

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 9, 2016

1:41 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Peter Micciche
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 182

"An Act relating to genetic genealogy, DNA testing, DNA analysis, DNA privacy, and DNA property rights."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 91

"An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; establishing a pretrial services program with pretrial services officers in the Department of Corrections; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violations of municipal ordinances; relating to parole; relating to correctional restitution centers; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to the duties of the commissioner of corrections; amending Rules 6, 32, 32.1, 38, 41, and 43, Alaska Rules of Criminal Procedure, and repealing Rules 41(d) and (e), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 182

SHORT TITLE: DNA TESTING EXEMPTION FOR GENEALOGY

SPONSOR(s): SENATOR(s) MCGUIRE

02/17/16 (S) READ THE FIRST TIME - REFERRALS
02/17/16 (S) JUD
03/09/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 91

SHORT TITLE: OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

SPONSOR(s): SENATOR(s) COGHILL

03/25/15 (S) READ THE FIRST TIME - REFERRALS
03/25/15 (S) STA, JUD, FIN
04/02/15 (S) STA AT 9:00 AM BUTROVICH 205
04/02/15 (S) Heard & Held
04/02/15 (S) MINUTE(STA)
02/03/16 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/03/16 (S) STA, JUD, FIN
02/13/16 (S) STA AT 10:00 AM BUTROVICH 205
02/13/16 (S) Heard & Held
02/13/16 (S) MINUTE(STA)
02/18/16 (S) STA AT 8:30 AM BUTROVICH 205
02/18/16 (S) Heard & Held
02/18/16 (S) MINUTE(STA)
02/25/16 (S) STA AT 9:00 AM BUTROVICH 205
02/25/16 (S) Heard & Held
02/25/16 (S) MINUTE(STA)
03/01/16 (S) STA AT 8:30 AM BUTROVICH 205
03/01/16 (S) Heard & Held
03/01/16 (S) MINUTE(STA)
03/03/16 (S) STA AT 8:30 AM BUTROVICH 205
03/03/16 (S) Heard & Held
03/03/16 (S) MINUTE(STA)
03/08/16 (S) STA AT 9:00 AM BUTROVICH 205
03/08/16 (S) Moved CSSSSB 91(STA) Out of Committee
03/08/16 (S) MINUTE(STA)
03/08/16 (S) STA AT 5:00 PM BUTROVICH 205
03/08/16 (S) -- MEETING CANCELED --
03/09/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

FORREST WOLFE, Staff
Senator Lesil McGuire

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 182 on behalf of the sponsor.

BENNETT GREENSPAN, President and founder
Family Tree DNA
Houston, Texas

POSITION STATEMENT: Testified in support of SB 182.

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

POSITION STATEMENT: Answered questions related to SB 91.

ACTION NARRATIVE

[1:41:35 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:41 p.m. Present at the call to order were Senators Coghill, Costello, Wielechowski, and Chair McGuire. Senator Micciche arrived during the course of the meeting.

SB 182-DNA TESTING EXEMPTION FOR GENEALOGY

[1:42:16 PM](#)

CHAIR MCGUIRE announced the consideration of SB 182.

[1:42:34 PM](#)

SENATOR COGHILL moved to adopt the committee substitute (CS) for SB 182, labeled 29-LS1289\E, as the working document.

CHAIR MCGUIRE found no objection and version E was before the committee.

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FORREST WOLFE, Staff, Senator Lesil McGuire, Alaska State Legislature, introduced SB 182 on behalf of the sponsor reading the following prepared testimony:

SB 182 has a very limited scope: to amend Alaska's statutes to provide solid legal ground for an emerging and increasingly popular new field known as genetic genealogy.

When the Alaska Genetic Privacy Act was passed, genetic genealogy was still in its infancy and nowhere near as popular as it is today, thus this field was not considered when crafting and enacting this legislation.

Because of this, a problematic legal gray area has arisen in this state that prevents genetic genealogy companies from feeling comfortable conducting business in Alaska. SB 182 rectifies this issue.

Genetic Genealogy must be participated in voluntarily, and has many benefits for people seeking to trace their ancestral lineage.

Online to provide more information on genetic genealogy and answer any questions we have Bennett Greenspan, President of Family Tree DNA.

We ask your support on this bill that makes Alaska a better place to do business for a rapidly growing industry and research field, and again, thank you for hearing SB 182.

SENATOR COGHILL pointed out that the bill is in the exemption section of the statute. Thus, it starts in the negative.

CHAIR MCGUIRE summarized that this bill carves out an exception in AS 18.13.040 saying it does not apply to collection of a DNA sample. She asked Mr. Greenspan to explain why Alaska law needs this clarification.

BENNETT GREENSPAN, President and founder, Family Tree DNA, Houston, Texas, testified in support of SB 182. He explained that his company started out assisting families that were looking for lost family members. Over the years, it morphed to a company that also tests people to determine their genealogical roots. They also do work in the adoption community as well as trying to help children who want to reconnect with biological family. He highlighted that in 2005 the National Geographic Society selected his company to do their DNA testing, which looks exclusively at human migration patterns around the world. He described this as the soft side of genetics, essentially helping people look into the history book that is written into their cells, and nothing else.

He said SB 182 is necessary because the way the genetic privacy statute is written, the DNA testing his company does could be categorized with doctor-directed and medically ordered tests. The cheek swab he uses could be considered a medical device and regulated as such, even though Family Tree DNA does not perform medical tests.

When the FDA addressed the subject of direct to consumer tests in 2008 and 2009, it was trying to make sure that people don't buy medical tests and get information on those tests online rather than going to their medical doctor for an explanation. On both occasions, the FDA said it wasn't interested in what Family Tree DNA was doing. SB 182 would clarify the statute and provide an exemption for genetic genealogy testing.

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CHAIR MCGUIRE noted that for many years the legislature declined to allow DNA samples to be collected. During the Murkowski administration, a bill passed allowing collection, but not retention, of Buccal Swabs. There also was a specific prohibition on medical use, with a few specific exceptions. Civil and criminal penalties are attached for misuse of the DNA results.

Family Tree DNA and other similar companies asked her to introduce a clarifying measure and it seemed reasonable and necessary. Alaskans and others are increasingly interested in finding out more about their genetic genealogy.

1:53:03 PM

SENATOR WIELECHOWSKI read AS 18.13.010(a)(1) and questioned whether this couldn't already be done with a disclosure agreement.

MR. GREENSPAN said his concern is potentially being swept into some action or case that he's not part of. He related that when the bill passed in 2005, he estimates there were not more than 100,000 people worldwide that had done a DNA test for genealogical and anthropological purposes. Today that number is approaching 3 million, and counsel has pointed out the lack of clarity in the statutes is a potential problem.

SENATOR WIELECHOWSKI asked if the bill would exempt Family Tree DNA and similar companies from a cause of action if there were a security breach.

MR. GREENSPAN discussed the measures his company employs to ensure their system is secure and reiterated that they do not look at medical issues. His interest is ensuring that people can find out about their DNA and that he can operate in all 50 states knowing that what is permissible in one is permissible in the others.

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SENATOR WIELECHOWSKI voiced interest in protecting Alaskans and ensuring that there won't be an exemption if an organization is reckless or negligent. He suggested that Legislative Legal Services may be able to answer the questions.

MR. GREENSPAN stressed his interest in safety and privacy.

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SENATOR COSTELLO asked if a family that adopts a child from China can request DNA testing.

MR. GREENSPAN answered in the affirmative describing efforts of Vietnamese American and Korean American adults to locate lost family. He noted that Alaska is uniquely progressive because it has open birth records.

SENATOR COSTELLO asked if he and his competitors foresee federal legislation relating to DNA testing for genealogical and anthropological purposes.

MR. GREENSPAN related that just three companies in the U.S. offer this type of DNA testing and Family Tree DNA is the only company that offers the mitochondrial test. His two competitors offer recombinant DNA testing, and his company allows those people to move their records to the Family Tree DNA database for genealogical purposes. He didn't know that there would ever be one large database.

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SENATOR COGHILL asked if the Department of Justice ever subpoenaed DNA information from his company.

MR. GREENSPAN said his company probably hasn't gotten those requests because there is no chain of custody. He relies on what his customers tell him about whose cheek scraping they're sending and that may or may not be accurate.

SENATOR COGHILL commented that birth parents who don't want contact after a closed adoption might be surprised if someone did a DNA test and then showed up at their door.

MR. GREENSPAN agreed and added that each state regulates adoptions a little differently.

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CHAIR MCGUIRE held SB 182 in committee for future consideration.

SB 91-OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

[2:17:34 PM](#)

CHAIR MCGUIRE announced the consideration of SSSB 91. [This was the first hearing and CSSSSB 91(STA) was before the committee.]

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SENATOR JOHN COGHILL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 91, introduced the legislation speaking to the following sponsor statement:

Senate Bill 91 implements proven practices to reduce recidivism, keep Alaskans safe, hold offenders accountable, and control corrections spending.

Increased spending on prisons has not brought Alaskans greater public safety: nearly two out of every three inmates who leave prison return to prison within three years. The high rate of recidivism has significantly increased Department of Corrections operating costs to \$324 million in FY 2016, and spurred the opening of the Goose Creek Correctional Center, costing the state \$240 million in construction funds.

Alaska Criminal Justice Commission

Seeking a better public safety return on our state's corrections spending, the legislature established the Alaska Criminal Justice Commission. The Commission included legislators, judges, law enforcement officers, prosecutors, defenders, corrections officials, and members representing crime victims and Alaska Natives. The Commission spent over a year conducting an exhaustive review of the state's pretrial, sentencing, corrections, and community supervision data and systems.

SB 91 Incorporates the Commission's Recommendations

The Commission developed a package of consensus recommendations that will reduce the state's daily prison population by 21 percent over the next 10 years, saving the state \$424 million. SB 91 aims to:

- Implement evidence-based pretrial practices by expanding the use of citations in lieu of arrest for lower-level nonviolent offenses; and making changes to bail practices to focus pretrial release decisions more on risk than on ability to pay.
- Focus prison beds on serious and violent offenders by diverting nonviolent misdemeanor offenders to alternatives; revising drug crime penalties; adjusting dollar amounts for felony property crimes to account for inflation; realigning sentence ranges in statute, expanding and streamlining parole; and incentivizing sex offenders to complete treatment programming.
- Strengthen probation and parole supervision by standardizing sanctions for violations of probation and parole conditions to ensure they are swift, certain, and proportional; establishing incentives to comply with supervision conditions; and focusing treatment resources on high-needs offenders.
- Improve opportunities for successful reentry by offering limited licenses to eligible revoked offenders; creating a reentry program within the Department of Corrections; and opting out of the federal ban on food stamps for people convicted of drug crimes.

Reinvest a portion of the savings from these reforms into evidence-based practices designed to improve public safety, control corrections populations, and reduce recidivism, including supervision services, victims' services, violence prevention, treatment services, and reentry services.

Cost of Doing Nothing: \$169 Million

Alaska's prison population grew 27 percent in the last decade, nearly three times faster than the resident population. At this rate, the Department of

Corrections projects the need to house an additional 1,416 inmates by 2024, which will cost the state at least \$169 million in new spending. With the disappointing recidivism rates and public safety outcomes the state has been achieving, the cost of doing nothing is too high.

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JORDAN SHILLING, Staff, Senator John Coghill, responding to a question from the sponsor, reported that 95 percent of offenders will return to their communities.

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SENATOR COGHILL informed the committee that in an effort to turn the corner on recidivism the Speaker of the House, Governor, and Chief Justice of the Alaska Supreme Court wrote letters to the PEW Charitable Trusts ("PEW") requesting technical help looking at Alaska recidivism statistics compared to other states. He said they brought statistics that many hadn't seen before and he believes "we're looking at ourselves in a very new way." He noted that there was some pushback but it wasn't unexpected.

He reviewed the following key findings:

- The pretrial inmate population has grown 81 percent in the last decade.
- Half of the pretrial defendants are detained on nonviolent charges, including misdemeanors.
- The bail system is tied to money, not risk.
- 28 percent of the prison population is pretrial.
- The length of stay for felonies rose 31 percent over the last decade.
- 75 percent of offenders entering prison were convicted of a nonviolent crime.
- 20 percent of the population are incarcerated for technical violations.

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SENATOR MICCICHE joined the committee.

SENATOR COGHILL noted that the Alaska Criminal Justice Commission annual report to the legislature on page 10 lists the 21 recommendations to decrease corrections costs and protect public safety.

He directed attention to the color-coded sheet in the packet that cross references the bill section with the list of recommended policies for the categories of pretrial, sentencing, community supervision, and other. He mentioned the pretrial category and the policy called "citation versus arrest" that is addressed in Sections 33-35. Additional pretrial policies are "risk-based release decision making," and "pretrial supervision." He noted that pretrial supervision will be part of the reinvestment that will cost money and require different treatment of prison beds.

SENATOR COGHILL listed the recommended policies in the sentencing category for "misdemeanors," "controlled substances," "felony theft threshold," "presumptive ranges," "discretionary parole/administrative parole," "geriatric parole," and "sex offender treatment."

CHAIR MCGUIRE clarified that a series of U.S. Supreme Court decisions affect what the state legislature has had to do to comport with those opinions. She mentioned the Blakely vs. Washington ruling that said presumptive sentences were okay and mandatory minimum sentences could be held at a higher level. She asked the sponsor to explain the interplay with Blakely and whether or not this bill would challenge that ruling.

SENATOR COGHILL, speaking to the presumptive sentencing provisions in Sections 67-69, said those ranges could probably be moved to a mid range but aggravators and mitigators would still have to be argued at sentencing.

CHAIR MCGUIRE added that states that had the circumstances of aggravators and mitigators had to have a separate trial unless they were a tenet of the original sentencing.

She asked Mr. Shilling to discuss the proposed policy for controlled substances in sentencing.

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MR. SHILLING explained that the commission recommended two aspects of sentencing related to drugs. One is related to commercial drug delivery/dealing and the other is related to simple drug possession. Existing law does not differentiate between a high-level and low-level drug dealer so the commission recommended creating a 2.5 gram weight threshold to differentiate the two. Dealing above 2.5 grams of certain substances would be a higher level felony and dealing below the 2.5 gram threshold would be a lower level felony. The goal is to

differentiate between the drug trafficker and someone who presumably is selling to support their habit.

For simple possession, the commission recommended creating a 2.5 gram weight threshold.

CHAIR MCGUIRE asked how the sponsor arrived at the 2.5 gram threshold. She also asked if he had any comment on the disproportionate and potentially discriminatory sentencing for users of crack cocaine versus powder cocaine. Arguably, people in a lower economic class would use crack, whereas a white collar criminal would be more likely to use powder cocaine.

MR. SHILLING said the 2.5 gram threshold is admittedly arbitrary, but the original recommendation was a 5 gram threshold. He admitted that there are incongruences when all drugs are considered together and a weight threshold is established. He suggested the committee might want to look at that to try and diminish the incongruities.

SENATOR COGHILL suggested the committee deal with each category of the bill separately, preferably in the order mentioned previously.

CHAIR MCGUIRE said she likes the idea of dividing the bill in the four major areas of "pretrial," "sentencing," "community supervision," and "other." Public testimony would open once the committee has a solid understanding of what the bill does in each of the categories and the controversial areas have been flagged. She asked future testifiers to point to the specific provisions they have concerns with and avoid generalizations. She relayed her intention to spend two weeks on the bill and send it along to the Finance Committee in perfect legal form.

She noted that she flagged the weight threshold and stated her preference to consider dosage and usage.

SENATOR COGHILL reviewed his approach to consider the bill and suggested the committee rely heavily on the Department of Law, the Public Defender, and the Court System to understand how the bill will work in practice.

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SENATOR COGHILL explained that the community supervision category includes policy recommendations for graduated sanctions/incentives, cap in technical violation stays,

probation earned credit, maximum probation terms, good-time on electronic monitoring, and CRCs - halfway houses.

SENATOR MICCICHE requested a copy of the sponsor's crib notes.

CHAIR MCGUIRE requested the crib notes and a document showing the changes between the original bill and the State Affairs committee substitute.

SENATOR COGHILL discussed the policy recommendations for limited driver's license, administrative license revocations, food stamps, public assistance, re-entry program, community work, limiting pretrial credit to 120 days, suspended entry of judgment, and victim's rights, all of which are in the "other" category.

He noted that the State Affairs Committee inserted a provision requiring a drug and alcohol test to qualify for public assistance. He said he doesn't know if it's constitutional, but any number of jobs require similar testing as a matter of public safety. He opined that there shouldn't be a privacy issue.

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CHAIR MCGUIRE said it's an equal protection under the law issue and she'll be looking for the nexus and equal application.

SENATOR COGHILL indicated he was open to the discussion.

He asked Mr. Shilling to supplement the discussion on community work.

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MR. SHILLING described the two aspects to the community work service change. One is to prevent the conversion of community work service hours to prison time. The commission felt it was odd that there was a non-incarceration option that could be converted to incarceration. There was some thought that the state shouldn't pay for someone to spend 10-15 days in prison simply because they couldn't or didn't want to complete their community work service. The second aspect is if there is an indigent offender who is required to pay a fine, there is an option in statute for them to work off the fine. Existing statute says \$3 and the bill links the work to the minimum wage.

CHAIR MCGUIRE asked if restitution could be included.

MR. SHILLING said he would look into that.

SENATOR COGHILL asked Mr. Shilling to speak to limiting pretrial credit to 120 days.

MR. SHILLING explained that the provision to cap the pretrial credit to 120 days was at the request of the Office of Victims' Rights. Anecdotal reports were that the day-for-day jail credit equivalency for spending time on electronic monitoring created an incentive for defendants to delay their trial in perpetuity to get that credit.

SENATOR COGHILL asked Mr. Shilling to discuss the suspended entry of judgment.

MR. SHILLING explained that it is very similar to the existing suspended imposition of sentence. A person admits their guilt and if they successfully complete some programs, their conviction is set aside. The major difference is the judgment wouldn't be entered in the first place and would provide some record confidentiality upon completion of the SIJ.

SENATOR COGHILL added that the case will be viewable on CourtView while the case is active, which was a request of the Office of Victims' Rights.

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CHAIR MCGUIRE thanked the sponsor and his staff and held SB 91 in committee.

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There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.