

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 10, 2014

1:36 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair

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)
 02/03/14 (S) Heard & Held
 02/03/14 (S) MINUTE(JUD)
 02/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/05/14 (S) Heard & Held
 02/05/14 (S) MINUTE(JUD)
 02/07/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/07/14 (S) -- MEETING CANCELED --
 02/10/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Described the changes between Version E and Version G of SB 64.

QUINLAN STEINER, Director
 Public Defender Agency
 Department of Administration (DOA)
 Anchorage, Alaska

POSITION STATEMENT: Commented on SB 64, Version E.

ANNE CARPENETI, Assistant Attorney General
 Criminal Division
 Legal Services Section
 Department of Law (DOL)
 Juneau, Alaska

POSITION STATEMENT: Commented on SB 64, Version E.

COLONEL TOM BUTLER
 Montana Highway Patrol

POSITION STATEMENT: Testified on SB 64 and described his involvement in the Montana 24/7 program.

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

POSITION STATEMENT: Commented on SB 64, Version E.

CHUCK KOPP, Staff
SENATOR DYSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Described Amendment 1 for SB 64, labeled 28-LS0116\G.11.

CRIS PROVOST, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 64 and in support of Amendment 1, labeled 28-LS0116\G.11.

ACTION NARRATIVE

[1:36:53 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:36 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

[1:37:28 PM](#)

CHAIR COGHILL announced the consideration of SB 64. He asked for a motion to adopt the proposed work draft committee substitute (CS).

[1:38:00 PM](#)

SENATOR DYSON moved to adopt work draft CS for Senate Bill 64, labeled 28-LS0116\E, as the working document.

CHAIR COGHILL announced that without objection, Version E was before the committee. He asked Mr. Shilling to describe the summary of changes and where they're found in the bill.

[1:38:55 PM](#)

JORDAN SHILLING, Staff, Senator Coghill, explained that the new Version E completely removes two aspects of the former draft, Version G. These are the fiscal analysis requirement that was found in Section 22 and the limited license found in Sections 22-25 and Sections 27-28.

He said Version E also has additions. The first three sections incorporate the amendment that Senator Wielechowski described during the last meeting.

CHAIR COGHILL added that the title of that amendment was custodial interference in the first degree.

MR. SHILLING explained that this addition is designed to close a loophole that currently exists for attempted child abduction.

CHAIR COGHILL offered his understanding that this addresses attempted child abduction in the first and second degree.

MR. SHILLING explained that it is a crime of custodial interference in the second degree if a relative attempts to remove a child for a protracted period, but the law doesn't address a non-relative that tries to do the same thing. This addition closes that loophole.

The next large change is found in Sections 4-18 that address the felony theft thresholds. The previous draft increased the threshold from \$500 to \$1,000 and Version E reduces it to \$750.

CHAIR COGHILL noted that he's been trying to increase the threshold for eight years, and this is an effort to maintain momentum.

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SENATOR WIELECHOWSKI joined the committee.

MR. SHILLING said the next significant change occurs in the 24/7 sobriety statutes found in Section 19. Concern was voiced that the previous draft applied 24/7 pretrial too broadly and it could possibly infringe on privacy. Version E attempts to address that concern by specifying which classifications of crime for which a person could be put on 24/7 pretrial. These crimes include unclassified felonies, class A felonies, sexual felonies, and a misdemeanor or felony involving domestic violence.

The next substantive change is to the Nygren credit found in Section 22. The previous draft said that employment was the only reason a person could leave a treatment facility and still receive credit for time served. Version E expands that to include vocational training and community volunteering. Subparagraph (D) on lines 13-17 has additional language to

clarify that the leave is for rehabilitative purposes directly related to the person's treatment plan and that the director of the treatment program has oversight.

Sections 26 and 27 are new sections that allow the Parole Board to place parolees in the PACE program. With this change, the program could include both probationers and parolees.

Section 28 removes from paragraph (7) the provision requiring an annual report to the legislature.

Section 29 changes the requirements for a program to qualify for a grant from the new recidivism reduction grant program and fund. These changes are found on page 18, lines 1-6. Paragraph (3) previously specified that the program had to provide on-site residential treatment for substance abuse. Not many programs in the state would meet that requirement so Version E allows referrals for treatment outside the reentry center. Paragraph (4) previously said the program had to require full-time employment. Version E adds vocational training or community volunteer work that is approved by the director of the treatment program. Paragraph (5) previously limited residential placements in the program to 150 days. Providers indicated this is too short for successful reentry and Version E limits the placements to a maximum of one year.

Sections 30 and 31 make two changes to the Alaska Criminal Justice Commission. The first change clarifies that the legislators on the commission are ex officio, nonvoting members. The second change provides a seat on the commission for the public defender.

CHAIR COGHILL opened public testimony.

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QUINLAN STEINER Director, Public Defender Agency, Department of Administration (DOA), said he had two comments to offer and the first relates to the so called Nygren credit in Section 22. The concern is that the current draft appears to expand the ability to obtain treatment opportunities and also receive credit, but it may not do that. Paragraph (C) provides a procedural improvement for getting credit for employment and an expansion for vocational training, but work could have been approved in the previous version. It just had to be approved by the court. He said this is an improvement, but it doesn't necessarily expand treatment significantly.

MR. STEINER said his primary concern is that, as currently drafted, paragraph (D) will exclude entire programs because of the possibility that sometime during the program somebody could obtain a pass that doesn't fit the definition. The phrase "rehabilitative purpose directly related to the person's treatment plan" may be read to require some approved treatment plan by the court rather than simply a treatment model, which is what most programs follow. This subsection also adds the requirement that the pass be approved by the director of the treatment program, but that may not be the person who approves passes. Treatment programs don't tend to change their models simply to fit statutory requirements, so this requirement may be exclusionary.

MR. STEINER summarized that while there has been intent expressed to expand treatment opportunities, the unintended consequence of Version E is that it will not.

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CHAIR COGHILL said the purpose is to ensure that if a person is to get credit, the pass must be tied to their treatment. He requested suggestions for improved language.

MR. STEINER said the language in the previous draft is preferable.

CHAIR COGHILL explained that he was trying to give credit to somebody who gets bonafide help in their treatment while they're required to be under custody. He asked if removing the word "plan" would help.

MR. STEINER agreed that would help.

CHAIR COGHILL asked if he agrees with the basic concept that the purpose is to give these people, who are supposed to be in jail, a reason to have treatment.

MR. STEINER said he agrees with the concept but drawing it too narrowly eliminates any benefit from the changes. Removing the term "plan" would help because it takes out the idea of a written treatment plan, but what hasn't been addressed explicitly on the record is reintegration into the community as part of treatment. For example, a person could get credit for attending an AA or NA meeting, but it's not clear if spending time out in the community with a senior member of the program would qualify even if it's part of the treatment. Without an explicit statement or rewording the language, that situation

might not receive credit. He highlighted that because the program is evaluated and not the person's conduct in the program, the entire program is excluded by barring what is referred to as the buddy pass.

CHAIR COGHILL said the intention is to ensure that direct supervision is credible. He said his view is that the phrase "both time and purpose by the director" has to be inserted to make sure that the person receives jail time credit for employment, vocational training, or community volunteer. These are given credibility by the director of the treatment program, he said.

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MR. STEINER said he believes that when somebody is allowed a pass, it is part of the program that is approved by the director. The concern is that it might not be the director who actually stamps "approved" on the pass; it might be the caseworker and that would exclude the program. He suggested that it would alleviate the problem if these requirements were in an earlier subsection so that the defendant's conduct in the program or the restrictions on the defendant could be evaluated rather than the program itself.

SENATOR WIELECHOWSKI asked if the following would ease his concerns: 1) page 12, line 15, delete "plan" 2) page 12, line 17, delete "by the director of the treatment program" and 3) state on the record that the intent is that reintegration into society does count towards Nygren credit.

MR. STEINER agreed that those would be clear improvements, although there would still be the question of whether or not the program itself is evaluated or how the defendant is treated in the program.

CHAIR COGHILL stated his intention to pose the question to the Department of Law.

MR. STEINER noted that he submitted language to accomplish what he suggested, which is to move paragraphs (1) and (2) from subsection (c) to subsection (b).

CHAIR COGHILL said his intention is to find a solution and move the bill on Wednesday.

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MR. STEINER said his second comment relates to the new paragraph (2) regarding custodial interference on page 2. The language in paragraph (2) mimics paragraph (1) in terms of the conduct that is criminalized. However, in paragraph (1) the word "entice" relates to a specific intent and in paragraph (2) there is no intentional conduct that's articulated and criminalized. Because there isn't a specific definition, it's ambiguous and could create some problems.

SENATOR WIELECHOWSKI suggested the solution is to remove the words "entice, or".

MR. STEINER agreed.

MR. STEINER also pointed out that his previous comments with regard to the use of the word "director" also apply to page 18, line 4. This relates to adding PACE to parole, and it may not be the director of the treatment program who issues the approval.

CHAIR COGHILL asked if it would work to simply delete the reference to the director.

MR. STEINER said yes.

CHAIR COGHILL asked Ms. Carpeneti if he clearly articulated the intention with regard to the Nygren credit. That is that if somebody is receiving credit for time served, there has to be real value for the treatment.

[2:04:54 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), Juneau, Alaska said the concern was clearly articulated. With regard to concern, She also agreed with Mr. Steiner's suggestion to remove the term "by the director" from page 12, line 17.

CHAIR COGHILL noted that the other suggestion was to remove "plan" from page 12, line 15.

MS. CARPENETI said that too makes sense.

SENATOR WIELECHOWSKI asked if there wasn't also an issue with the use of the word "program" on page 12, line 17.

MS. CARPENETI replied this is about treatment programs so it makes sense to leave it there. With regard to Mr. Steiner's suggestion to move paragraphs (1) and (2) from subsection (c) to

subsection (b), she said she would be prepared to comment on Wednesday.

CHAIR COGHILL said he likes Mr. Steiner's idea about separating the program and the conduct of the person. The other issue is whether or not a statement on the record about reintegration is sufficient, he said.

MS. CARPENETI expressed concern with Mr. Steiner's comments about reintegration. This is talking about getting credit for time in jail and it's too easy to say "reintegration" because that may be a two day weekend pass with a buddy, she said. That may be helpful for the person, but that shouldn't necessarily count for credit for time served. Using the term "reintegration time" is very broad and would cover periods that are nothing at all like incarceration.

CHAIR COGHILL said this issue should be brought up again to clarify the intent. He asked if there would be sufficient accountability if the word "director" was removed on page 18, line 4.

MS. CARPENETI said she didn't have a concern with that suggestion.

CHAIR COGHILL said he was open to the discussion.

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SENATOR WIELECHOWSKI asked Ms. Carpeneti her view of the suggestion in Section 2 to remove the term "entice, or" on page 2, line 17.

MS. CARPENETI said she didn't see a problem, but she'd give it more thought. She offered additional comments on Version E. On page 14, line 7, she suggested replacing "and" with "or" so the reference would be to "controlled substances or alcoholic beverages." She also pointed out that on page 14, line 13, "notice by the next business day" would not be a 24/7 program it would be a 24/4 program.

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CHAIR COGHILL asked Colonel Butler to discuss the success of the 24/7 program in Montana, and the importance of law enforcement responding on the same day.

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COLONEL TOM BUTLER, Montana Highway Patrol, described his involvement in the 24/7 program in Montana, including the

implementation of the SCRAM and similar devices because geography limits the ability to do twice daily breath testing in some places. He said the data from North Dakota and the anecdotal data from Montana illustrates that twice daily breath testing is best if it's available. He acknowledged that Alaska may have some of the same geographic limitations as Montana and that using SCRAM and other devices is better than doing nothing at all.

CHAIR COGHILL asked if it's been successful for things other than drinking and driving.

COLONEL BUTLER said the provisions of 24/7 were expanded during the last legislative session to any crime where alcohol was a nexus and the penalty for the crime was 6 months or longer. The primary target was partner or family member assault when alcohol was a factor. The Montana data hasn't been analyzed, but North Dakota has excellent statistics and he expects the same sort of results in Montana.

CHAIR COGHILL noted that SB 64 also includes the use of the 24/7 program for the more serious crimes involving alcohol.

COLONEL BUTLER said initially he was generally suspicious of the 24/7 program, but he's learned that jailing your way out of alcohol problems isn't the answer. He highlighted the psychological impact of being reminded of your crime by having to show up twice a day to blow into a Breathalyzer. He said he believes that's the cause of the benefits that South Dakota has seen.

CHAIR COGHILL noted that SB 64 has the requirement for twice daily testing when practicable. It also applies if the person is charged with an alcohol-related or substance abuse offense that is an unclassified felony, class A felony, sexual felony, or a crime of domestic violence.

COLONEL BUTLER commented that this addresses the subset of people that can't handle alcohol.

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CHAIR COGHILL returned attention to page 14, subsections (g)(1) and (2), and asked Ms. Carpeneti if they provide flexibility or nullify one another.

MS. CARPENETI said she believes that paragraphs (1) and (2) work together so that both apply to a person.

CHAIR COGHILL asked if the requirement to file should be in both sections.

MS. CARPENETI said DOL's point is that it shouldn't be difficult to get notice to the person within 24 hours, because it's a matter of a telephone call or FAX.

CHAIR COGHILL asked the Department of Corrections to speak to the matter.

[2:28:18 PM](#)

RON TAYLOR, Deputy Commissioner, Department of Corrections (DOC), Anchorage Alaska, said he understands Ms. Carpeneti's concern and DOC would recommend changing the language to say "notice as soon as possible."

CHAIR COGHILL said that could be ambiguous and stretch into a couple of business days.

MS. CARPENETI expressed concern with the suggestion and recommended including the phrase "within 24 hours."

[2:29:45 PM](#)

CHAIR COGHILL asked if it should say "within 24 hours unless not practical."

MS. CARPENETI replied within 24 hours is practical for everybody in this age; that's what makes it a 24/7 program.

She continued to offer comments on the bill. She noted that on page 14, lines 22-23, the current version removes paragraph (C) that included any other violations. Ms. Gutierrez recommended this because those violations often require an evidentiary hearing. Ms. Carpeneti said it would be important to say on the record that the other violations of conditions of probation would be handled the way they are now.

MR. TAYLOR said that's correct.

CHAIR COGHILL said the idea was to ensure that the swift and certain action didn't get delayed because of scheduling issues.

MS. CARPENETI asked if the risks and needs assessments described on page 17, lines 17-18, apply to people serving sentences on ankle monitors and at home.

MR. TAYLOR confirmed the risk and needs assessments would be done on people serving sentences on ankle monitors and at home.

CHAIR COGHILL noted that Senator Dyson had an amendment.

[2:34:54 PM](#)

SENATOR DYSON moved to adopt Amendment 1, labeled 28-LS0116\G.11.

CHAIR COGHILL objected for discussion purposes

AMENDMENT 1

OFFERED IN THE SENATE

TO: CSSB 64(JUD), Draft Version "E"

Page 1, line 10, following "**beverages;**":

Insert "**relating to waiver of jurisdiction in juvenile cases;**"

Page 21, following line 20:

Insert new bill sections to read:

"* **Sec. 31.** AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, **and, when after a hearing and consideration of the minor's individualized risk assessment, the court determines that the minor is not amenable to treatment under this chapter,** this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which

the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

* **Sec. 32.** AS 47.12.030 is amended by adding a new subsection to read:

(d) For purposes of making a determination under this section, the standard of proof is by a preponderance of the evidence, and the burden of proof that the minor is amenable to treatment under this chapter is on the minor."

Renumber the following bill sections accordingly.

Page 22, line 6:

Delete "and"

Following "Act":

Insert ", AS 47.12.030(a), as amended by sec. 31 of this Act, and AS 47.12.030(d), as enacted by sec. 32 of this Act,"

Page 22, line 7:

Delete "34"

Insert "36"

Page 22, line 11:
Delete "34"
Insert "36"

Page 22, line 12:
Delete "34"
Insert "36"

[2:35:38 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, sponsor of Amendment 1, labeled 28-LS0116\G.11, explained that this introduces judicial determination and oversight into the auto waiver section of the juvenile justice statute as it pertains to 16 and 17-year-olds. A judge would have discretion to determine, based on a risk needs assessment and a preponderance of the evidence presented by the juvenile, that he/she is amenable to treatment in the juvenile justice system.

CHAIR COGHILL asked if a preponderance of the evidence is a new standard.

MR. KOPP answered no; this is the same standard that is applied when a minor is waived into the adult system for having committed an auto waiver offense. It's a consistent standard that's used throughout the statute.

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SENATOR DYSON asked Mr. Kopp to discuss what happens to a 16 or 17-year-old who is put in adult prison.

MR. KOPP explained that the minor is isolated from the main population and has limited opportunity during the day for activities like exercise. In that type of environment, the degradation of the minor's behavior over time is significant, he said.

CHAIR COGHILL said he has more sympathy for the victims who have suffered the effects of a heinous crime; they may not feel that justice is being done if the minor is not waived into the adult system.

SENATOR DYSON observed that the idea of retribution is contrary to this nation's sense of justice. The public certainly has to be protected, but hopefully there can also be reparation for the

youth who committed the crime. That's the goal of juvenile court.

CHAIR COGHILL commented that justice and rehabilitation are both part of the correctional system.

[2:43:52 PM](#)

CRIS PROVOST, representing himself, Anchorage, Alaska, said he retired from the Office of Public Advocacy last June and most recently worked in the child advocacy section. He described SB 64 as an ideal vehicle for the proposed amendment because they have the same goals. The amendment provides in the auto waiver statute the option of asking the superior court for a hearing so the 16 or 17-year-old can present his/her case. The judge will then decide if the juvenile should be auto waived as an adult or if the juvenile has proved by a preponderance of the evidence that he/she is amenable to treatment by age 20 in the juvenile system.

CHAIR COGHILL summarized that it looks as though the judge would still have the flexibility to waive the juvenile into the adult system if he/she finds by a preponderance of the evidence the need to do that. He asked if that's because of the nature of the crime and a review of the juvenile based on their risk assessment.

MR. PROVOST clarified that this is the auto waiver statute so the juvenile is charged as an adult and they're taken to jail, not a juvenile facility. It's up to the juvenile to request a hearing before the superior court, and the judge will make a determination whether the juvenile stays in the adult system or is dealt with by the juvenile justice system. In 2011, there were 25 states that had this provision, he said.

CHAIR COGHILL said his expectation is that this would become the norm.

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MR. PROVOST agreed it would be the norm for unclassified felonies, but some juveniles facing less serious felonies don't want to be in the juvenile justice system. He said the statistics show that in the last five years, 9.5 youths per year have been auto waived.

CHAIR COGHILL asked if a juvenile who successfully petitions to remain in the juvenile system would have his/her crime dismissed once he/she comes of age.

MR. PROVOST explained that the trial on the merits of the criminal charges will come after the discretionary waiver hearing. If the minor is reverse waived into juvenile justice jurisdiction, he/she will be adjudicated delinquent based on those charges, but there won't be an adult conviction.

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SENATOR WIELECHOWSKI asked him to expand on the explanation of how the process is handled now.

MR. PROVOST explained that the prosecution is the gatekeeper, and DOL sometimes uses discretion and decides not to auto waive a child; a judge has no say in the matter.

SENATOR WIELECHOWSKI asked if it's fair to say that this would change the current system where the prosecutor has the sole discretion to a system where the judge has the discretion.

MR. PROVOST said yes, although the law really doesn't provide discretion. It says a child who is charged with this crime shall be treated as an adult. That's what happens if the prosecution strictly follows the law. Amendment 1 does provide discretion for a judge to decide whether it's appropriate to keep the juvenile in the adult system or move back to juvenile justice. The models are different: the adult model provides punishment and the juvenile model provides restorative justice.

SENATOR WIELECHOWSKI asked why this is an important change from a policy standpoint.

MR. PROVOST said the recidivism rate for adults is 70 percent and the recidivism rate for juveniles that go through the juvenile justice treatment program varies but right now it's 37 percent. Juveniles who are auto waived into the adult system will recidivate more quickly, more seriously, and more frequently than similarly situated juveniles who are treated in the juvenile justice system. Auto waiving juveniles into the adult system doesn't make society safer.

CHAIR COGHILL thanked Mr. Provost and asked Mr. Steiner if he had anything to add.

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MR. STEINER said the data he's seen shows that recidivism rates are lower for juveniles who are handled under the juvenile system versus juveniles who are handled through the adult

system. He agreed with Mr. Provost that the lower level offenders that are handled in the adult system under the waiver statute get out of prison without getting the level of programming that is appropriate for their needs. He offered his expectation that this amendment will enhance public safety and reduced recidivism.

He said the waiver statute, although changed, is essentially intact in the sense that these individuals will still be charged as adults in adult court. The juvenile will have to prove by a preponderance of the evidence that he/she can rehabilitate him/herself by majority age. This is a significant burden and what will practically happen is that the juveniles who committed the very highest level of offenses with the most violent conduct will likely not be able to establish their ability to rehabilitate themselves in a short period of time

CHAIR COGHILL asked how that would be established.

MR. STEINER explained that the facts of the case, the juvenile's history, and psychological assessments are evaluated to determine whether or not it's possible to formulate a treatment program that would allow the juvenile to be rehabilitated by the time he/she comes of age. With the more brutal homicide and sex assault cases that's not an easy thing to establish, especially when the timeframe is just a couple of years. In these cases the juvenile is generally unlikely to prevail. But for the lower level crimes, the juvenile is more likely to get a finding that will keep him/her in the juvenile system. He said he thinks that's why the recidivism rates are so much lower, because similarly situated juveniles are not dealing with the same level of violent conduct as the unclassified felonies.

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CHAIR COGHILL observed that the committee is generally supportive of Amendment 1 and it fits within the scope of the bill, but he would hold it until the next meeting.

SB 64 was held in committee.

[2:59:10 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.