

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 21, 2016

1:36 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Lesil McGuire, Chair

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 AND 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)
03/11/16 (S) Heard & Held
03/11/16 (S) MINUTE(JUD)
03/16/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/16 (S) Heard & Held
03/16/16 (S) MINUTE(JUD)
03/18/16 (S) Heard & Held
03/18/16 (S) MINUTE(JUD)
03/21/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Presented the Alaska Criminal Justice Commission recommendations for community supervision and relating to SB 91.

GREGORY RAZO, Chair
Criminal Justice Commission
Anchorage, Alaska

POSITION STATEMENT: Presented information on SB 91.

JEFF JESSEE, Chief Executive Officer
Alaska Mental Health Trust Authority
Anchorage, Alaska

POSITION STATEMENT: Presented information on SB 91.

JANET MCCABE, Member
Partners for Progress
Anchorage, Alaska

POSITION STATEMENT: Presented information on SB 91.

ACTION NARRATIVE

[1:36:33 PM](#)

VICE 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 Micciche, Costello, Wielechowski, and Vice Chair Coghill.

SB 91-OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

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VICE CHAIR COGHILL announced the consideration of SSSB 91. He said today the committee would consider the Alaska Criminal Justice Commission recommendations for community supervision. He listed the individuals available to answer questions.

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JORDAN SCHILLING, Staff, Senator John Coghill, Alaska State Legislature, presented the Alaska Criminal Justice Commission recommendations 12 through 18 for community supervision. These recommendations are public safety enhancements meant to focus limited resources on offenders that are most likely to recidivate. They apply the best research to probation

supervision, using swift, certain, and proportional sanctions in order to reduce recidivism.

Recommendation 12: Implement graduated sanctions and incentives.

MR. SCHILLING described the problem that almost two-thirds of offenders who are released return to prison within three years. The commission relied on research to come up with the strategy to use swift, certain, and proportional sanctions when responding to technical violations, such as rule violations, missing an appointment, and alcohol and drug violations. The commission authorized the Department of Corrections (DOC) to create graduated sanctions made up of non-incarceration options.

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VICE CHAIR COGHILL noted that this new recommendation is found under Sections 88 and 91.

MR. SHILLING summarized that the sanctions are a new tool in a probation officer's tool box.

Recommendation 13: Reduce pre-adjudication length of stay and cap overall incarceration time for technical violations of supervision.

MR. SCHILLING said the commission discovered that when someone commits a technical violation, they often spend up to a month in prison prior to the resolution of the violation. Of those who are sentenced for a technical violation, nearly half stay in prison more than one month. He noted that technical violators make up about one-fifth of the prison population. On average, a technical violator is spending 106 days in prison and there is no set maximum amount.

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MR. SHILLING reported that the commission recommended a tiered approach for technical violations of supervision with a cap on incarceration time. He noted there were several exceptions for several violations, such as absconding for up to 30 days or not completing sex offender treatment.

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VICE CHAIR COGHILL said this recommendation is found in Sections 65 and 119.

Recommendation 14: Establish a system of earned compliance credits.

MR. SHILLING explained the idea is to incentivize good behavior and compliance with probation. Research shows this to be effective. The commission established an earned compliancy policy that includes one month of credit for each month probationers and parolees are in full compliance.

VICE CHAIR COGHILL pointed out that it was in Section 62.

[1:44:34 PM](#)

Recommendation 15: Reduce maximum lengths for probation terms and standardize early discharge proceedings.

MR. SHILLING explained the average length of stay on community supervision is up 13 percent over the past decade, and failure is most likely to happen within the first three months. Also, a large portion of the supervision population is low-risk, therefore the commission decided to focus supervision resources on high-risk offenders.

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VICE CHAIR COGHILL added that there is now a requirement for a new risk assessment tool.

MR. SHILLING agreed that DOC is required to conduct a risk and needs assessment on every offender who is sentenced for 30 days or more.

He said the commission also recommended capping maximum probation terms, which were raised by the previous committee. These are found in Sections 61 and 62. Currently, the maximum probation term for felony sex offenders has been raised to 10 years, all other felonies to 5 years, domestic violence crimes to 4 years, second time DUIs remain at 2 years, and all other misdemeanors are 1 year. This is one area where the sponsor deviated from the commission's recommendation.

He continued to explain that for certain offenders, the minimum time needed to serve on probation or parole prior to being eligible for early discharge was reduced to one year. Also, DOC would be required to recommend early termination of probation or parole for someone who has completed all treatment programs and is in compliance with all supervision conditions. This is another area where the Senate State Affairs Committee made sex offenders and un-sentenced, unclassified felons ineligible for early discharge.

[1:48:16 PM](#)

Recommendation 16: Extend good time eligibility to offenders serving sentences on electronic monitoring.

MR. SHILLING said that unlike those in prison, offenders on electronic monitoring were previously unable to earn good time. These are typically low-risk individuals deemed appropriate for electronic monitoring by DOC.

VICE CHAIR COGHILL commented that the risk assessment tool would provide conditions such as enrolling in a treatment program.

[1:50:18 PM](#)

Recommendation 17: Focus ASAP resources to improve program effectiveness.

He explained that Alaska's Alcohol Safety Action Program (ASAP) was originally created to address the needs and issues of drunk drivers. He said the commission saw that ASAP's scope had expanded to provide treatment and referrals for offenders who are referred by the court. Last year only 57 percent of ASAP's referrals were statutorily mandated, such as for DUIs and MCAs. The increases in non-mandated referrals to ASAP have limited the program's effectiveness. The commission recommended limiting referrals to those the program was originally created for and are statutorily required.

VICE CHAIR COGHILL pointed out that that language has not been drafted yet.

MR. SHILLING said it would be included in the upcoming committee substitute (CS).

VICE CHAIR COGHILL announced that he would be presenting amendments today.

[1:53:02 PM](#)

Recommendation 18: Improve treatment offerings in CRCs and focus the use of CRC resources on high-need offenders.

MR. SHILLING said the commission found that Community Residential Centers (CRCs), or half-way houses, are likely mixing high-risk and low-risk offenders, which can lead to increased recidivism for low-risk offenders. The commission also found that treatment is effective and it will require CRCs to provide evidence-based treatment and a greater degree of cognitive-behavioral programs.

VICE CHAIR COGHILL said this recommendation is found in Section 132.

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VICE CHAIR COGHILL suggested the committee look at items outside the commission's recommendations: limited driver's license, administrative license revocations, food stamps, public assistance, re-entry programs, community work, limiting pretrial credit to 120 days, suspended entry of judgment, and victim's rights.

He asked Mr. Razo to comment.

GREGORY RAZO, Chair, Criminal Justice Commission, explained that the commission was tasked with finding safe and effective ways of reducing the prison population, so they looked at evidence-based research regarding how state resources were being used. They found a number of problems in the area of community supervision where a vast amount of resources were being used to supervise low-risk offenders.

The commission found that this population of post-prison supervision is spread thin across many years, rather than focused on the initial months after release. The proposal focuses community supervision dollars where they are most effective and incentivizes people to complete probations. He discussed the PACE program, but noted it isn't used across the court system.

He described the probation revocation process, which sometimes takes six months to resolve. He noted there are many technical violations that should be dealt with by using a swift and certain method consisting of a matrix of graduated sanctions and incentives. He stressed that technical violations are not new crimes. The commission recommended caps on incarcerations and short jail terms for technical violations, as well as incentives for those who are on probation.

[2:01:39 PM](#)

MR. RAZO addressed the recommendations related to ASAP. He pointed out that Alaska is in an epidemic of alcohol abuse that fills prisons. The savings achieved by focusing on the front end will allow for reinvestment in treatment programs, particularly for Alaska Natives in rural Alaska, but also for cities in the state.

[2:02:40 PM](#)

VICE CHAIR COGHILL thanked those who worked on this area of the bill.

SENATOR MICCICHE requested copies of the amendments.

[2:03:46 PM](#)

At ease

[2:04:34 PM](#)

VICE CHAIR COGHILL offered five amendments to version I for discussion. He said there will be a new version of the bill at the next meeting.

VICE CHAIR COGHILL explained that Amendment I.5 inserts reinvestment language that repurposes the Recidivism Reduction Program (RRP) to provide a vehicle for funding evidence-based rehabilitation programs and supporting offenders' transition and re-entry into the community. In addition, the amendment includes uncodified language to allow funding for violence prevention programs and services for crime victims within the Council on Domestic Violence and Sexual Assault.

MR. SHILLING added that rather than spending money on things that don't work, the amendment takes the RRP and repurposes it for the next several years. It also includes the Alaska Criminal Justice Commission in making recommendations to the legislature on how to best reinvest money saved. It also funds violence prevention programs within the Council on Domestic Violence and Sexual Assault.

VICE CHAIR COGHILL said that has been part of the discussion with the Office of Victims' Rights and the Council on Domestic Violence and Sexual Assault.

[2:07:48 PM](#)

SENATOR COSTELLO asked about the accountability and efficacy of the programs. She noted that line 17 in the amendment uses "evidence-based" programs and asked whether there were accountability measures.

MR. SHILLING noted that "evidence-based" is defined in the bill. He understood that the money for the programs would be available through a competitive bid grant process and accountability would be contained within that process.

SENATOR COSTELLO asked about reporting success or failure data.

MR. SHILLING explained that the commission recommended an oversight body that follows and tracks the outcomes of this legislation and also make recommendations to the legislature on how to best reinvest the money in years to come. That language will be found in the forthcoming CS.

VICE CHAIR COGHILL commented that there are new concepts and methodologies in the bill that should have oversight and feedback.

[2:10:02 PM](#)

VICE CHAIR COGHILL explained Amendment I.7 increases the mandatory minimum by five years for first degree murder and second degree murder in Section 67 and 68. He referred to Mr. Moore's comments about needing a mandatory minimum throughout the bill.

[2:11:06 PM](#)

VICE CHAIR COGHILL explained Amendment I.8 requires the parole board to confer with a corrections officer prior to parole being granted. This amendment was brought forth by the Department of Corrections and the last committee. He agreed that parole officers have first-hand knowledge about prisoners.

SENATOR COSTELLO asked the number of members on the parole board and whether that includes a corrections officer.

MR. SHILLING replied that there are five members on the board confirmed by the legislature. There is no requirement for a corrections officer to sit on the board.

VICE CHAIR COGHILL noted that information about the parole board could be provided.

[2:13:43 PM](#)

MR. SHILLING referred to AS 33.16.020 for information on the parole board. He related that there are five members on the board appointed by the governor and confirmed by the legislature. One must reside in the first judicial district, one in the third judicial district, and one must reside in either the second or the fourth judicial district.

VICE CHAIR COGHILL said his expectation is that the correction officer could provide first-hand information about prisoners.

[2:14:47 PM](#)

SENATOR WIELECHOWSKI asked if the amendment would cause a delay in parole.

VICE CHAIR COGHILL clarified that, currently, in order to receive parole a prisoner must apply. The bill provides that the parole board will receive notice of anyone who is eligible for parole.

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MR. SHILLING said there would be an increased number of parole board hearings due to the bill. He agreed with checking to see if the amendment would cause a delay in parole.

SENATOR MICCICHE suggested clarifying the criteria of what type of information can be shared with the department and the board.

[2:16:44 PM](#)

VICE CHAIR COGHILL turned to Amendment I.9 which authorizes the Department of Corrections to enter into contracts for pretrial electronic monitoring supervision. If contracting is pursued to administer the 24/7 Sobriety Program, the department may do so through a competitive procurement process.

He explained that Amendment I.10 restricts misdemeanants from administrative parole eligibility. He asked who suggested it.

MR. SHILLING said both the Office of Victims' Rights and the Counsel on Domestic Violence and Sexual Assault have expressed concern that there could be an issue where policies overlap.

VICE CHAIR COGHILL said the amendments are topics that rose to a level that required attention, and they could be debated at the next meeting. He expects a new version of the bill to be ready by Wednesday. He noted drafting challenges with the bill.

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SENATOR COSTELLO requested Mr. Jessee's opinion.

MR. SHILLING added that Mr. Jessee has considerable thoughts on reinvestment.

[2:21:18 PM](#)

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority, voiced appreciation for the consideration of the amendments as improvements to SB 91. He said he is particularly interested in the reinvestment aspect of the bill, which is essential to releasing more people pre-trial and to the

availability of pre-trial supervision to ensure success of the parolee and public safety. He noted there is also an element of reinvestment around community-based services so people coming out of prison can access services such as the Partners Re-entry Center where they have access to housing, employment services, and support for recovery. He spoke of the bill as a huge step forward in revising the entire criminal justice system. He concluded that the reinvestment aspects are vital and essential and he looks forward to continuing to work with the committee.

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JANET MCCABE, Member, Partners for Progress, recalled the history of Partners for Progress and noted they run Therapeutic Court Support and the Partners Re-entry Center whose purpose is to reduce recidivism. She said the recommendations in SB 91 are solidly based on evidence compiled by the PEW Justice Reinvestment Project. Adopting SB 91 will make Alaska a leader in criminal justice reform, which has long been needed.

She noted Partners for Progress sees the primary benefits of SB 91 as savings for the state budget, for overall public safety, for aiding victims, for the welfare of individual families, and for the good of the whole community that is Alaska. She stated that closing the revolving door of recidivism is one of the best ways to maximize the benefits of justice reinvestment. She provided a case study of homeless felons as an example of a population needing immediate assistance. She emphasized how the community can provide the support needed for prevention, save money, and keep the public safer. She concluded that it is the intent of Partners for Progress to work proactively with re-entry non-profits in communities.

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VICE CHAIR COGHILL thanked Ms. McCabe.

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SENATOR MICCICHE asked about Section 28 that brings "Spice" into state law. He related that various degrees of charges for Spice are found in the bill. He asked what happens with Spice under the fifth degree.

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MR. SHILLING explained how Spice is treated in the bill. Dealing Spice, a 3A substance, is a class B or class C felony depending on the amount sold. Possession of all drugs is a Class A misdemeanor, however, possession of Spice is the exception and is a class B misdemeanor.

SENATOR MICCICHE asked how close this matches the Municipality of Anchorage drug ordinance.

MR. SHILLING said he did not know how Anchorage treated Spice, but he recently reached out to the municipal prosecutor for that information.

SENATOR MICCICHE said he could wait for it.

[2:33:34 PM](#)

SENATOR COSTELLO asked if the repealed sections of the bill could be highlighted.

MR. SHILLING offered to provide an annotated version or a visual aid.

VICE CHAIR COGHILL thought a visual aid would be best.

He stressed the importance that every stakeholder will be affected by SB 91.

VICE CHAIR COGHILL held SB 91 in committee with public testimony open.

[2:36:11 PM](#)

There being no further business to come before the committee, Vice Chair Coghill adjourned the Senate Judiciary Standing Committee at 2:36 p.m.