

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 29, 2014

1:31 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair

OTHER LEGISLATORS PRESENT

Senator Johnny Ellis

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 & 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
 07/25/13 (S) Heard & Held
 07/25/13 (S) MINUTE(JUD)
 01/29/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JORDAN SHILLING, Staff
 Senator John Coghill
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Introduced Version G of SB 64 on behalf of the Senate Judiciary Committee.

DOUG GARDNER, Director
 Legislative Legal Services
 Legislative Affairs Agency,

POSITION STATEMENT: As drafter, provided information related to SB 64, Version G.

ACTION NARRATIVE

[1:31:29 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Dyson, Olson and Chair Coghill. Senator Wielechowski arrived soon thereafter.

SB 64-OMNIBUS CRIME/CORRECTIONS BILL

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CHAIR COGHILL announced the consideration of SB 64. [CSSB 64(STA) was before the committee.] He explained that the bill was heard twice during the Interim and he brought a new work draft committee substitute (CS), Version G, for the committee to discuss today.

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SENATOR WIELECHOWSKI joined the committee.

CHAIR COGHILL described the proposed outline for the meeting today, Friday, and the coming week.

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CHAIR COGHILL stated that SB 64 implements proven practices to reduce recidivism, reduce the cost of corrections, and maintain public safety within a structure that currently exists in state government. He described certain terminology and provisions in the bill including the 24/7 Sobriety Program, the new Criminal Justice Commission, the Probation and Parole Accountability with Certain Enforcement (PACE) program, the Recidivism Reduction Fund, property felony theft thresholds, limited licenses, credit for time served in residential treatment, and expanded risk-needs assessments.

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JORDAN SHILLING, Staff, Senator John Coghill, presented a PowerPoint on the omnibus crime bill, starting with a chart that explains the impetus for SB 64. He pointed out that the offender population is growing about three percent a year while the number of prison beds remains constant since Goose Creek opened in 2011. Noting that Alaska has one of the highest recidivism rates in the nation, Mr. Shilling warned that the state will need to build another prison very soon if something isn't done to reduce recidivism.

MR. SHILLING displayed a chart showing the Smart Justice policy reforms that other states have initiated to keep from having to build additional prisons. In 2007, Texas pioneered Smart Justice policy reforms as an alternative to building four new prisons; the state was able to close a prison a few years later. He noted that Alaska was not on the chart because it has initiated few Smart Justice policy reforms.

MR. SHILLING highlighted that the goals of SB 64 to improve public safety, reduce recidivism, and reduce costs are similar to the mission of the Department of Corrections (DOC) to provide secure confinement, reformative programs, and a process of supervised community reintegration to enhance community safety. He said it's important to look at how DOC is allocating resources to accomplish its mission; 86 percent is allocated to secure confinement and 4 percent is allocated to reformative programs. About 80 fulltime DOC positions are dedicated to reformative programs and about 1,600 are dedicated to secure confinement. Although there was a 1.5 percent drop in recidivism in the four-year period ending in FY10, the rate is still 63.54

percent, which puts Alaska at the top of the list in terms of recidivism.

MR. SHILLING reviewed the eight components in SB 64: the Alaska Criminal Justice Commission, a limited license, a 24/7 Sobriety Program, the PACE program for felony offenders on probation, the Recidivism Reduction Fund, adjusting the felony theft thresholds, a less cumbersome process for credit for time served in a residential treatment program, and increased use of risk-needs assessments.

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MR. SHILLING explained that Sections 1-15 adjust, from \$500 to \$1,000, the property theft thresholds between a class C felony and a class A misdemeanor. Fifteen areas of statute are affected. He displayed a chart of the felony theft thresholds in western states and noted that Alaska's thresholds haven't changed since they were established in 1978. He also pointed out that in FY11 and FY12 property crimes made up the largest proportion of felonies in Alaska.

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SENATOR WIELECHOWSKI asked if there was data on what percentage of prisoners are in prison for felony theft.

MR. SHILLING said yes, but there isn't data about the value of the item that was stolen so it's difficult to predict the potential savings.

Sections 16-18 establish the 24/7 Sobriety Program in the pretrial phase. The main tenants of the program are a twice daily Breathalyzer test, swift and certain sanctions, it may be used for any crime where alcohol is a factor, it's funded by the testing fees, and it's run by DOC/ASAP.

CHAIR COGHILL added that the committee would hear about the 24/7 pilot program for Alaska.

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SENATOR WIELECHOWSKI asked the cost per individual, if there were provisions for indigent offenders, and if there were accommodations for the program to operate in rural Alaska.

MR. SHILLING directed attention to page 19, line 14. Paragraph (3) requires a person to pay the cost of participating in the program, based on their ability under established financial guidelines. The three testing devices are a portable

Breathalyzer, a desktop Breathalyzer that is suitable for use in rural Alaska, and the SCRAM bracelet that provides continuous testing. He explained that SB 64 also provides drug testing through the 24/7 program on a random basis.

He reviewed several charts with data from South Dakota to show how the 24/7 Sobriety Program works. In that state, about 60 percent of the participants are on the program as a result of a DUI. Most of the participants spend 30-180 days on the program, and the data shows that this results in a significant reduction in recidivism.

CHAIR COGHILL relayed that there would be testimony in a subsequent meeting about what this tool is and how to use it.

MR. SHILLING continued to explain that in South Dakota a majority of the tests are done with an in-person portable Breathalyzer. In Montana, about half the participants are on electronic monitor, but anyone living in an urban center does in-person testing.

He restated that the 24/7 Sobriety Program is applicable to any crime where alcohol is a factor, and it can be used pretrial and post-conviction for probation or parole. The results are promising. A majority of the people that are placed on the 24/7 Sobriety Program remain sober for the duration of the program, and 30 percent stay sober after one or two failures.

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MR. SHILLING explained that Section 19 deals with credit for time served in a residential treatment facility; this is commonly referred to as Nygren Credit. In 2007, the legislature put credit for time served in a treatment facility in statute, but it was more restrictive than case law. SB 64 removes one of those restrictions and creates an incentive for seeking treatment. Importantly, the offender is able to leave the facility if they are limited to time and a rehabilitative purpose.

Section 22 establishes a special requirement for fiscal notes. Any bill that creates a new criminal offense or affects an existing criminal justice practice requires a fiscal note that describes the projected 10-year effect on court prosecution, public defense, and corrections resources.

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Section 23 establishes that the court may terminate a revocation for DUI if:

- The person successfully completed a court-ordered treatment program;
- The person has not been charged or convicted of DUI since completing the program; and
- The person has successfully driven under the limited license without having those privileges revoked.

Section 24 establishes that the court may grant a limited license if:

- The revocation was for DUI;
- The person participates in a court-ordered treatment program;
- The person provides proof of insurance;
- The person has not been previously convicted during the first 30 days of the revocation;
- The person shows proof of installation of an ignition interlock device;
- The person is enrolled in alcohol screening and testing;
- The person has not previously been granted a limited license;
- The person totally abstains from alcohol; and
- The person pays the cost of testing.

The court is required to immediately revoke a limited license if the person is charged with or convicted of DUI or tests positive for alcohol or drugs.

CHAIR COGHILL added that the forgoing was a new approach and it would be debated thoroughly.

MR. SHILLING explained that Section 25 gives the court the ability to reduce a person's penalty in order to allow them to go into the program. This essentially allows the other limited license sections to work together, he said.

Sections 27-28 provide a path for a person who has driven on a limited license to get their license back. The requirements are the same for DUI revocation and refusal revocation. The driver's license may be restored if:

- The person has been granted limited license privileges and has successfully driven under that limited license without having the limited license privileges revoked;

- The person has successfully completed a court-ordered treatment program;
- The person has not been convicted of a criminal offense since the license was revoked; and
- The person provides proof of insurance.

CHAIR COGHILL explained that he wanted to include these provisions for two reasons. First, people with 10-year and lifetime revocations are still driving and they're dangerous, unaccountable and they're hurting people. The other reason is that the people who have accepted responsibility and changed their lives face severe limitations because they're unable to drive. This allows people the opportunity to redeem themselves, although the threshold has to be fairly high, he said.

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MR. SHILLING described the procedure that allows a first time DUI offender to serve their mandatory three-day sentence on electronic monitoring. He said that Anchorage adopted this policy in 2011 and the bill attempts to put the rest of the state under those same rules. The cost savings are significant compared to putting an offender in prison. Electronic monitoring costs \$20-\$30 per day, whereas a prison bed costs \$159 per day. He pointed to the legislative research report that calculates the savings at close to \$1 million.

SENATOR WIELECHOWSKI referenced a previous chart and asked why the numbers dropped so much between 2011 and 2013. [The chart showed the numbers of DWI convictions that resulted in electronic monitoring. In 2011 there were 612; in 2012 there were 497; and in 2013 there were 368.]

MR. SHILLING offered to follow up.

Section 29 directs DOC to establish a Probation Accountability and Certain Enforcement (PACE) program for probationers that relies on swift and certain punishment in the event of a violation. The probation officer no longer has discretion on when to submit a petition to revoke probation. Data from the Anchorage PACE pilot program shows that recidivism drops markedly after the first violation. He confirmed that PACE was modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) program.

MR. SHILLING said that [Section 30] requires DOC to establish a program to conduct risks needs assessments on offenders that are

incarcerated for 30 days or longer. The effective date for this section is 2016 to give DOC time to prepare for this change.

Section 31 establishes the Recidivism Reduction Fund to promote rehabilitation through transitional re-entry programs for persons released from prison. The commissioner may make grants from the fund for programs that provide case management, sober living, residential treatment, work placement, and a cap on residential placement.

CHAIR COGHILL said the committee would hear from DOC and service providers when this new approach is discussed.

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MR. SHILLING described the new commission.

CHAIR COGHILL discussed the conversations over the Interim and the difference between the two CSs.

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MR. SHILLING compared the composition of the Criminal Justice Commission outlined in the State Affairs committee substitute (CS), Version O, to the current CS, Version G. Version O describes 17 members and Version G describes 11 members.

CHAIR COGHILL highlighted the discussions throughout the Interim and the conclusion that more people make it more difficult to come to a decision.

MR. SHILLING spoke to the following Structures:

	Version O CS		Version G CS
3	Senators	2	Senators
3	Representatives	2	Representatives
1	Supreme Court Chief Justice	1	Supreme Court Chief Justice
1	Superior Court Judge	1	Superior Court Judge
1	District Court Judge	1	District Court Judge
1	Member AK Native Community	1	Member AK Native Community
1	Attorney General	1	Attorney General
1	Commissioner DOC	1	Private Attorney
1	Commissioner DPS	1	Chief, Municipal Law Enforcement
1	Commissioner DHSS		
1	Director, Public Defender Agency		
1	Director, Office Public Advocacy		
1	Victims' Rights Advocate		

He pointed out that Version G adds a 5-year sunset to the commission. Another change is that the Member of the Alaska Native Community will be appointed by the Alaska Native Justice Center.

CHAIR COGHILL said discussion is welcome, but his intention is to keep the commission compact.

MR. SHILLING directed attention to a list of the powers and duties of the commission, and noted that they come directly from the Alaska State Constitution. The Commission will be staffed by the Alaska Judicial Council, will meet at least quarterly, and will submit an annual report with recommendations to the legislature.

CHAIR COGHILL stated his preference for having the Alaska Judicial Council staff the commission.

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CHAIR COGHILL asked Mr. Shilling to walk the committee through the bill starting with Section 16. He noted that representatives from the Department of Corrections, the Department of Law, the Public Defender Agency, the Judicial Council, and service providers were available to answer questions.

MR. SHILLING explained that Sections 16-18 have the release before trial statutes and the 24/7 Sobriety Program has been inserted in each of those sections of law.

CHAIR COGHILL asked for an explanation of AS 33.05.020(g).

MR. SHILLING replied that's the meat of the 24/7 Sobriety Program, which is located on page 18, line 27, through the end of Section 29. Subsection (f) establishes the PACE program and subsection (g) establishes the 24/7 program.

The 24/7 program requires twice-a-day alcohol testing and random drug testing. If there is a violation, notice is sent to the probation officer, prosecutor's office, or local law enforcement within 24 hours so that a complaint and petition can be filed with the court seeking appropriate sanctions.

CHAIR COGHILL asked if this section has rural provisions.

MR. SHILLING said the language is broad enough that it could work in rural Alaska. In-person testing isn't required because it's impracticable in a lot of places.

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SENATOR WIELECHOWSKI read the first line of AS 33.05.020(g) in Section 29 that says "The commissioner shall establish a program and eligibility requirements for certain persons..." He asked who the certain persons are and if the legislature can delegate to the commissioner the authority to establish the eligibility requirements.

MR. SHILLING replied the certain persons are either misdemeanor or felony offenders that have a condition of probation that includes not consuming alcohol.

SENATOR WIELECHOWSKI expressed interest in hearing from Legislative Legal about whether the legislature could delegate the authority for the commissioner to determine whether or not certain people go to jail.

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DOUG GARDNER, Director, Legislative Legal Services, Legislative Affairs Agency, said he didn't believe it was an impermissible delegation because there is guidance from the legislature for the commissioner to establish the program and create the eligibility requirements. The commissioner has the unique skills to do that, he said.

CHAIR COGHILL offered his understanding that AS 12.30, which is referenced in subsection (g), is a pre-trial statute.

MR. GARDNER confirmed that it addresses people on release on bail conditions. This subsection gives the commissioner of DOC the flexibility to make decisions through regulation about which offenders are eligible to be managed and monitored in the program.

CHAIR COGHILL indicated he had additional questions such as whether direction is needed on what an eligibility requirement would be.

SENATOR WIELECHOWSKI asked for additional guidance on the eligibility and application under AS 33.05.020(g).

MR. GARDNER posed a hypothetical example of assault in the 4th degree in a domestic violence case. He explained that the court would go through the considerations in AS 12.30 and balance the factors such as the ability of the person to have the most limited bail conditions possible but still secure community

safety. In the hypothetical example, the court might believe that by imposing a condition in AS 12.30 that the person could be released with less bail if they were in a program like this that tracks their alcohol issues.

Under the current drafting, the commissioner, in the course of creating regulations, would be making evaluations about how the program would work and the eligibility requirements. He acknowledged that the bill is broad, but that it could be limited at the legislature's option.

CHAIR COGHILL highlighted that on page 19 three conditions are set out and provide guidance: if the person fails to appear for testing, tests positive, or fails to comply with program requirements. He acknowledged that further discussion was warranted to find out if those requirements have been effective.

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CHAIR COGHILL asked Mr. Shilling to discuss the new language in Section 30.

MR. SHILLING explained that Section 30 imposes a duty on the commissioner of DOC to establish a program to conduct assessments of the risks and needs of offenders sentenced to a term of 30 days or longer, and to submit an annual report to the legislature by January 15 with the findings of those assessments.

CHAIR COGHILL discussed Section 31 that establishes the Recidivism Reduction Grant Program and Fund. He listed the five requirements for a program to qualify for a grant (page 21, lines 3-8) and stated that his intent is for these individuals to be productive. For example, if full-time employment sets the bar too high, perhaps part-time should be considered. He welcomed discussion about making the grant fund as effective as possible.

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MR. SHILLING pointed out that the Department of Corrections currently does not provide grants, so this would be a "first" for the department.

CHAIR COGHILL stated that he was looking for input from DOC, because he believes it would be a valuable tool.

He directed attention to Section 32 that establishes the Alaska Criminal Justice Commission in the Office of the Governor. It is

modeled after a program that was established in the early 1990s and later decommissioned. This new commission has a longer effective date and it tries not to duplicate things that were ignored in the earlier commission.

MR. SHILLING explained that the State Affairs version of the bill domiciled the commission in the Court System, but the Court didn't want the appearance of making policy recommendations. Thus, it is established in the Office of The Governor.

CHAIR COGHILL directed attention to page 22, line 11, subsection (d) that says that the Alaska Judicial Council shall provide staff and administrative support to the commission. He welcomed discussion on that provision.

SENATOR DYSON reported that during the Interim he attended the U.S. Sentencing Commission national meeting. He said he was impressed by the history and record of accomplishments and it was clear that Alaska is behind the curve.

CHAIR COGHILL described the outline for the meeting on Friday and the coming week and encouraged the various parties to come forward with suggestions and concerns about who should be at the table as a voting member and who should be invited. He read the list of proposed members of the commission and noted his intention to make the legislators ex officio members.

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SENATOR WIELECHOWSKI suggested the committee consider adding a substance abuse and/or mental health professional, because the statistics show that over 90 percent of offenders have some sort of substance abuse problem, and 40-50 percent have a mental health issue.

CHAIR COGHILL said he'd add that suggestion, but his expectation was that they would be non-voting.

He flagged Sec. 44.19.645 on pages 22-23, and asked interested parties to study paragraphs (1)-(10) and provide input. He also asked the Department of Law and the Department of Corrections to comment on the methodology outlined in Sec. 44.19.646 on page 23.

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SENATOR WIELECHOWSKI noted that the committee skipped from Section 18 to Section 29.

CHAIR COGHILL asked Mr. Shilling to discuss Section 19.

MR. SHILLING explained that Section 19 amends AS 12.55.027(c) relating to qualifying for credit against imprisonment for time spent in a treatment facility. It adds a circumstance when a resident may leave the grounds of a treatment facility without an escort. The new language permits a resident to receive credit when they leave for rehabilitative purposes that are expressly limited as to time and purpose by the treatment program.

CHAIR COGHILL added that the intention is to give value for receiving treatment.

SENATOR DYSON suggested he think about the program that allows prisoners in state facilities to go to work in canneries.

CHAIR COGHILL offered his understanding that this, too, affects a narrow population.

MR. SHILLING said this is to incentivize people who are trying to better their lives by paying their way for treatment. He opined that the term "rehabilitative services" on page 11, line 18, strikes a balance and avoids giving credit for a leisure activity like dinner and a movie.

Section 20 applies 24/7 sobriety as a condition of probation.

Section 21 describes the staffing of the commission.

Section 22 describes the additional fiscal note requirement for bills that either create a new crime or affect an existing crime. The idea is to look at the fiscal impact of increasing a crime penalty. He noted that this is similar to the section of law that requires any bill that alters a retirement system to undergo special fiscal analysis in the first committee of referral.

SENATOR WIELECHOWSKI said he likes the concept but worries about the workability. He asked how this would affect amendments in a subsequent committee of referral or on the floor, and if this could open opportunity for cases to be dismissed.

CHAIR COGHILL agreed it was possibly problematic.

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MR. SHILLING reviewed Sections 23 and 24. Section 23 amends AS 28.15.181(f) by adding provisions under which the court may

terminate a license revocation for DUI or refusal. The person: has successfully completed a court-ordered treatment program, has not been charged with or convicted of a DUI or refusal since completing the program, has been granted a limited license and has successfully driven under that limited license without having those privileges revoked.

Section 24 adds a new subsection (g) to AS 28.15.201. It says the court may grant a limited license privilege if the revocation is for DUI or refusal and the person is participating in a court-ordered treatment program, provides proof of insurance, is using an ignition interlock device, enrolls in alcohol testing, abstains from alcohol use, signs an affidavit attesting to that, and participates in the cost of testing. The court is required to immediately revoke a limited license if the person is charged or convicted of a DUI or refusal or tests positive under the alcohol screening program.

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SENATOR WIELECHOWSKI asked if a person who is required to have an ignition interlock on their personal car would be required to have one on a company car.

MR. SHILLING said he believes so but he would defer to the department.

CHAIR COGHILL observed that the Court System and the Division of Motor Vehicles might want to discuss some of the issues this provision may present.

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MR. SHILLING reviewed Section 25. It amends AS 28.35.028(b) to include imprisonment, fine, or license revocation.

Section 26 amends AS 28.35.030(k) to allow electronic monitoring to be used for a first-time DUI conviction.

Section 27 amends AS 28.35.030(o), which is the process where a person convicted of a DUI has driven under the limited license successfully and is seeking a regular license. The new language says a driver's license shall be restored if the person: has been granted a limited license and has successfully driven under that limited license without having those privileges revoked; has successfully completed a court-ordered treatment program; has not been convicted of a criminal offense since the license was revoked; and provides proof of insurance.

Section 28 amends AS 28.35.032(q), which is the process where a person convicted of refusal has driven under the limited license successfully and is seeking a regular license. The new language says a driver's license shall be restored if the person: has been granted a limited license and has successfully driven under that limited license without have those privileges revoked; has successfully completed a court-ordered treatment program; has not been convicted of a criminal offense since the license was revoked; and provides proof of insurance.

Section 29 adds two new subsections (f) and (g) to AS 33.05.020 and it establishes, respectively, the PACE program and the 24/7 Sobriety Program. Subsection (f) says the commissioner shall establish a program and eligibility requirements for felony offenders who have conditions of probation that include not consuming drugs or alcohol and have been identified as being at high risk for violating their conditions of probation. These individuals are tested randomly and the probation officer is required to file a petition with the court seeking appropriate sanctions if the probationer fails to appear for an appointment, tests positive for drugs or alcohol, or fails to follow any condition of probation.

Subsection (g) says the commissioner shall establish a program and eligibility requirements for certain persons with release conditions ordered under AS 12.30, or offenders with conditions of probation, that include not consuming drugs or alcohol. The program requires twice-a-day testing for alcohol and random testing for drugs, and it must provide a means for the probation officer, prosecutor's office, or local law enforcement to receive notice within 24 hours so that a complaint and petition may be filed and the court may schedule a prompt hearing if the person or offender fails to appear for an appointment, tests positive for the use of drugs or alcohol, or fails to comply with the program requirements. The person or offender is required to pay for the cost of participating in the program, based on their ability under established financial guidelines.

CHAIR COGHILL observed that for the DUI laws there will be some discussion about the point at which the program will be required.

He asked Senator Dyson for a motion to adopt the work draft committee substitute (CS), Version G, as the working document.

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SENATOR DYSON moved to adopt CS for SB 64, labeled 28-LS0116\G, as the working document.

CHAIR COGHILL stated that without objection, Version G is the working document for SB 64. [The bill was held for further consideration.]

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There being no further business to come before the committee, Chair Coghill adjourned the meeting of the Senate Judiciary Standing Committee at 2:57 p.m.