ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
January 31, 2014
1:32 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)
01/29/14	(S)	Heard & Held
01/29/14	(S)	MINUTE(JUD)
01/31/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

RON TAYLOR, Deputy Commissioner
Department of Corrections (DOC)
Anchorage, Alaska
POSITION STATEMENT: Offered suggestions on SB 64.

ANNE CARPENETI, Assistant Attorney General
Criminal Division, Legal Services Section
Department of Law,
POSITION STATEMENT: Answered questions related to SB 64.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska,
POSITION STATEMENT: Answered questions related to SB 64.

CARMEN GUTIERREZ, representing herself
Anchorage, Alaska
POSITION STATEMENT: Offered suggestions on SB 64.

ACTION NARRATIVE

1:32:26 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Wielechowski, Dyson, Olson, and Chair Coghill.

SB 64-OMNIBUS CRIME/CORRECTIONS BILL

1:32:43 PM

CHAIR COGHILL announced the consideration of SB 64. [Version G was before the committee.] He recapped the previous meeting and provided an outline of the meeting today. He invited Mr. Taylor to come forward.

1:35:46 PM
RON TAYLOR, Deputy Commissioner, Department of Corrections (DOC), offered comments on Version G. In Section 29, subsection (f), on page 18, DOC would like to tie participation in the PACE program to the risk assessment tool, not to the identity of being at high risk for violating the conditions of probation. Because the term "high risk" isn't defined, the interpretation would be subjective and subject to change depending on the commissioner.

CHAIR COGHILL noted the suggestion.

MR. TAYLOR referenced the new paragraph (7) on page 20, lines 19-22. He reported that DOC's current policy is to conduct a risk assessment on sentenced felons that have a term of incarceration of 45 days or more, and 63 percent are complete at this time. He assured the committee that DOC could comply with the new requirement.

CHAIR COGHILL asked what value DOC places on 45 days and what effect it would have to change the timeframe to 30 days.

MR. TAYLOR replied the 45 days was a policy call; changing to 30 days would expand the number of assessments that would need to be done.

CHAIR COGHILL said he'd give it some thought.

MR. TAYLOR directed attention to the proposed Recidivism Reduction Grant Program and fund described in Section 31. He said that because DOC does not have a grant program, they don't know what infrastructure is needed to manage and administer the grants. At this time DOC is reaching out to other departments for guidance.

CHAIR COGHILL asked if DOC also needs guidance on what to do.

MR. TAYLOR confirmed that DOC needs to understand the legislative intent regarding the number and size of the grants. He reviewed the five requirements for a re-entry program listed on page 21, lines 3-8, and requested more flexibility.

1:45:38 PM
CHAIR COGHILL asked how the general requirements for the existing re-entry programs compare.

MR. TAYLOR replied the requirements in the bill are more rigid. The existing re-entry centers may provide stipends for housing, case management, referrals for substance abuse, and referrals for employment but they don't provide all the things that the bill requires. He suggested that a broader array of other services ought to be allowed, particularly in rural communities where resources are more limited.

CHAIR COGHILL granted that it might be preferable to have a statutory requirement for measurable outcomes so the person can be held accountable. He asked if DOC has considered that for other programs.

MR. TAYLOR said that DOC would be willing to work with the committee to broaden this section and allow more flexibility for re-entry services and programing. He also suggested that collaboration with another agency may be advantageous.

CHAIR COGHILL mentioned the meetings on this legislation during the Interim, and asked how DOC interacts with the existing 24/7 programs.

MR. TAYLOR said that DOC participated in a 24/7 program in the past, but it was discontinued. Now the department is working actively with DHSS to establish a 24/7 pilot program in Anchorage and Fairbanks. This is a much better option for people who have had difficulty staying sober while on probation and parole than sending them back to prison.

CHAIR COGHILL asked, for the discontinued 24/7 program, how much notice DOC received on re-entry or re-incarceration.

MR. TAYLOR said he wasn't involved, but results from North Dakota and other states have proven it to be an effective way for people to stay sober while they're on probation and parole.

CHAIR COGHILL said he was open to suggestion on how a grant program could focus on measurable outcomes under this condition. He acknowledged that the provisions were perhaps too rigid and prescriptive.

CHAIR COGHILL asked Ms. Carpeneti to provide her observations and suggestions on the bill.

1:54:32 PM
ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, expressed appreciation for the cooperative approach to the bill. She offered two comments on Sections 1-15 that raise the thresholds for theft. First, it's important that the bill states when this change will take place, so it's clear who will get charged with the higher crime and who will get charged with the lower crime. She said the next comment also relates to registering legislative intent. Several places in the current theft law say it's a class C felony if a person steals something that's worth over $500, but it's also a class C felony if a person steals something worth $50 and they have two prior convictions for theft in last five years. It's important that somewhere in the bill it says that the legislature wants these to count.

SENATOR WIELECHOWSKI posed the scenario of a person who is convicted today of stealing property worth $750, and this bill becomes effective on June 1. He asked if that person's sentence would be retroactively affected.

MS. CARPENETI replied that's why DOL wants the legislature to articulate its intent. She noted that she read several decisions about that this morning and the court concluded that a person sentenced after the effective date gets the benefit of the new law even if he/she committed the crime before the effective date.

SENATOR WIELECHOWSKI clarified that he was referring to people sentenced and sitting in jail before the effective date.

MS. CARPENETI responded that the court would probably find that the person should be sentenced under the previous law, but the decision she mentioned also talked about judges being lenient knowing that a law is about to change. She reiterated that it would avoid problems if the legislature registers its intent in terms of retroactivity.

SENATOR DYSON noted a recent communication from a defense attorney who argued at a sentencing hearing that if the sentencing commission that was in place 10-12 years ago had done its job there wouldn't be the very disproportionate sentencing that's seen today.

CHAIR COGHILL summarized that a person wouldn't be sentenced retroactively under the new law if they had been tried under the old law.

MS. CARPENETI said that's generally true, but in the decision she mentioned the court of appeals took the approach that if a person committed the crime before the new law took effect but was sentenced afterwards the person got the benefit of the new law.

CHAIR COGHILL said he'd draft a letter of intent for her to review.

2:01:53 PM
MS. CARPENETI turned to the bail conditions in Section 16. She noted that this gives the judge the authority, as a condition of bail (and probation too), to require a person to comply with the 24/7 program. That program, which is found on page 18, subsection (g), requires the commissioner of corrections to set eligibility requirements. She suggested that the committee think about how this would work because the judge might not know what the eligibility requirements are or whether the person meets them.

CHAIR COGHILL asked if it has to be spelled out or if pointing to AS 33.05.020(g) is sufficient.

MS. CARPENETI said she'd have to think about how to say it so that a judge isn't ordering a person to participate in a 24/7 program when he/she doesn't meet the eligibility requirements.

CHAIR COGHILL stated that he wants the references to always point to AS 33.05.020(g) located on page 18.

2:04:20 PM
MS. CARPENETI said the next comments relate to Section 19, when a person qualifies for credit against a sentence while participating in a therapeutic program. She questioned why the committee would want to delete the language on page 11 about allowing a program participant to go to work that's required by the treatment program. She acknowledged that approval in advance by the court caused problems in the past, but the advance approval could be by the person in charge of the therapeutic program.

CHAIR COGHILL agreed that the problem was advance approval by the court, and that allowing a participant to work was valuable.

MS. CARPENETI directed attention to the new language on page 11, lines 17-20, and explained that Department of Law would like the term "rehabilitative purposes" narrowed to clarify that it is rehabilitation related to the person's needs.

CHAIR COGHILL asked if she thought it was ambiguous enough that it could be interpreted as recreation for rehabilitation.

MS. CARPENETI restated that the rehabilitative activity should target the person's needs.

CHAIR COGHILL asked if the phrase "expressly limited as to both time and purpose" didn't establish an appropriate boundary.

MS. CARPENETI replied that's dinner and a movie. Responding to a further question, she said she'd like to draft different language for the committee to consider.

MS. CARPENETI noted that the new language on page 12 is another cross reference to AS 33.05.020(g), the 24/7 sobriety program.

She said that Department of Law also has concerns about the license revocation provisions, because the bill doesn't make it clear that the termination of revocations are only for drunk driving and refusal, not another termination of revocation that might have nothing to do with alcohol problems or things that are dealt with in therapeutic courts. She noted that the Division of Motor Vehicles could also explain the Department of Law's concerns in this area.

SENATOR DYSON commented on the problems it causes when a person is on probation or parole and they're arrested for driving on a revoked license. It doesn't matter that they may be driving to a drug test or to work. Under existing law the offender has to wait ten years before he/she can start the process to have their license reinstated.

MS. CARPENETI agreed that there is a significant penalty for driving on a revoked license.

SENATOR DYSON said the person didn't hurt anyone and they're trying to comply with the conditions of probation or parole.

MS. CARPENETI said that's why it's important to articulate the intent.

2:11:05 PM
CHAIR COGHILL noted that the question has come up about whether a person who has a revocation under another section of law might commit a DUI offense so that they could get their licenses back under this section.

MS. CARPENETI suggested the committee establish a time limit for a person to drive successfully under a limited license before the person qualifies to have their license revocation terminated.

CHAIR COGHILL agreed, and commented on the importance of accountability.

SENATOR WIELECHOWSKI reviewed the list of offenses under AS 28.15.181 that are grounds for revocation of a driver's license, and compared it to the language in AS 28.15.181(f) that describes when a court may terminate a revocation. Under current law, about the only way a person can get his/her license back is by serving the minimum period of time. The bill proposes to change that to say a person can get his/her license suspended for a DUI but one provision says the person can also get it back by going through the three steps listed on page 13, lines 12-19. He asked Ms. Carpeneti to explain her concern.

MS. CARPENETI explained that the only concern is that proposed language doesn't say how long the person has to have received and driven successfully under a limited license. As currently written, a person could ask the court for their regular license after just a week or a month. She reiterated that it seems wise to have a track record of driving successfully on a limited license. As currently written, there is none.

2:15:31 PM
SENATOR WIELECHOWSKI asked if the administration thinks this is a good policy.

MS. CARPENETI replied the Department of Law has no problem with this policy; it will encourage people to get treatment.

SENATOR WIELECHOWSKI asked if it would be better to tie it to the 24/7 program or something similar.

MS. CARPENETI said the limited license provision in the next section does that. She reiterated the importance of a track record driving under a limited license.

SENATOR WIELECHOWSKI suggested the limited license should be tied to a treatment program.

MS. CARPENETI pointed out that Section 24 does that. The limited license provisions require a person to participate in a court-ordered treatment program. She said that's probably 24/7, but it has to be clarified. She said that's why it's important that a person who is driving under a limited license has to do so long enough that a judge can determine the person is driving safely.

SENATOR WIELECHOWSKI asked if it's tied now because that seems logical.

MS. CARPENETI said it's not specifically tied to a court termination of a revocation, but she believes that it's tied to getting a limited license under paragraph (g) that starts on page 13. The requirement under (g)(2) is to be participating in a court-ordered treatment program, and the requirement in paragraph (9) on page 14, line 30, says the person participates in and pays the cost of testing. She asked for clarification that that that means the person participates in the 24/7 program.

CHAIR COGHILL asked Ms. Meade to speak to the [previous] requirement to drive successfully for five-years under a limited license.

2:20:16 PM
NANCY MEADE, General Counsel, Alaska Court System, Anchorage, Alaska, clarified the statutory reference on page 13, lines 5-6, relating to when the court may terminate a revocation for an offense. She explained that the reference to subsection (a)(5) relates to DUI and subsection (a)(8) is refusal, so subsection (f) is limited to DUI and refusals.

To understand the five-year time limit, she said it's helpful to look at the limited license provisions in Section 24. People that fall under this section have to be in a therapeutic court program that, by statute, lasts a minimum of 18 months but sometimes up to two years. During this time the person is attending a lot of meetings and working actively with therapists, attorneys, and the judge.

Section 24 says that while the person is participating in the therapeutic court program and following the requirements, the court may grant the person limited license privileges. Presumably the person has been doing well in the program for

several months and the attorneys say he/she is a candidate for a limited license. After 18-24 months, the person graduates from the therapeutic court program and the case is closed; he/she is no longer under the court's jurisdiction. Because the person is no longer participating in a therapeutic court program, he/she would no longer fit under Section 24 for the limited license privilege. The question is what to do about it.

Section 23 addresses the question. It says the court may terminate a license revocation if the person has successfully completed a court-ordered treatment program, has not been charged with or convicted of a violation since completing the program, and has been driving successfully under a limited license received under Section 24.

The five-year time limit that was previously in Section 24 was problematic because the court doesn't have jurisdiction over the person for the whole time and it didn't give judges any discretion to grant a limited license for less than five years. This would have discouraged judges from using the provision to grant limited licenses. She said that Section 23 is slightly different and there might be different considerations, but it would be problematic to put in a minimum time period there too, because the court doesn't have jurisdiction over the person after they graduate from therapeutic court.

CHAIR COGHILL asked if it would be better to have language that said completed a court-ordered program.

MS. MEADE offered to work with staff on language that the committee expressed.

CHAIR COGHILL asked Ms. Carpeneti if Section 23 addresses people who are no longer in therapeutic court.

MS. CARPENETI explained that the Section 23 provisions are dependent on a person completing the treatment program and driving successfully on a limited license. She offered her belief that DMV would articulate concerns about transferring records back and forth under these circumstances.

CHAIR COGHILL stated that at least two members of this committee believe that the court system and DMV need to have a closer working relationship on this issue.

2:25:31 PM

SENATOR WIELECHOWSKI directed attention to page 13, lines 28-29, and asked if it would be wise to also sweeping in people serving a long-term suspension who have already completed a court-ordered treatment program.

MS. MEADE agreed that those people are not covered because the bill is prospective. Section 23 probably won't come into play for a year or two because there aren't any graduates that have gone through the Section 24 limited license program. She said it's a policy call as to whether the committee wants to grant limited licenses to people who have previously graduated from therapeutic courts.

SENATOR WIELECHOWSKI asked if it's a good policy call, or if there's a policy reason not to do that.

MS. CARPENETI responded that she didn't see a policy reason not to do it as long as the court has discretion on whether or not to grant the limited license, but she'd like to think about it.

CHAIR COGHILL said he'd look at the other requirements that would have to be modified.

SENATOR WIELECHOWSKI questioned if the better policy in Section 23 would be to require an ignition interlock for the entire time that the person's license would have been revoked.

MS. CARPENETI said she didn't have any policy concern about adding that requirement.

MS. MEADE said the court has no position on that, but the committee should be mindful that it would be saying that felony DUI defendants would have to have an ignition interlock for life. She explained that these provisions are geared toward felony DUI defendants, and felons lose their license for life when they get a DUI

2:29:31 PM
SENATOR WIELECHOWSKI said it might be helpful to understand the time periods that people lose their licenses and for what offenses.

MS. CARPENETI said that for felony DUI and refusal a person loses their license for life, but after 10 years they can request it be returned.

MS. MEADE added that a first time DUI defendant loses their license for 90 days; a second time DUI defendant loses their license for one year; a third time DUI defendant is a felon unless their priors were more than 10 years earlier. Felons for DUI or refusal lose their license for life.

CHAIR COGHILL stated his intention to get DUI defendants under the 24/7 program as early as possible to avoid that situation.

SENATOR WIELECHOWSKI asked if Sections 23 and 24 aim at third time offenders.

MS. CARPENETI replied she didn't believe it is aimed at that population, but the reality is that most people convicted of a misdemeanor don't participate in therapeutic court.

MS. MEADE added that AS 28.15.201 has an existing subsection (d) which is a mechanism through which misdemeanant DUIs can get their license back.

SENATOR WIELECHOWSKI stated that if it's a policy call to give people who have lost their license for life an opportunity to drive again, it should be done under the most stringent circumstances. Requiring an ignition interlock for 10 years or longer isn't unreasonable; they've proved to be very successful, he said.

CHAIR COGHILL said he'd like to devote the next 15 minutes to Ms. Gutierrez who would discuss the 24/7 program.

2:33:28 PM
CARMEN GUTIERREZ, representing herself, stated that she's been an attorney for 27 years and she worked for the Alaska Department of Corrections from June 2009 through December 2012. As deputy commissioner she was responsible for prisoner rehabilitation and prisoner reentry. She opened her comments by emphasizing the importance of breaking away from ineffective policies of the past and adopting appropriate, evidence-based strategies to reduce recidivism and advance successful prisoner re-entry. SB 64 seeks to implement these new approaches.

She summarized the history of the 24/7 pilot project in Anchorage. She said that it was initially established for domestic violence offenders and later it was expanded to include other kinds of offenders. The project was showing success, but it wasn't funded last year so it closed. Nevertheless, there is ongoing interest in the project. A judge in the second judicial

district is very interested in giving judges the option of adding 24/7 sobriety as a pretrial condition of release.

MS. GUTIERREZ explained that under 24/7 sobriety, pre-trial and convicted offenders are monitored using a variety of testing methodologies such as a Breathalyzer or a SCRAM unit. The goal is to use methodologies that are appropriate for the community in which these programs might be established. The long-term goal of this approach is to help people in the program begin to see the benefits of extended sobriety. Under the program, the person is required to go to a center and blow into an Intoximeter twice-a-day. If the SCRAM monitoring device is used, it has the technology to download readings from the unit to determine if a person has ingested a prohibited substance. If the person tests positive, a mechanism is in place where the authorities and prosecutor's office are notified immediately and the person is arrested and taken to jail and brought to court in a in a very swift and certain fashion for the imposition of a sanction.

MS. GUTIERREZ cited the Rand Corporation study published in the American Journal of Public Health on November 15, 2012 as proof of the success of 24/7 sobriety. The study analyzed data from participants in the South Dakota 24/7 program and found that 99 percent of the individuals passed Breathalyzer tests over a five year period. What was more encouraging was that the 24/7 program was associated with a 12 percent reduction in repeat DUI arrests on a county level.

2:45:29 PM
CHAIR COGHILL noted he distributed a fact paper that has a link to the Rand Corporation study.

SENATOR WIELECHOWSKI asked for clarification on the DUI recidivism rate because he read it as 12 percent, not a decrease of 12 percent.

MS. GUTIERREZ said she'd get clarification, but her understanding is that it was a 12 percent decrease in repeat DUI arrests.

2:47:57 PM
MS. GUTIERREZ described the PACE program, how it works, and how it differs from the 24/7 sobriety program. She explained that PACE is modeled after Hawaii's HOPE program that was established in 2004 by Judge Alm who was dissatisfied by the way the state was doing probation. As has been the case in Alaska, a probationer would commit a technical violation by not showing up

for a scheduled appointment and months would pass before the person would be arrested and another month or so would pass before they would go before a superior court judge. Judge Alm founded the program on the principle that people respond more positively when there are swift, certain, and proportionate sanctions imposed for bad behavior.

The PACE program follows that same methodology. If a probationer commits a technical violation, a bench warrant is issued immediately and with the cooperation of local authorities it is served very quickly, often within 24 hours. The probationer is brought to court, counsel is appointed, the person admits to the petition, and a sanction is imposed in one court hearing, often within 72 hours of the infraction. Under probation as usual, that series of events would involve three or four court hearings that would be conducted over a period of three or four months.

MS. GUTIERREZ reported that a National Institute of Justice funded evaluation of the Hope model found that the HOPE program is effective. Probationers were compared to a control group over the course of a year and were found to be 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, and 61 percent less likely to skip appointments with their probation officer. The program in Hawaii has expanded and there are now four study sites where the Bureau of Justice is doing further analysis. A report showing the efficacy of the program in those locations is expected within six months.

She noted that researcher Steven Oas with the Washington State Institute for Public Policy (WSIPP) has updated his cost benefit analysis of new approaches to address criminality. He showed that PACE has 90 percent odds of a positive net compared to present value. That means that there is a 90 percent chance of achieving better outcomes than the cost to implement the program.

MS. GUTIERREZ asked the committee to consider deleting the language in subparagraph (C) on page 18, lines 20-21. She explained that the reason that the court, probation officers, Department of Law, and defense attorneys are able to dispose the case in one hearing is because the issues of whether or not the person made it to the probation office for their appointment are normally matters that are beyond evidentiary dispute. It doesn't mean that the probation officer wouldn't file a petition to revoke probation, but it wouldn't fall under the PACE guidelines in Section 29. She also suggested the committee consider adding a PACE provision for the Parole Board. People are often on

parole before they're on probation and they should get the message about swift, certain, and proportionate sanctions as soon as possible.

CHAIR COGHILL thanked Ms. Gutierrez.

2:59:46 PM
There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:59 p.m.