ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 3, 2014
1:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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)
01/31/14	(S)	Heard & Held
01/31/14	(S)	MINUTE(JUD)
02/03/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law (DOL),
POSITION STATEMENT: Commented on SB 64.

TIFFANY THOMAS, Driver Licensing Manager
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 64.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 64.

ACTION NARRATIVE

1:35:04 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Dyson, Olson, Wielechowski, McGuire, and Chair Coghill.

SB 64-OMNIBUS CRIME/CORRECTIONS BILL

1:35:10 PM
CHAIR COGHILL announced the consideration of SB 64. [The committee was considering CSSB 64, Version G] He recognized that Senator Ellis was present. He recapped the meeting on Friday and described a tentative outline for the meetings this week. He asked Ms. Carpeneti to continue her commentary on the bill.

1:39:12 PM
ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), directed attention to page 17, Sections 27 and 28. She reminded the committee that subsection (o) applies to termination of a driver's license revocations for felony drunk driving, and subsection (q) applies to termination of driver's license revocations for felony refusal to take a breath test. She highlighted that the mandatory language says the department shall return the driver's license if the various conditions have been satisfied, but the language does not clarify that this applies only to revocations for drunk driving and refusal. She suggested the committee clarify its intent.

CHAIR COGHILL summarized that in each subsection the language in paragraph (2) following "shall restore" should say this specifically applies to DUI or refusal.

MS. CARPENETI agreed it doesn't hurt to be as clear as possible.

CHAIR COGHILL asked if someone who had another type of revocation might purposefully get a DUI charge so he/she could qualify under this mandate.

MS. CARPENETI said she wouldn't advise anyone to do that. She further suggested these sections specify a time period for driving successfully on a limited license, and acknowledge the requirement in current statutes for a person convicted of felony drunk driving or refusal to use an interlock device for 60 months after their license is returned.

On page 18, lines 9 and 30, she offered a drafting suggestion to say "controlled substances or alcoholic beverages" instead of "controlled substances and alcoholic beverages".

Regarding the risk and needs assessment described on page 20, lines 19-22, she said it might be helpful to say whether these

assessments will be done on people serving their sentence at home or on an ankle monitor.

MS. CARPENETI said her final comment is that it would be helpful to have a definite effective date, especially for the provisions addressing theft, because the applicability provision say the new thresholds apply on or after the effective date of the Act.

CHAIR COGHILL asked Ms. Thomas to discuss the ways that licenses can be revoked and why the bill should be more specific in the provision that allows the return of a license under certain conditions.

1:48:26 PM
TIFFANY THOMAS, Driver Licensing Manager, Division of Motor Vehicles, Department of Administration, reported that her office oversees the processing of the DMV limited licenses as well as felony and misdemeanor terminations of revocations. She said that Version G addresses most of the issues that DMV raised last April regarding the limited licenses in Section 24, but there are ongoing concerns with Section 27.

With regard to Sections 27 and 28, she said the intent isn't clear, but it seems as though the bill would wipe the slate clean if a person successfully completed wellness court. The language in both sections essentially mandates DMV to restore the driving privileges regardless of whether that person has set aside any other Title 28 suspensions or revocations that might be on his/her record. The mandatory language is also problematic because it is contrary to AS 28.15.031(b)(1) that says that DMV cannot issue a license to a person who is revoked, suspended, or disqualified. She suggested keeping the permissive language currently in statute to give DMV the discretion to review the driving record and determine eligibility. She also voiced concern about creating a different standard for a person with a felony conviction versus a person who may have only two DUI offenses, and fitness to drive issues if a person hasn't had a license in over five years.

1:52:35 PM
CHAIR COGHILL asked if inserting a requirement for a road and written test would alleviate the last concern.

MS. THOMAS said yes. She offered to walk through a typical felony driving record to show that driving actions compound. For example, a person may be in wellness court in 2006, but they may not begin to serve their felony revocation until 2012 because of

other driving actions for which they've been suspended or revoked. Responding to a further question, she explained that in most DUI or refusal cases the criminal action runs concurrent with the administrative action. Everything else runs consecutively.

CHAIR COGHILL said the sample driving record would be helpful; the intent is to improve public safety by developing accountability measures so that fewer people will be driving uninsured on a revoked or suspended license.

CHAIR COGHILL recognized Mr. Steiner.

1:56:17 PM
QUINLAN STEINER, Director, Public Defender Agency, Department of Administration (DOA), stated that his comments were technical in nature and would focus on potential unintended consequences and policy issues.

He directed attention to Section 19 that addresses credit against a sentence of imprisonment, or Nygren credit. The new language on page 11, lines 17-20, redefines the kinds of passes that are allowed in a treatment program. He said this is an improvement over the prior statute but the discussion about the "rehabilitative purposes" for which somebody can have a pass to leave a treatment program is a little conflicting.

MR. STEINER said that "rehabilitative purpose" can mean a lot of different things; it could mean going to an AA meeting or it could be an activity for purposes of reintegrating into the community. He suggested the committee to put the intent on the record to help the courts and practitioners sort it out. If the definition is very restrictive it might not expand the treatment opportunities to a significant degree. Whereas a broader definition that was specifically defined by the treatment provider as being for reintegration or some broader rehabilitative purpose would be worthwhile would greatly expand it to include such things like the program that was at issue in the McKinley case.

SENATOR DYSON said he believes that the controlled release of inmates to work off site in fish processing jobs ought to qualify for credit against a sentence. He asked Mr. Steiner his sense of whether the statutes would allow that.

MR. STEINER responded that the proposed change would probably allow that provided the court didn't interpret the deleted

language regarding work required by the treatment program as excluding it. Because there's ambiguity in the term, it's important to clarify the intent on the record, he said.

2:02:24 PM
SENATOR DYSON opined that the language should be clarified, and that people in the treatment program should not have the final say about whether the work experience is rehabilitative.

MR. STEINER suggested inserting a safety clause to exclude periods that are determined later not to be rehabilitative. He said another concern is, if a person for good reason doesn't exercise the option for a pass, it might exclude the whole treatment program for the period that's not locked down.

SENATOR DYSON expressed support for the idea.

MR. STEINER added that the same would be true for the buddy pass; if it was later determined not to be rehabilitative the person should still get credit for the period that he/she was confined.

2:04:14 PM
CHAIR COGHILL asked if he had any experience with getting approval in advance by the court for work required by a treatment program. His understanding is that this had been problematic.

MR. STEINER said the problem is that when the work isn't approved in advance, the person may not get credit for it. The original draft expanded the definition to expressly limit the pass to both time and purpose, which was fine. But Version G has the additional definition that the pass has to be for a rehabilitative purpose. That creates a layer of ambiguity that needs clarification. Now it could be argued that work isn't a rehabilitative purpose; that rehabilitative purposes are limited to things like treatment programs and counseling related to the person's underlying issues. He suggested it would add clarity for the court if the committee were to say on the record that reintegration into the community is a valid rehabilitative purpose.

CHAIR COGHILL asked if a definition was preferable.

MR. STEINER suggested that instead of a definition, the committee say that rehabilitative purpose is intended to include passes to support reintegration into the community. Work is

potentially included because it is part rehabilitative and part reintegration.

SENATOR DYSON highlighted the rehabilitative value of prisoners paying restitution.

2:08:51 PM
CHAIR COGHILL stated his intention to bring amendments to solve this and the DMV issues on Wednesday.

MR. STEINER said he also had some concerns with Sections 16 and 18 that create pretrial release conditions for a testing program. The new language in these sections requires a person to submit to a test for a controlled substance, but in some jurisdictions this has been determined to violate search and seizure rights in the Fourth Amendment. He said the condition doesn't have a specific nexus to the purpose of bail to ensure public safety. Some courts have said that protecting the public is there at all times and is not a special need that gets around the Fourth Amendment.

With regard to assuring appearance, he said the courts have held that it requires some specific findings that the alcohol or drugs led to the person not coming to court. The consequence may be a Fourth Amendment problem if someone were later a bail violator or charged with a crime. He also expressed concern that people with insufficient financial resources may have difficulty getting out of jail.

CHAIR COGHILL asked if he believes that this would be unusable under the least restrictive condition.

MR. STEINER said that's possible and it could have a problem with mission creep if it's ordered in cases where it doesn't meet the least restrictive requirement.

CHAIR COGHILL offered his belief that it could be used in cases where a person tests positive for alcohol but their trial date is 40 days away.

MR. STEINER suggested that limiting it to certain types of cases that are directly related to alcohol and public safety would address the potential concern about over use.

MR. STEINER also pointed out that the language on page 19, line 9, could be misinterpreted as requiring appointments, which would undermine another aspect of the statute. He also voiced

concern in Section 29 that the program discusses specifically the requirement of swift and certain, but not a proportional or short sanction. He explained that what makes a program like PACE work is that the consequences for noncompliance are immediate, certain, and short. He suggested that some legislative guidance explaining the purpose of the PACE-type model would be helpful. He agreed to provide the suggestion in writing.

2:18:01 PM
MR. STEINER said his next comment relates to Section 23 that involves permitting the court to terminate a license revocation for DUI or refusal. Page 13, lines 14-16, impose the requirement that the person has not been charged with or convicted of another DUI or refusal. But if a person has been charged inappropriately and the state later dismisses the charges, they're still barred from getting their license back. One solution is to remove the language about being charged.

He pointed out that Section 24, page 15, line 3, has the same concern. In this section the court is required to immediately revoke a limited license if the person is charged with a violation. Because this could involve two different courts, it's important to make sure that the court that revokes the limited license makes a specific finding that there is probable cause to support the subsequent DUI or refusal.

SENATOR DYSON cited the example of somebody who was cited for driving on a revoked license when he was using his truck to move tools to work on a culvert at the bottom of his driveway. He said he doesn't want harsh language to force someone under this circumstance to forfeit the capacity to make a judgment in those rare situations.

MR. STEINER said there would be a defense if a person was rushing somebody to the emergency room, but that defense wouldn't be available to the person who was moving his tools.

2:24:11 PM
SENATOR DYSON said that's a concern.

SENATOR WIELECHOWSKI said a possible solution to Senator Dyson's legitimate concern is to add language on page 15, line 3, that the court finds that probable cause exists for the person to be charged.

MR. STEINER agreed it would work if the court was making an independent finding of probable cause, rather than just noting that some other judge reviewed the case.

SENATOR WIELECHOWSKI said he assumes that the language on page 15, lines 5-6, is zero tolerance. If someone tests positive, even with a trace amount, their license would automatically be revoked.

MR. STEINER agreed, and added that the same problem exists there regarding the inability to address whether or not it was a legitimate positive test.

He read the language in Section 27, page 17, lines 16-17, and noted that the corresponding provisions for the court in Section 23 don't refer to any conviction. Under this broad language, somebody might go through the entire program and later get a relatively minor criminal conviction unrelated to driving or alcohol that would prevent them from getting their license back. In that circumstance, the purpose of the program and this provision would ultimately not be served. He suggested a solution would be to limit it to DUI and refusal. He noted that Section 28, page 18, lines 3-4, has the same concern.

CHAIR COGHILL said he was noting the suggestions.

MR. STEINER directed his next comments to the membership of the Alaska Criminal Justice Commission in Section 32. He recommended, as a policy matter, that the private attorney that's appointed to the commission be a defense attorney or have a substantial career in criminal defense. He noted that the Office of Public Advocacy (OPA) represents close to 80 percent of the criminal defense cases in the state, and opined that OPA could bring a helpful perspective to the commission.

CHAIR COGHILL said the point is well taken.

MR. STEINER directed his final comment to Section 34, page 25, lines 4-6, that references the applicability of the changes to the Nygren credit. He recommended making the Nygren credit applicable immediately to any court order issued after the effective date of the Act. As currently drafted, two defendants could be in court the same day arguing for Nygren credit, one whose conviction occurred the day before the applicability section and one that occurred the day after. Those two people would be treated very differently.

CHAIR COGHILL asked Mr. Steiner to send the suggestion in writing. He also asked how this would affect the general rule that a person who is convicted prior to a change in law lives under the old law.

MR. STEINER explained that that is generally true with regard to sentencing provisions.

CHAIR COGHILL said that on Wednesday he expected to take up the easier amendments. This potentially would include the Nygren credit, the main purpose of which is to allow for rehabilitation that ensures accountability.

2:37:43 PM
There being no further business to come before the committee, Chair Coghill adjourned the meeting of the Senate Judiciary Standing Committee at 2:37 p.m.