

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 11, 2016

2:13 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Peter Micciche

COMMITTEE CALENDAR

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 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) STA RPT CS 2DP 1DNP 1NR 1AM NEW TITLE
 03/09/16 (S) DP: COGHILL, MCGUIRE
 03/09/16 (S) DNP: STOLTZE
 03/09/16 (S) NR: HUGGINS
 03/09/16 (S) AM: WIELECHOWSKI
 03/09/16 (S) JUD WAIVED PUBLIC HEARING NOTICE, RULE
 23
 03/09/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/09/16 (S) Heard & Held
 03/09/16 (S) MINUTE(JUD)
 03/11/16 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Presented the Alaska Criminal Justice
 Commission pretrial recommendations embodied in SB 91.

CRAIG RICHARDS, Attorney General
Department of Law (DOL) and Commissioner
Alaska Criminal Justice Commission
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

DEAN WILLIAMS, Commissioner Designee
Department of Corrections and Commissioner
Alaska Criminal Justice Commission
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

GARY FOLGER, Commissioner
Department of Public Safety (DPS) and Commissioner
Alaska Criminal Justice Commission
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

KRIS SELL, Lieutenant
Juneau Police Department and Commissioner
Alaska Criminal Justice Commission
Juneau, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

BRENDA STANFILL, Executive Director
Interior Alaska Center for Non-Violent Living and Commissioner
Alaska Criminal Justice Commission
Fairbanks, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

QUINLAN STEINER, Public Defender
Public Defender Agency and Commissioner
Alaska Criminal Justice Commission
Anchorage, Alaska

POSITION STATEMENT: Provided supporting testimony for SB 91.

ACTION NARRATIVE

[2:13:17 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 2:13 p.m. Present at the call to order were Senators Coghill, Costello, and Chair McGuire. Senator Wielechowski arrived during the course of the meeting.

SB 91-OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

[2:13:34 PM](#)

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

[2:14:09 PM](#)

SENATOR JOHN COGHILL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 91, said today Mr. Shilling will present the pretrial policies. He reported that the pretrial population has grown by 81 percent in the last decade and comprises 28 percent of the prison population. The reform recommendations for pretrial services relate to citation vs. arrest, risk-based release decision making, and pretrial supervision.

CHAIR MCGUIRE stated that the hearings on SB 91 are divided into the four categories and today would focus on pretrial policies. For each category the initial testimony would be invited and public testimony would come later. She targeted the week of March 21-25 to move the bill from committee.

She noted that in 2014, detainees whose most serious charge was a nonviolent misdemeanor were staying an average of 9 days during the pretrial period. This is 3 days longer than the average stay in [2005]. At \$142 per bed per day, that translates to \$210,000 per day for pretrial nonviolent offenders.

[2:19:29 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, delivered a PowerPoint presentation of the Alaska Criminal Justice Commission Pretrial Recommendations (1-4).

Recommendation 1: Expand the use of citations in place of arrest for lower-level nonviolent offenses.

Mr. Shilling explained that the bill takes the form of a presumption of nonarrest, but includes exceptions to ensure that officers have the discretion to arrest an individual deemed a flight risk or danger to the public.

SENATOR COGHILL noted that the citation vs. arrest provisions are found in Sections 33-35.

CHAIR MCGUIRE asked Mr. Shilling to flag the areas where there is pushback.

[2:21:03 PM](#)

MR. SHILLING said that even though law enforcement officers have always had the discretion to issue a citation for lower-level nonviolent crimes, 56 percent of pretrial admissions to prisons are from nonviolent misdemeanor charges. He described Section 33 as the meat of the citation policy.

Law enforcement initially pushed back asking the sponsor to take a careful look at where discretion was limited. The Senate State Affairs Committee tightened these provisions and the sponsor's team is continuing to actively work with groups on this, he said.

He listed the following key findings of the commission:

- There has been 81 percent growth in the pretrial inmate population in the last decade.
- 28 percent of the entire prison population are pretrial detainees.
- Half of pretrial defendants are detained on nonviolent charges, including misdemeanors.
- The bail system is tied to money, not risk.

Recommendation 2: Utilize risk-based pretrial release decision-making.

MR. SHILLING explained that the two pretrial risk factors are the risk of reoffending during the pretrial phase, and the risk of not appearing in court. However, there currently isn't a statistical tool to measure these risks. Instead, the seriousness of the crime and the individual's criminal history is considered. This is despite the fact that someone who committed a serious crime isn't necessarily high risk and someone who committed a low-level crime isn't necessarily low risk. Thus, moving to a risk-based system makes sense, he said.

He displayed a chart showing that less than half of the defendants sampled are released from prison pretrial, and only 12 percent are released on their own recognizance. He displayed a second chart showing that two-thirds of defendants sampled were required to pay monetary bond to attain release. Because secured bond is ordered in a majority of cases, release is often linked to the defendant's ability to pay rather than their risk of pretrial failure.

[2:23:25 PM](#)

SENATOR WIELECHOWSKI joined the committee.

[2:23:41 PM](#)

MR. SHILLING displayed a chart that illustrates that monetary bail leads to detention on low bond amounts. For example, 36 percent of defendants are able to post bond for secured bail under \$500, whereas 57 percent are unable to post bond for secured bail between \$500 and \$999. He reported that the states that do use pretrial risk assessments are seeing big benefits; the research shows that using a pretrial risk assessment tool is more predictive than professional judgment alone. That has been the experience in Kentucky where 70 percent of their pretrial defendants are released. The data shows that 90 percent appear at their hearings and 92 percent don't commit a new crime pretrial. This illustrates the potential to get the same or better results by moving to a smarter, more risk-based approach.

The research also shows that pretrial detention for low-risk defendants can lead to worse outcomes. If held longer than 24 hours, a pretrial defendant is more likely to engage in criminal activity during the pretrial phase and more likely to recidivate long term.

SB 91 envisions the Department of Corrections conducting a pretrial risk assessment on every defendant pretrial. A release decision will be made based on that risk assessment. He added, "We feel very strongly, as did the commission, that a system that isn't based on risk, is not serving the public well. It's not serving the state's budget well either."

[2:27:27 PM](#)

Recommendation 3: Implement meaningful pretrial supervision.

Recommendation 4: Focus pretrial supervision resources on high-risk defendants.

MR. SHILLING said the commission also recommended that the state begin supervising defendants pretrial and that the supervision resources be sharply focused on those most likely to reoffend. Individuals who need minimal supervision might only receive court date reminders from their pretrial supervisor. Individuals who need basic supervision might receive phone calls, have in-office appointments and field visits. Risky defendants released pretrial would receive enhanced supervision. This would include the 24/7 sobriety program, electronic monitoring, and very high frequency visits. He said this is one of the large public safety enhancements in SB 91, and a critical part of reinvestment.

[2:29:19 PM](#)

CRAIG RICHARDS, Attorney General, Department of Law (DOL), described the commission process as a collaborative consensus exercise that worked well. Anyone who felt strongly about a policy had the ability to block it. He noted that DOL blocked a number of suggestions it felt weren't good. Similarly, when DOL's suggestions received pushback, they generally worked with other commissioners to get them amended so that prosecutors were comfortable. He provided examples. The original proposal had 5 grams rather than 2.5 grams as the trigger point for the change in the drug classification. He noted that he personally pushed to make the second DUI offense jailable. The original provision for the suspended reentry of judgment decision wasn't acceptable and Mr. Skidmore's redraft was ultimately adopted by the commission. DOL also influenced the inflation provision on the theft statutes and the sentence reductions for mandatory minimums.

ATTORNEY GENERAL RICHARDS said that while it was a lot of time and work, the Department of Law was ultimately able to buy in on all the proposals.

[2:32:09 PM](#)

ATTORNEY GENERAL RICHARDS said the Department of Law believes that pretrial supervision is a very good idea but the downside is the cost of instituting another layer of organization into the system. The hope is that it will be successful and he looks forward to the legislature making a decision on worthwhile pre-investment.

He confirmed that there was broad consensus that the existing bail system could be better. It doesn't make sense when 50 percent of eligible inmates can't afford their bail, particularly when the objective goal is to reduce bed counts when possible. The approach taken to have a risk assessment on some sort of grid also had wide consensus. DOL in particular is appreciative that the system that's in place is one that will be collaborative between the different groups and corrections.

[2:33:48 PM](#)

ATTORNEY GENERAL RICHARDS said there were a number of meetings on the citation vs. arrest policy and there was some pushback but they landed in a good spot. Creating a presumption of nonarrest in most circumstances changes the habit of the behavior, and the recent amendments empower law enforcement to make arrests when they deem it's appropriate or for certain classes of offenses.

He concluded that all the proposals are good and they have DOL's support.

CHAIR MCGUIRE asked if there was any discussion about the potential for discrimination in sentencing when the trigger point for the drug classification is based on weight.

ATTORNEY GENERAL RICHARDS said the discussion came up but the decision was to choose simplicity. He believes that is reasonable but either policy could be defended.

SENATOR COGHILL highlighted that both are felonies and part of the discussion was to differentiate between using because of an addiction and trafficking at a higher level.

[2:36:27 PM](#)

CHAIR MCGUIRE requested more thought on the topic because the discussion in the marijuana legislation was dosage.

ATTORNEY GENERAL RICHARDS suggested the Controlled Substance Advisory Committee would be a good resource.

SENATOR WIELECHOWSKI expressed interest in hearing DOL's opinion on the bill as a whole and whether victim rights were adequately included in developing the recommendations.

ATTORNEY GENERAL RICHARDS said the people that attended the meetings had a voice and an opportunity to provide meaningful input, whether they were on the commission, in the subcommittees, or a member of the public.

[2:40:33 PM](#)

SENATOR WIELECHOWSKI asked if he believes that this legislation can pass and still protect the rights of both victims and the public.

ATTORNEY GENERAL RICHARDS said he does. He related that he asked Attorney General Sam Olens what didn't work in Georgia's criminal justice initiative reforms, and his answer was that all the policies worked and none needed to be changed. While there's no guarantee that will happen here, he believes the commission picked policies that will work.

[2:41:51 PM](#)

DEAN WILLIAMS, Commissioner Designee, Department of Corrections (DOC), said he's fairly new to the commission that made these recommendations, but he's been following this work in his other

occupation for several years. He noted that some of the reforms in the juvenile system are somewhat similar, particularly in the area of pretrial. The concept is to jail the people who represent the most risk, and keep the people who represent low risk out of jail and away from career criminals. The concept makes sense in both systems, he said.

He highlighted that law enforcement, corrections, and safety organizations are naturally risk averse because they don't want anything to go wrong when they've been charged with protecting the public. If there isn't an established process to analyze what they're doing in terms of risk, they will play it overly safe and become more cautious every day. The current pretrial data clearly illustrates that is what has been happening with pretrial inmates in Alaska and nationwide over the last 10 years.

COMMISSIONER WILLIAMS agreed with Mr. Shilling's assertion that a pretrial risk assessment process has better outcomes than relying on professional judgment. He pointed to the practice of using halfway houses as an example of making decisions pretrial to drive down the prison population numbers, but acknowledged that he was a little nervous about that decision-making right now. He related that it's difficult to convince staff to move someone even if they seem low risk because it's their decision if something goes wrong. The risk assessment tool will help guide this decision-making and has the potential to be a huge help to the department.

COMMISSIONER WILLIAMS alluded to data from other states and emphasized that the right reforms in pretrial policies has the potential to not only lower prison population numbers but also lower crime rates. This naturally follows because the people in jail need to be there and the people who get out will become productive and stay out of trouble. These reforms aren't about compromising safety but rather about enhancing safety for the entire state. That's why the Department of Corrections supports these reforms 110 percent, he said.

[2:48:18 PM](#)

GARY FOLGER, Commissioner, Department of Public Safety (DPS), said he can't really add to what's already been said other than that DPS supports SB 91.

SENATOR WIELECHOWSKI asked if he believes that this legislation can pass and still protect the rights of both victims and the public.

COMMISSIONER FOLGER said he does. He added, "There will always be detractors but, in the end, this is a good bill."

2:49:19 PM

KRIS SELL, Lieutenant, Juneau Police Department and Vice President, Alaska Peace Officers Association, clarified that she was speaking as a commission member and not for either JPD or APOA. She noted that members from both organizations questioned her thinking when SB 91 was introduced.

She described the proposed reforms as a huge, difficult and slightly scary paradigm shift. She related that she grew up on a farm in Montana during the "tough on crime" era and she entered law enforcement wanting to be a part of that culture. However, she soon realized that she was arresting the same people repeatedly, and they were getting more dangerous and more anti-social each time they went through the system. When she walked through the jails she could understand why this was happening. These people had very serious problems in their lives, but being in jail was simply a grownup timeout with cable TV and three meals a day. When these individuals were put back out on the street the cycle started over again, but they were a little more dangerous.

LT. SELL expressed particular interest in the risk assessment tool for pretrial. It may help law enforcement understand what is driving a person to commit crimes and then impose positive and negative sanctions to change the behavior and get that person back into the community. She noted that someone who grows up in the system is more likely to have kids that will also be arrested. She said Juneau has families that have a third generation in the system which is a clear demonstration that something isn't working. Citing the dismal recidivism statistic, she expressed the desire to use some of the savings to delve into what is driving individuals to commit crimes. "We don't want to throw away the old tool, we just want to add some new ones and we have to pay for them." Fewer hard beds are part of that, she said.

2:54:49 PM

LT. SELL reported that she testified against former Senator Dyson's bill to reclassify drugs when it didn't have a reinvestment piece. That part is particularly important in pretrial because without reinvestment there is just less jail time and that is the only way to make the status quo worse. She urged the committee not to pass the bill without reinvestment

because it would not be good for public safety. She concluded saying that "With the reinvestment, maybe we can actually start correcting behavior."

CHAIR MCGUIRE asked her to expand on the idea that these reforms are a culture shift.

LT. SELL said paradigm shifts can be difficult and take some time, but this one is happening quite rapidly considering the 30-40 years spent on getting tough on crime. She discussed crisis intervention training, mental health calls, and the need for discretionary tools to separate violent individuals. The safest thing for the community is to change behavior, but more work needs to be done in that area, she said.

[3:00:32 PM](#)

SENATOR COGHILL commented on the pushback Lt. Sell experienced on the citation vs. arrest policy.

LT. SELL discussed the provisions she worked to carve out for that policy.

SENATOR WIELECHOWSKI asked her to discuss the concern voiced by police officers about not having the ability to arrest someone when they need to be arrested.

LT. SELL said law enforcement needs to have the discretion to arrest when it's appropriate and necessary and Senator Coghill has been very receptive to making changes to accommodate that.

SENATOR COGHILL said they've tried to give discretion although there is a presumption of nonarrest. He discussed the new chapter on pretrial services found in Section 92 that has the reinvestment piece.

LT. SELL said it was an aha moment when she realized that a person's access to money is not correlated to their propensity to commit more crimes. She admitted that the process was a difficult journey and that she had to open her mind to the science of incarceration and correction and the experience of other states.

CHAIR MCGUIRE commented on finding the sweet spot as the pendulum swings, and asked Lt. Sell if she would serve as a resource for the committee. She expressed hope that the bill would leave the judiciary committee with support from both law enforcement and victims' rights organizations.

LT. SELL said she believes that victims and law enforcement can get to common ground. The victims she's talked with in the last 18 years always say they don't want the perpetrator to victimize anyone else. The idea is to meaningfully alter behavior the first time someone enters the criminal justice system so there isn't a victim 2, 3, or 4.

CHAIR MCGUIRE said she likes the provision that calls for legislative review.

LT. SELL said smart justice doesn't end on a certain day; it's necessary to stay on this issue.

[3:10:46 PM](#)

BRENDA STANFILL, Executive Director, Interior Alaska Center for Non-Violent Living, said she was appointed to the victim advocacy seat on the Alaska Criminal Justice Commission. She related that when she started out in victim advocacy she felt it was possible to criminalize the way out of a social issue, but she understands now that's simply not possible. Despite initial reservations, she embraced the process the commission went through to try to think through how to do things smarter to attain public safety, accountability, and a long term change in behavior. She listened to the research, data from other states and to the professionals who have prior experience and knowledge.

MS. STANFILL described the commission process as interactive and inclusive. Everyone who attended the meetings had a voice. There were also two victim services roundtables that worked with victims to identify gaps and issues within the system and think about how to reinvest. That work is ongoing. She explained that the commission decided to release the 21 high-level recommendations knowing that there would be a legislative process to go into the details. She thanked Senator Coghill and his staff for the time they've spent with victim service agencies. She listed the expertise that the commission drew on that identified needed carve-outs to make sure that public safety and victim rights were at the front and center of this bill.

[3:15:27 PM](#)

MS. STANFILL said she embraced the recommendation to utilize risk-based pretrial decision-making because the pretrial period is often when victims are most at risk. This can be a crucial piece of providing victim safety and reducing victimization. It

can also help identify individuals who might be amenable to a suspended entry of judgment so pretrial services has potential for both victims and offenders.

She described the citation vs. arrest policy as the scariest part of pretrial in terms of public safety. That being said, she believes the commission did a good job of carving out the needed parts so law enforcement has the latitude to make an arrest when a victim's safety is at risk.

MS. STANFILL concluded her comments emphasizing the importance of reinvestment. It's about having pretrial services in place so someone can be released from prison safely, not just to free up a hard bed. She cited data from the Choose Respect initiative that shows that money put into prevention services resulted in 3,000 fewer victimizations in the last 12 months.

"From a commissioner's standpoint and from representing victims in our state of Alaska, I do truly stand behind what we're doing here and I think we're on the right track to make something different happen and in a safe way," Ms. Stanfill stated.

[3:19:59 PM](#)

CHAIR MCGUIRE asked if her seat on the commission represented victim rights and if the concerns articulated by victims' rights groups were met by the State Affairs committee substitute.

MS. STANFILL said she was appointed to the victim advocacy seat and she believes there the issues related to victims' rights were addressed. She commented on the paradigm shift in her thinking now compared to 15 years ago, but admitted that there may never be a day that every victims' services agency or victim will support these changes.

CHAIR MCGUIRE commented that it takes bravery to go down this path, because it's a different way of thinking about things.

[3:26:12 PM](#)

QUINLAN STEINER, Public Defender, Public Defender Agency, Anchorage, Alaska, said he's spent the bulk of his career working on policy and management issues; most recently he was a member of the Alaska Criminal Justice Commission. He said the commission did a comprehensive review of data related to criminal justice in this state and there was vigorous debate about the merits of each policy that was forwarded to the legislature. As a public defender he discussed and examined his views in the consensus process and he supports every policy the

commission voted on. While saving money was a goal throughout the process, the commission never forgot about the goal of reducing crime and enhancing public safety. He said the bill accomplishes that, but an important part of its success will be to follow up and measure the outcomes of the initiatives. Currently there are initiatives to make that happen. The Alaska Criminal Justice Information Center is forming to compile data on treatment programs and initiatives to make sure the expected benefits are attained. If they aren't, changes can be made.

MR. STEINER described the package of data-supported reform recommendations as the most comprehensive and significant that he'd ever seen. "Based upon all of that work, I'm happy to support the initiatives in this bill," he said.

[3:30:31 PM](#)

SENATOR COGHILL asked the committee to keep in mind three things on the pretrial services: 1) the risk assessment tool will need to be refined for Alaska after implementation; 2) in addition to accountability, there is the option for diversionary programs; and 3) the constitutional question of holding someone based on a risk assessment.

CHAIR MCGUIRE said she suspects there are similar notions to the suspended imposition of sentence.

SENATOR COGHILL said he'd like to hear from the court on the issue.

[3:34:14 PM](#)

CHAIR MCGUIRE asked Lt. Sell about a ride along with JPD and Commissioner Williams if members could visit Lemon Creek Correctional Center. [She received an affirmative response to both questions.]

[SB 91 was held in committee.]

[3:36:26 PM](#)

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:36 p.m.