

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 12, 2014

1:37 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

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."

- MOVED CSSB 64(JUD) OUT OF COMMITTEE

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)
 02/10/14 (S) Heard & Held
 02/10/14 (S) MINUTE(JUD)
 02/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Testified that Department of Law does not support proposed Amendment 1 to SB 64.

RALPH SAMUELS, representing himself
 Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to proposed Amendment 1 to SB 64.

CHRIS PROVOST, representing himself
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of proposed Amendment 1 to SB 64.

JORDAN SHILLING, Staff
 Senator John Coghill

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented proposed Amendment 2 to SB 64.

ACTION NARRATIVE

[1:37:54 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Dyson, McGuire, Wielechowski, and Chair Coghill. Senator Olson arrived soon thereafter.

SB 64-OMNIBUS CRIME/CORRECTIONS BILL

CHAIR COGHILL announced the consideration of SB 64. He asked Senator Dyson to summarize the idea of Amendment 1, 28-LS0116\G.11, which the committee was considering at the end of the previous hearing.

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SENATOR DYSON explained that certain very serious crimes committed by juveniles are automatically waived to adult court before the trial. Twenty-four states have amended their laws to allow a judicial review so the judge can make a decision about whether or not the extenuating circumstances make the juvenile a candidate for rehabilitation in the juvenile system. He noted his intention to offer an amendment to the amendment to exclude unclassified felonies from the group of crimes that could be subject to judicial review.

CHAIR COGHILL stated that he was reluctant to include this matter in the bill, but wanted it thoroughly vetted. He asked Ms. Carpeneti to provide the Department of Law's perspective.

[1:42:24 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, Juneau, Alaska, expressed appreciation for the cooperative work on the bill and offered her opinion that in its current form the bill is in good shape. However, the administration is unable to support proposed Amendment 1, which would essentially eliminate the auto waiver for 16 and 17-year-olds who commit very serious crimes.

She said there are two significant interests at work: the interest of doing society's best to rehabilitate a minor, and the interest of public safety. While nobody wants to give up on a minor, some 16 and 17-year-olds commit extremely serious

crimes and the auto waiver statutes were designed to address them.

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SENATOR OLSON joined the committee.

MS. CARPENETI cautioned the committee not to repeal the auto waiver statutes this way because it leaves open questions going forward. For example, a question has been raised about who does the risk assessments that are described in the amendment, and the Division of Juvenile Justice has said it doesn't have the authority to do these for juveniles who have been waived into the adult system. There are also questions about where minors go to be assessed, and what will happen to them while the issue is litigated.

She also pointed out that the current drafting of the amendment would be easier to waive to adult court a person under age 16 who has been charged with murder than it would be to waive somebody who is 16 or 17. This is an evidentiary issue; for minors under age 16 who have committed unclassified felonies or a felony against a person, there is a rebuttable presumption that they are not amenable to treatment in the juvenile system. The amendment doesn't address that rebuttable presumption for 16 or 17-year-olds.

CHAIR COGHILL said the idea was that the juvenile would show that by a preponderance of the evidence he/she could be rehabilitated. He asked for help understanding how this is different.

MS. CARPENETI explained that under current law the state has the burden to prove that a child is not amenable to treatment. However, for a child under 16 years of age who is charged with an unclassified or class A felony, there is a rebuttable presumption that the child is not amenable to rehabilitation. The proposed amendment does not address that rebuttable presumption, she said.

SENATOR DYSON countered that it doesn't do away with it so it stays in its present form.

MS. CARPENETI responded that the amendment doesn't address it at all for 16 and 17 year olds, which would make it harder to prove that the juvenile is not amenable to treatment. It's an evidentiary consideration that should be addressed and is an

example of one of the many things that need to be considered before changing a procedure like this, she said.

She highlighted that Title 27 already has a procedure called dual sentencing that in some cases allows the court to impose both a juvenile sentence and an adult sentence. The person can be addressed in the juvenile system and depending on how he/she does, the adult portion of the sentence may or may not be imposed. This isn't used very often, but it gives a chance to people for whom there is hope for rehabilitation by age 19 or 20. If it doesn't happen by then, the adult sentence is imposed.

MS. CARPENETI said there are things that could be done to make the statutes more responsive, but there are too many public safety concerns to eliminate the auto waiver at this point.

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CHAIR COGHILL asked, under this amendment, what crimes would be charged as a class A felony.

MS. CARPENETI explained that the amendment gives the possibility of a waiver decision on all cases that are auto waived. Unclassified felonies include murder, certain cases of sex trafficking, murder in the first and second degree, sexual assault, rape, and sexual abuse of a minor in the first degree. Class A felonies against a person would include attempted rape, attempted sexual abuse of a minor, manslaughter, and robbery in the first degree.

The current auto waiver also applies to arson, a class B felony against a person where the person used a deadly weapon and had been previously adjudicated delinquent for a similar offense, and two most serious weapons offenses.

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SENATOR MCGUIRE asked if Title 27 is working with dual sentencing and if there is something that's happening that lawmakers aren't addressing.

MS. CARPENETI said her point is that dual sentencing may be the answer in some manslaughter cases. There is some discretion with plea agreements and new evidence where an auto waived case can be brought back to juvenile court, but it doesn't happen very often.

SENATOR MCGUIRE summarized that there is some discretion in sentencing for the judge to say this is an act of manslaughter

versus an intentional homicide and that person would then be incarcerated at a juvenile facility.

MS. CARPENETI confirmed that if a person is charged with murder and convicted of a non-waivable offense, there is a procedure in statute where the juvenile can ask the court to be moved back into the juvenile system.

[1:56:49 PM](#)

SENATOR DYSON asked her to comment on the attorney general's statement about no more plea bargaining on some classes of felonies.

MS. CARPENETI clarified that the policy is no sentence bargaining for serious offenses, but this doesn't apply if new evidence shows the state can't prove what was originally charged.

SENATOR DYSON asked if she's saying that now there will be no sentencing bargains for felonies.

MS. CARPENETI offered to provide the written policy because it's just certain felonies.

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SENATOR WIELECHOWSKI asked if it would change the administration's view if unclassified felonies were removed, as Senator Dyson mentioned.

MS. CARPENETI replied that would be better, but it's preferable to look at the whole picture.

SENATOR WIELECHOWSKI asked if a child who breaks windows and is charged with a felony could be auto waived into the adult system.

MS. CARPENETI replied there is a discretionary waiver statute, but it probably would never be applied to a property crime.

SENATOR WIELECHOWSKI asked for a list of the class A felonies that would apply.

MS. CARPENETI paged through the statutes and named the class A felonies that are crimes against a person: manslaughter, assault in the first degree, manslaughter of an unborn child, certain kidnapping crimes, attempted rape, attempted sexual abuse of a minor, and robbery in the first degree.

SENATOR WIELECHOWSKI said he agrees in concept with the amendment but worries about where to draw the line. He asked to hear the history of the auto waiver statute.

CHAIR COGHILL welcomed Ralph Samuels.

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At ease.

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RALPH SAMUELS, representing himself, Anchorage, Alaska, shared the tragic story of his brother's murder. Under the waiver procedure at that time it took six years to determine whether or not a male who had confessed on video to the execution-style murder was a juvenile. He said Amendment 1 essentially returns the law to that state.

He explained the history of the auto waiver statute. In 1993, former Senator Halford introduced Senate Bill 54 to address the circumstance of a series of murders and violent offenses that were committed by young juveniles. It stirred up a lot of controversy, but it really only affects a very narrow scope of offenders. The law applies to situations where somebody is hurt badly or killed by a juvenile.

MR. SAMUELS said the bill received very broad bipartisan support over the two years it took to pass. The debate points then were similar to those mentioned now about the probability of reformation, brain development on teens, and public safety. McLaughlin Youth Center testified in support of the bill because they wanted to get rid of the young violent offenders in the facility who were staying so long that they became role models for the juveniles who had been adjudicated delinquent for offenses like selling weed or shop lifting.

He cautioned that it is OPA and the public defender's duty to zealously defend all their clients. If the option is available they'll petition to reverse waive, even for the kid who carried a gun. They may not be successful, but they'll try.

MR. SAMUELS shared that his brother was murdered in his own home yet the public defender and OPA wrote a letter saying there were elements of self-defense in the crime. That argument didn't work, but they tried because it's their role in the system, he said.

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He cited the Alaska Constitution Article 1 Section 12 - Criminal Administration and Article 1 Section 24 - Rights of Crime Victims and highlighted that this debate is missing the voice of the victim and victim's rights organization. He concluded with the caution that adding this amendment to the bill will cause the legislation to fail.

CHAIR COGHILL stated that the victim has to be central in any decision.

SENATOR MCGUIRE expressed appreciation that the Chief Justice mentioned the legislation that puts a time limit on the requirement to expedite rulings that favor victims. She also offered her belief that there ought to be a renewed commitment by legislators to pass one piece of victim's rights legislation every year. This would put that constitutional requirement into practice, she said.

CHAIR COGHILL welcomed Mr. Provost.

[2:18:28 PM](#)

CHRIS PROVOST, representing himself, Anchorage, Alaska, said he worked for the Office of Public Advocacy (OPA) for 22 years and retired last June. He extended condolences to Mr. Samuels and expressed outrage that it took six years for the waiver proceeding. It should take four to six months at most, and the court is generally very diligent about that, he said. He also highlighted the Court System reform in the last few years to consider the comments from victims and victim's advocates when making a decision about these crimes.

He commented as follows on the points that were raised about Amendment 1:

- This is not a repeal of the auto waiver statute; it is a provision for judicial review.
- Minors who are charged with an auto waive crime stay in adult prison until a determination is made. This is a concern of the Juvenile Justice Division.
- He questioned the idea that [this amendment would make] it is easier to waive a juvenile age 15 and younger. The intention is that the rebuttable presumption that the juvenile is not amenable to treatment should be part of this. It may not be in the language but the burden is still on the juvenile to prove he/she is amenable to treatment by age 20.

- He questioned the notion that the state has the burden to prove a juvenile is not amenable to treatment, because the first paragraph of AS 47.12.100 addresses the only time the burden would fall on the state to prove that the juvenile is not amenable to treatment.
- The Department of Corrections has done a very good job of segregating juveniles who are waived into the adult system.
- He offered his experience that the Department of Law's policy about no bargaining applies to both plea bargains and sentence bargains for most cases involving violence against a person.
- Juveniles can be waived for felony property crimes through this provision, although it's never used.
- The problem of incorporating these offenses under dual sentencing is that in order for the adult sentence to be imposed, the juvenile has to be determined not amenable to treatment, so the waiver hearing will take place whether dual sentencing is used or not, just like in discretionary waiver.
- With regard to the suggestion to remove the unclassified felonies from the proposed amendment, the practical reality is that the kids who commit the heinous crimes will get waived to the adult system.
- He expressed concern about the juveniles who will slip into the adult system when they're not nearly as culpable as their, often older, codefendants. These are the kids who go along with the idea of doing a robbery or burglary, but have no idea that someone is carrying a weapon.

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SENATOR MCGUIRE said she's inclined to believe that this subject should be addressed in a separate bill. However, she is ready to look for opportunities to help young people who have made mistakes to be rehabilitated. She asked if he was undertaking any efforts, other than the proposed amendment, to help these youths.

MR. PROVOST described efforts when he worked for OPA to work out options other than just having a judge review and make a decision.

SENATOR MCGUIRE suggested he might find more support in the legislature if he shares some of those ideas.

SENATOR DYSON asked him to discuss why dual sentencing isn't used.

MR. PROVOST said it's a convoluted statute that's open to interpretation, and it still involves a hearing before a judge to determine whether or not the sentence should be imposed.

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At ease

[2:32:46 PM](#)

CHAIR COGHILL reconvened the meeting and asked Senator Dyson to speak to Amendment 1.

SENATOR DYSON described his efforts over the years to work on restorative justice. He related a personal experience from childhood and asked the committee to consider that sometimes there are extenuating circumstances for youths who have committed a heinous crime. He said he appreciates the pushback and he has no intention of hobbling a good piece of legislation.

CHAIR COGHILL said he agrees with some of what's been said in defense of the amendment and he's willing to take on the issue, but it's outside the scope of what he envisions for this bill. He suggested the sponsor consider withdrawing Amendment 1.

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SENATOR DYSON opined that it's not out of line to consider this matter in this bill. He continued to say that he has begged two attorneys general, the governor and several others within the Department of Law to take on the issues of sentencing review, smart justice, and disproportionate sentencing. It's been to no avail. He cited statistics to illustrate that the current system isn't working: 60 percent of the people in prison today are not violent; there are 2.5-3 times as many Alaska Natives in prison as any other ethnic group; prisons are overcrowded; Alaska incarcerates its citizens at the 4th or 5th highest rate in the nation; and the Justice Forum says Alaska is amongst the worst states for barriers to reentry. At the current rate, Alaska will have to build another \$350 million prison in six years, and it doesn't appear that the Department of Law is actively dealing with this problem. He concluded that DOL's inertia verges on irresponsibility.

SENATOR DYSON withdrew Amendment 1, 28-LS0116\G.11.

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At ease

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CHAIR COGHILL moved Amendment 2, labeled 28-LS0116\E.3.

SENATOR MCGUIRE objected for purposes of an explanation.

AMENDMENT 2

OFFERED IN THE SENATE

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

Page 1, line 1, following "**offenses;**":

Insert "**relating to the definition of 'prior convictions' for certain theft offenses;**"

Page 2, line 17:

Delete "**, entice,**"

Page 5, following line 30:

Insert a new bill section to read:

"* **Sec. 12.** AS 11.46.295 is amended to read:

Sec. 11.46.295. Prior convictions. For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c),

(1) a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed;

(2) a conviction for an offense under Alaska law where the value of the property or services for the offense was lower than the value of property or services for the offense under current Alaska law, is a prior conviction for that offense; and

(3) the [. THE] court shall consider the date of a prior conviction as occurring on the date that sentence is imposed for the prior offense."

Renumber the following bill sections accordingly.

Page 10, line 13:

Delete "**of**"

Insert "**involving**"

Page 12, line 1:
Delete "time"
Insert "a day [TIME]"

Page 12, line 3, following "liberty":
Insert "on that day"

Page 12, line 15:
Delete "plan"

Page 12, line 17:
Delete "the director of"

Page 14, line 7:
Delete "and"
Insert "or"

Page 14, line 13:
Delete "by the close of the next business day"
Insert "within 24 hours"

Page 14, line 17:
Delete "(g) of this section"
Insert "this subsection"

Page 21, line 31, following the second occurrence of
"Act,":
Insert "AS 11.46.295, as amended by sec. 12 of
this Act,"

Page 22, line 1:
Delete "sec. 12"
Insert "sec. 13"
Delete "sec. 13"
Insert "sec. 14"

Page 22, line 2:
Delete "sec. 14"
Insert "sec. 15"
Delete "sec. 15"
Insert "sec. 16"

Page 22, line 3:
Delete "sec. 16"
Insert "sec. 17"
Delete "sec. 17"

Insert "sec. 18"

Page 22, line 4:
Delete "sec. 18"
Insert "sec. 19"

Page 22, line 5:
Delete "sec. 19"
Insert "sec. 20"
Delete "sec. 20"
Insert "sec. 21"

Page 22, line 6:
Delete "sec. 21"
Insert "sec. 22"
Delete "sec. 22"
Insert "sec. 23"

Page 22, line 7:
Delete "secs. 1 - 27 and 29 - 34"
Insert "secs. 1 - 28 and 30 - 34"

Page 22, line 8:
Delete "sec. 23"
Insert "sec. 24"

Page 22, line 9:
Delete "sec. 25"
Insert "sec. 26"
Delete "sec. 26"
Insert "sec. 27"

Page 22, line 10:
Delete "sec. 27"
Insert "sec. 28"

Page 22, line 11:
Delete "secs. 1 - 27 and 29 - 34"
Insert "secs. 1 - 28 and 30 - 34"

Page 22, line 12:
Delete "secs. 1 - 27 and 29 - 34"
Insert "secs. 1 - 28 and 30 - 34"

Page 22, line 16:
Delete "sec. 30"
Insert "sec. 31"

Page 22, line 18:
Delete "sec. 30"
Insert "sec. 31"

Page 22, following line 19:

Insert a new bill section to read:

"* Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISIONS: REGULATIONS. (a) The Department of Corrections may adopt regulations necessary to implement AS 33.05.020(f) and (g), added by sec. 26 of this Act.

(b) The board of parole may adopt regulations necessary to implement AS 33.16.060(c), added by sec. 27 of this Act, and AS 33.16.150(b), as amended by sec. 28 of this Act.

(c) The regulations adopted under (a) and (b) of this section take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2014."

Renumber the following bill section accordingly.

Page 22, line 20:
Delete "sec. 28"
Insert "sec. 29"

Page 22, following line 20:

Insert new bill sections to read:

"* Sec. 37. Section 35 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 38.** Sections 1 - 28 and 30 - 34 of this Act take effect on July 1, 2014."

CHAIR COGHILL summarized that Amendment 2 provides mutually acceptable language for the Nygren credit, and the balance is the cleanup language that was discussed during the previous hearing.

JORDAN SHILLING, Staff, Senator John Coghill, explained that the first change is to the title. The second change removes the term "entice" from Senator Wielechowski's amendment. The next change clarifies that changing the felony theft threshold does not affect prior offenses. Next, the phrase "crimes of domestic violence" is changed to "crimes involving domestic violence." The next change clarifies that it does not jeopardize credit for

the entire treatment program if a person for some reason spends a day doing something that is not for rehabilitative purpose. It only affects that day. Next, the terms "plan" and "the director of" were removed to provide flexibility for the Nygren credit. The next change is a wording preference changing "and" to "or." Then to tighten the reporting requirement for the 24/7 program, terminology was changed from "by close of next business day" to "within 24 hours." The change on page 14, line 17, is a wording preference. Page 21, line 31, ameliorates a drafting error and adds burglary and criminal trespass into the applicability statutes. Finally, a new section says the Department of Corrections can start working on regulations immediately.

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SENATOR MCGUIRE removed her objection.

SENATOR COGHILL announced that without further objection, Amendment 2 is adopted.

[2:48:12 PM](#)

SENATOR MCGUIRE moved to report Version E CS for SB 64, as amended, from committee with individual recommendations and attached fiscal note(s).

SENATOR DYSON thanked the Chair and Senator Ellis for their work on the Sentencing Commission.

CHAIR COGHILL thanked the committee (Senator Dyson in particular), Senator French and Senator Ellis.

Finding no further objection, he announced that CSSB 64(JUD) and forthcoming fiscal notes moved from the Senate Judiciary Standing Committee.

[2:50:06 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:50