specifically on the proposed sentencing commission and the PACE Program. She read the following into the record:

Today states have available more and better information about what works to reduce crime and control corrections costs. Legislatures are using this data to inform the policymaking process and enact cost-effective measures that reduce recidivism and maintain public safety.

Justice reinvestment is a data-driven process used by a growing number of states. It involves collecting data and analyzing drivers of prison populations and costs. Policies are then developed and adopted to address these factors. This strategy is characterized by reallocating funds to support effective sentencing and corrections policies and, in some states, by reinvesting a portion of savings achieved policies and programs that reduce recidivism.

Since 2007, at least 28 states have enacted justice reinvestment reforms. These reforms have included expanding eligibility for community-based diversion and treatment programs, employing the use of risk assessments and evidence-based practices for improved community supervision, and revising sentence lengths and eligibility for prison release. These efforts have been supported by a public-private partnership of the Bureau of Justice Assistance and The Pew Charitable Trusts.

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On the last page I have included a chart that shows South Carolina's identified prison population drivers and the policy responses adopted by the General Assembly in 2010.

SB 64 proposes establishment of a sentencing commission. A distinguishing feature of some of the most comprehensive sentencing and corrections changes in recent years has been the use of cross-governmental commissions or task forces. These have involved stakeholders from all branches and levels of government to oversee data collection and analysis, and put forth recommendations for legislative and administrative order. In some states, these commissions have been created through executive action, while others, like the proposed sentencing commission, have been codified. These groups not only make recommendations but will continue to track and evaluate to ensure that policy choices continue to be data-driven and that desired results are achieved.

Connecticut, Illinois and Louisiana have recently created or redefined sentencing commissions to focus their work on improvement of public safety; ensuring

sentencing laws and practices are fair, proportional and consistent; and increasing efficiency and [effectiveness] of criminal penalties.

A number of state commissions have oversight responsibility for not only sentencing practices, but also for prison policies, reentry programs and community-based supervision. Some also make funding recommendations. The South Carolina Sentencing Reform Oversight Commission evaluates and tracks savings from policies adopted in their 2010 omnibus act and makes recommendations to the General Assembly on reallocating a portion of the savings.

Swift and certain non-prison sanctions for probation and parole rule violations is a data-driven policy that many states have adopted in recent years. Data show that offenders who are sent to prison for technical violations contribute substantially to prison populations, and more than half of all state inmates meet the criteria for substance abuse or dependence. Swift and certain sanctions, like the proposed Probation and Parole Accountability with Enforcement program, hold these offenders accountable while allowing them to remain in the community, continue to work, pay restitution and child support, and attend treatment.

At least 17 other states currently operate programs modeled after Hawaii's HOPE. Five of these states - Arkansas, Kentucky, Michigan, South Dakota and Virginia - have passed laws; the others have been created by judicial action. The enacted laws authorize local pilot projects and some have included state general fund appropriations to cover startup costs. The laws include a list of permissible sanctions and require program evaluation and reporting. Arkansas, Kentucky and Virginia laws also require use of a validated risk assessment tool to determine which offenders are high risk.

These HOPE-type programs are similar to another policy, called graduated sanctions. Authorized by more than 20 states in recent years, graduated sanctions operate statewide and are used for most offenders, not just those designated high risk. These policies involve clearly established non-prison sanctions that

are delivered quickly, and with the severity of the sanction proportionate to the violation. Sanctions include increased reporting or drug testing requirements, electronic monitoring, participation in treatment, short jail stays and specialized violator facilities. In many of the states, probation and parole officers are authorized to handle the rule violations rather than referring the offender to the court or parole board for formal proceedings. This can decrease the response time for delivering sanctions and clear up crowded dockets.

Making the best use of corrections dollars is a key component of the justice reinvestment process. Effective community supervision policies like swift and certain sanctions help to maximize corrections dollars by allowing agencies to focus resources on the highest risk offenders.

The six states that adopted justice reinvestment legislation in 2012 have a collective projected corrections savings of nearly \$685 million over the next five to 10 years. Savings are expected to be used for increasing availability of treatment options and supervision technology, training for corrections officers on evidence-based practices and risk assessments; and supporting law enforcement and victims' services.

[2:59:51 PM](#)

CHAIR COGHILL thanked Ms. Lawrence and relayed that he would probably ask her help to develop a matrix of what other states are doing.

REPRESENTATIVE MADDEN noted that Adam Gelb presented one of those menus at a recent Pew Charitable Trusts conference.

CHAIR COGHILL introduced Mr. Wiese.

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JESSE WIESE, Policy Analyst, Justice Fellowship, Prison Fellowship Ministries, Lansdowne, Virginia, said his primary goal today is to show solidarity for the proposed sentencing commission, particularly the victim component. He explained that Justice Fellowship is a conservatively-oriented Christian organization that has worked for 30 years to reform the criminal

justice system so that communities are safer, offenders become law-abiding citizens, and victims are respected.

MR. WIESE highlighted that state corrections spending in 1998 was \$12 billion and in 2011 it was more than \$52 billion. Skyrocketing corrections spending and declining state revenues is often putting concerns about the bottom line in competition with public safety, he said. However, strategies tested in a number of states and local jurisdictions shows that there are effective ways to address the challenge of containing rising correction costs while also increasing public safety.

He said these drastic costs increases coupled with new knowledge about corrections has created a perfect storm of opportunity for conservatives and liberals to work together toward meaningful comprehensive criminal justice reform. Instead of investing money almost exclusively on incarceration, it is time to invest corrections dollars in places and programs that generate higher returns. Some things to consider include changing the thinking about accountability by providing effective community-based programs that hold low-level offenders accountable without sending them to prison. Crime victims are direct parties and should be given the necessary rights to enforce their standing within the administration of justice.

Expensive prison beds should be reserved for violent and career offenders, while nonviolent offenders should be punished with mandatory supervision and access to Therapeutic Courts. These reforms are working in other states and the federal government is beginning to recognize these accomplishments. He highlighted that the US House Appropriations Committee has recently proposed the creation of the Charles Fulton Task Force on Federal Corrections to review how state criminal justice reforms can be replicated at a federal level.

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MR. WIESE encouraged the committees to talk to people in South Dakota about considering implementation issues as the bill is drafted. He also suggested consideration be given to renaming the commission because the goals are broader than just sentencing. He agreed with an earlier suggestion to rename the commission to include victim issues and rights. Finally, he was encouraged to hear about the discussion regarding barrier crimes and collateral consequences. Judging from some of the discussion he heard today he believes that Alaska can lead the country in some of these reforms.

SENATOR DYSON asked Mr. Wiese to comment on the restoration of relationships and what that can mean to both victims and offenders.

MR. WIESE responded that Justice Fellowship is a proponent of restorative justice, which is to restore the community, the offender, and the victim. To that end, Justice Fellowship has instituted programming in nearly 200 prisons nationwide. For example, Sycamore Tree is a victims-based program that is oriented to encourage a meeting between the offender and victim. Justice Fellowship strongly believes that the victim should have this right if he/she chooses, because restoration happens during these meetings. Viewpoints and lives are changed for both the victim and offender.

CHAIR COGHILL said he subscribes to the idea of treating the whole person, and that includes the spiritual side.

He thanked Mr. Wiese and introduced Judge Wanamaker.

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JUDGE JAMES N. WANAMAKER (retired), Partners For Progress, Anchorage, Alaska, introduced himself and Janet McCabe and explained that Partners for Progress was founded 15 years ago to protect the public and reduce criminal recidivism by supporting therapeutic justice. He stated support for Sections 3-7 of SB 64, version O. These sections create a way for a defendant who is participating in the Therapeutic Court to receive a temporary driver's license and then a conditional permanent driver's license. He described this as a valuable, but voluntary, carrot to bring people into the Therapeutic Courts. Using an automobile analogy, he described therapeutic courts as the Cadillac model for smart justice.

JUDGE WANAMAKER continued to use an automobile analogy to comment on electronic monitoring. He characterized this as a "top of the line" Chevrolet on the track of social justice that approximates what is done in the Wellness Court. People are supervised and required to do treatment. The leash is short and there are immediate consequences for deviating from the requirements.

He stated that Partners For Progress is suggesting an amendment to SB 64 to allow people to qualify for electronic monitoring when they have a first DUI. He noted that Deputy Commissioner Taylor indicated it makes sense since electronic monitoring is allowed for the second and third DUI. He directed attention to a

new tracking and monitoring device that is a breathalyzer, GPS, camera, and cellphone. When the device emits a buzz the defendant must blow into the breathalyzer while his/her picture is taken, and the information is sent by cellphone to headquarters. He said this and future improved technology will allow people to serve their time in their communities, facing their triggers for addiction with their families and building their own self-esteem, as opposed to losing all these things by going to jail.

JUDGE WANAMAKER said therapeutic courts and electronic monitoring are two areas where it's possible to go big, as Representative Madden suggested, and get rewards.

JANET MCCABE, Chair, Partners For Progress, Anchorage, Alaska, said the long term data shows that the recidivism rate for people that emerge from community residential centers is 62 percent, whereas the recidivism rate for people on electronic monitoring is 18 percent. She then predicted that the upcoming legislative session would be an opportunity for legislators to make a significant change.

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CHAIR COGHILL said the support is bipartisan and the governor is positively disposed. He articulated three cautions: bad actions will not be treated softly; things must be done cost effectively; and public safety is paramount.

He asked Judge Wanamaker what the deciding factors are for a defendant to agree to put him/herself under the accountability of the therapeutic court, and if judges are sometimes reluctant.

JUDGE WANAMAKER answered that the population of offenders who might qualify for therapeutic court is relatively small and most of the people are aware of who is being successful with their addiction. His approach was to encourage people to watch the process in court and that proved successful in getting people to sign up. Partners For Progress also helped explain the system in the courthouse and by distributing information about therapeutic courts across the state.

CHAIR COGHILL asked if he believes that therapeutic courts will always be the Cadillac model, because cost is one of the criticisms in the legislature.

JUDGE WANAMAKER opined that it will move to the production model when the Department of Law is fully onboard.

MS. MCCABE added that the possibility for offenders to receive a limited driver's license is a tremendous step forward, because barring all opportunity to receive a license is a Catch-22.

CHAIR COGHILL asked, because of the requirement for twice daily testing, if compliance will be problematic for persons who receive a conditional license.

JUDGE WANAMAKER said the carrot is more powerful than the stick, and the power of the group in Therapeutic Court is tremendous.

REPRESENTATIVE MADDEN highlighted that the Hawaii HOPE Program provides a swift and sure consequence for noncompliance.

MS. MCCABE added that the longer a person stays sober the more likely they are to not abuse.

CHAIR COGHILL thanked Judge Wanamaker and introduced Mr. Satterberg.

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BILL SATTERBERG, Attorney, Fairbanks, Alaska, stated support for the idea of a sentencing commission, because working on a problem piecemeal creates unintended consequences. He cited two examples: the attorney general's recent announcement that there would not be plea bargaining in various types of cases; and the Nygren credit (credit against a sentence) legislation the legislature passed.

MR. SATTERBERG said a sentencing commission is a good idea because it gives a group of professionals the time to analyze and work on prospective resolutions. However, he has concerns about the proposed bill. First, the proposed membership does not include a private sector lawyer. The membership should not be limited to public agency representatives. He also recommended including a member of the alcohol or drug rehabilitation community to the commission, because most of the crimes in Alaska are committed with tangential involvement of drugs or alcohol.

MR. SATTERBERG addressed the limited license provisions of SB 64. He commended the idea of a limited license when a person has attained a certain level of sobriety and compliance, but the bill doesn't go far enough in the right direction. He suggested that use of the interlock should continue in communities where it's possible. The sentencing commission can deal with the fact

that it isn't available in rural communities. He suggested the committee seriously consider allowing the suspended imposition to become available for an individual who has completed the Wellness Court Program and has remained compliant for a set period of time afterwards. Someone who is compliant can get a felony removed from their record, which would automatically restore their driving privileges. He said there isn't a whole lot of incentive for a person with an alcohol addiction problem to become sober if he/she won't be able to drive again and will be a convicted felon forever.

MR. SATTERBERG criticized the Wellness Court Program in Fairbanks for focusing on its success ratio and not taking on hard cases. He cited an example and opined that the function of the Wellness Court should be to deal with the hard cases, not just the ones that make the statistics look good. He opined that the sentencing commission could deal with that.

MR. SATTERBERG concluded that he likes the concept of a sentencing commission that will analyze the laws rather than grandstanding. Alcohol and drugs are a major problem in Alaska, which is why people who work with these issues should be on the commission. Also, one private attorney should be included in the membership.

CHAIR COGHILL thanked Mr. Satterberg and introduced Ms. Meade.

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NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, stated that the Alaska Court System supports the Sentencing Commission as described in [Section 2] of SB 64. The Chief Justice is enthusiastic and has people in mind to appoint to the commission. She is particularly enthused that the commission will take a comprehensive look at sentencing and other aspects of the criminal justice system. It will not be a piecemeal approach.

MS. MEADE said the Court System does not have a position on the provision in the bill to give limited licenses back to Therapeutic Court participants and for Therapeutic Court graduates to receive their full licenses after a period of time. However, the Court System supports Therapeutic Courts and would like the program to expand. Studies have shown that the recidivism rate is much lower for people who graduate from those programs. She noted that the bill is drafted to be used mostly for felony DUIs. The judge has the discretion to grant some

driving privileges as well as for testing. That is not spelled out in the language of the bill to accommodate for different communities.

MS. MEADE described the PACE Program and reported that the judges that handle the PACE calendar in Anchorage and Palmer believe it is successful, that it saves the state money, and that it is a better way to handle probationers than the typical protocol. However, it does remove discretion from probation officers. If a probationer doesn't show for an appointment or fails a test, the probation officer must immediately file with the court to revoke probation. The judge must give an immediate consequence, and the standard is three days incarceration for the first noncompliance. Swift and certain enforcement appears to help people learn a lesson quickly.

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SENATOR ELLIS requested that she ask the Chief Justice to be a signatory to a letter to The Pew Charitable Trusts asking for help with technical assistance as Alaska engages in this collaborative process.

MS. MEADE replied she would be happy to deliver the letter.

CHAIR COGHILL voiced support for the idea.

CHAIR KELLER stated that it would be a significant shot in the arm if Pew were to select Alaska as one of the two states it would help this year.

CHAIR COGHILL thanked Ms. Meade and reiterated his thanks to all the participants, Representative Madden in particular. He reviewed areas that need additional attention: the name of the commission, issues on methodology, issues related to assessment of risks and needs, and the assessment of the programmatic approach.

SENATOR DYSON expressed appreciation that many of the people here today are here because they care, and not because it's their job.

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CHAIR COGHILL said he would look very carefully at implementation and while it is outside the scope of the bill, he would also look at mitigation. The first things to discuss would be the PACE Program, conditional driver's license, and a

commission that deals with everything from sentencing to recidivism.

[SB 64 was held in committee.]

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There being no further business to come before the committees, Chair Coghill adjourned the joint meeting of the Senate and House Judiciary Standing Committees at 3:57 pm.