

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 2, 2015

9:07 a.m.

MEMBERS PRESENT

Senator Bill Stoltze, Chair
Senator John Coghill, Vice Chair
Senator Charlie Huggins
Senator Lesil McGuire
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 91

"An Act relating to protective orders; relating to conditions of release; relating to prisoners; relating to the duties of the commissioner of corrections; amending Rules 32 community work service; relating to credit toward a sentence of imprisonment for and 35(b), Alaska Rules of Criminal Procedure; and providing for an effective date." certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court-ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for

- HEARD & HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 1

"An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 74

"AN ACT RELATING TO PERMANENT FUND DIVIDENDS; RELATING TO A MEDICAL ASSISTANCE REFORM PROGRAM; ESTABLISHING A PERSONAL HEALTH SAVINGS ACCOUNT PROGRAM FOR MEDICAL ASSISTANCE RECIPIENTS; RELATING TO THE DUTIES OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES; ESTABLISHING MEDICAL ASSISTANCE DEMONSTRATION PROJECTS; AND RELATING TO A STUDY BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 58

"An Act relating to workers' compensation and transportation network companies; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 91

SHORT TITLE: CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID

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

BILL: SB 1

SHORT TITLE: REGULATION OF SMOKING

SPONSOR(s): SENATOR(s) MICCICHE

01/21/15	(S)	PREFILE RELEASED 1/9/15
01/21/15	(S)	READ THE FIRST TIME - REFERRALS
01/21/15	(S)	HSS, STA, FIN
01/30/15	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/30/15	(S)	HSS, STA, FIN
02/11/15	(S)	HSS AT 1:30 PM BUTROVICH 205
02/11/15	(S)	Heard & Held
02/11/15	(S)	MINUTE (HSS)
03/11/15	(S)	HSS AT 1:30 PM BUTROVICH 205

03/11/15 (S) Moved CSSSSB 1(HSS) Out of Committee
03/11/15 (S) MINUTE (HSS)
03/13/15 (S) HSS RPT CS 2DP 3NR SAME TITLE
03/13/15 (S) DP: GIESSEL, ELLIS
03/13/15 (S) NR: STEDMAN, KELLY, STOLTZE
04/02/15 (S) STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Provided an overview for SB 91.

RONALD TAYLOR, Commissioner
Alaska Department of Corrections
Anchorage, Alaska

POSITION STATEMENT: Addressed the impact SB 91 will have on the Department of Corrections.

SENATOR PETER MICCICHE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 1.

CHUCK KOPP, Staff
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an overview of SB 1.

DR. JAY BUTLER, MD, Chief Medical Officer/Director
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Provided information on the negative health effects from smoking.

JOE DARNELL, Investigator
Tobacco Youth Education & Enforcement Program
Division of Behavioral Health
Alaska Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Explained smoking regulations enforcement.

DR. ROBERT URATA, MD, volunteer
American Heart Association

Juneau, Alaska

POSITION STATEMENT: Supports SB 1.

ACTION NARRATIVE

[9:07:46 AM](#)

CHAIR BILL STOLTZE called the Senate State Affairs Standing Committee meeting to order at 9:07 a.m. Present at the call to order were Senators McGuire, Coghill, and Chair Stoltze.

CHAIR STOLTZE reviewed the committee agenda and noted that the Medicaid sustainability bill would be heard at a later meeting.

SB 91-CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID

[9:09:00 AM](#)

CHAIR STOLTZE announced the consideration of SB 91.

SENATOR JOHN COGHILL, sponsor of SB 91, revealed that during the previous year he had worked with the Senate to address corrections reform. He explained that a commission was put together to study Alaska's corrections system and sentencing structures.

He noted that prior to working in the Legislature, he had served as a pastoral worker and spent a third of his time either in a halfway house or in a jail dealing with people. He detailed that his pastoral work provided him with an interesting view to see everything from people who made mistakes and were trying to find a way to correct, to those who were really good comen or were just bad people.

He disclosed that he has paid close attention to corrections and sentencing issues during his time on various committees in the Legislature. He noted that he has served nearly all of his time on judiciary committees and has been responsible for helping create laws that hold people accountable at a high level; however, he became aware of issues where felons were being put into prison without expectations for change. He remarked that he became a magnet for corrections and sentencing issues after SB 64 passed in 2014, a bill that addressed reform. He added that he currently knows more about the process of enforcement, the courts, and prison than he ever thought he would.

[9:11:18 AM](#)

He asserted that he wants the public to be safe through good peacekeeping, protection and restitution for victims, offender productivity, and rehabilitation for offenders. He remarked that getting people who will change into programs with some degree of accountability is his focus. He revealed that approximately 90 percent of prisoners currently in jail will be back in society in one form or another. He said the question is whether released prisoners will reform or recidivate as well as how to keep individuals accountable.

He said the high cost of building Goose Creek Correctional Center made it apparent to him that the state would not be able to afford another \$250 million prison for a good while, but noted that the prison population continues to grow. He added that the cost to annually operate Goose Creek costs \$50 million. He asserted that based on inmate population trends, the state will not be able to hold people without building another prison, a problem that is coming very fast. He asserted that the state does not get to deal with how society changes where offenders show up at the door because of enforcement issues, but the state wants good enforcement.

SENATOR STOLTZE pointed out that Goose Creek is an operating budget expense, specifically a lease-purchase that is similar to the Seward-model.

SENATOR COGHILL stated that SB 91 is a work in progress and he is very open to discussion. He summarized that the challenge is trying to figure out how to keep people from returning to prison while keeping the public safe.

[9:14:47 AM](#)

SENATOR WIELECHOWSKI joined the committee meeting.

SENATOR COGHILL explained that the nonviolent prison population includes people in the pretrial and probation violation categories. He noted that the length of stays has an impact on the prison populations and the intent is to find ways to turn that around.

CHAIR STOLTZE asked that Senator Coghill define and specify the types of people identified as nonviolent so that the public can weigh in on the proposed policies.

SENATOR COGHILL replied that he is initially addressing the nonviolent population in different categories from a high overview perspective.

SENATOR STOLTZE pointed out that legislators have to be sensitive to a person who has been burglarized that might consider a certain level of violence due to an invasion of one's privacy. He noted that Alaska's Constitution addresses both reform and victim's rights.

SENATOR COGHILL agreed that a balance has to exist for nonviolent people who have violated someone. He said an offender's payback must be considered if jail time is the best and can restitution be considered. He explained that his presentation will give the committee a high overview of the bill polices and then get into some of the specifics.

[9:16:50 AM](#)

SENATOR COGHILL pointed out that electronic monitoring is going to be one area where people may be held accountable without costly jail time. He noted that electronic monitoring may include nonviolent individuals who are in pretrial for domestic violence that are not married or cohabitating, parolees with good-time credit, or probationers.

SENATOR COGHILL explained that SB 91 addresses policies that include: administrative sanctions, probation caps, technical violations, good-time on parole, protective orders, police training surcharge, community work service, increased judicial discretion, and driver's licenses. He detailed that technical violations are situations where a probationer does not get to their meeting on time and good-time is a benefit earned by a person who does their actions well in prison. He noted that the police training surcharge was first put in in 1998 and the bill looks at upping the charge. He explained that judicial discretion was increased in some places. He admitted that there is always tension between the legislative branch, the judicial branch, and the Department of Law on allowing judges with more discretion even after a sentence has been handed down or a bargain has been agreed upon. He detailed that driver's licenses addresses DMV revocations and other revocations.

[9:19:47 AM](#)

CHAIR STOLTZE added that administrative revocations are also included.

SENATOR COGHILL answered yes. He detailed that administrative revocations do not always line up authority-wise and SB 91 tries to address that. He explained that limited licenses are for individuals who have revoked licenses. He admitted that some

people are driving anyway without impunity, no accountability, no insurance, and people can be hurt. He detailed that limited license allows an individual to drive under certain conditions with insurance and accountability.

He stated that earned-credit is for the nonviolent population that addresses how to provide an opportunity for betterment. He noted that the Alaska Criminal Justice Commission and legislators have brought up people coming out of jail that are forbidden in Alaska to get food stamps. He detailed that SB 91 addresses the policy question whether punishment should follow an offender out of jail or should an individual be allowed to receive food stamps during their reentry program to improve their lot in life.

[9:21:02 AM](#)

SENATOR HUGGINS joined the committee meeting.

SENATOR MCGUIRE noted that Senator Coghill's presentation addresses a complex area. She emphasized that the factors driving prison growth include the nonviolent population, those awaiting judgement in the pretrial population, increase in the average length of stay, and probation violations. She revealed that the Senate Judiciary Committee repeatedly hears the factors for prison growth and cost increases. She asserted that the dollars spent on increased prison costs could be used towards education funding, infrastructure development in the Arctic, or all kinds of things. She stated that holding people accountable is important, but rethinking how corrections can be done more efficiently must also be considered.

SENATOR COGHILL summarized that there are so many interlocking pieces in SB 91. He reiterated that his intent is to review the policy calls being looked at and then to review how the sections interlink within the bill.

[9:23:28 AM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, explained that there are two big pieces in the bill that deal with driving reforms: administrative license revocations and limited licenses.

MR. SHILLING explained that administrative license revocation is something that occurs pretty quickly after someone either refuses a breath test or produces a breathalyzer test of 0.08 blood alcohol content or greater. He detailed that for public safety reasons, revocation is done right away. He specified that

driving under the influence (DUI) is a 90 day revocation for the first offense, 1 year for the second offense, and a lifetime revocation for the third offense with a 10 year period. He revealed that what can happen with administrative revocations is a person does not get their driver's license back if their case is dismissed or the person is found not guilty. He specified that if a person is acquitted or their case has been dismissed with prejudice, the administrative revocation is synched up with the court revocation to allow the person to get their driver's license back.

He explained that the limited license portion of the bill addresses a felony DUI situation where a person has their license revoked for life. He said there is a thought from people in the criminal justice community that people do not simply quit driving when their license has been taken away. He detailed that in an effort to steer people with revocations towards a limited license if their vehicle has mandatory interlock, a requirement to have insurance, and participation in the Alcohol Safety Action Program (ASAP) with 24/7 sobriety. He said an individual would be extended a limited license if they jump through the noted hoops and drive safely on the road.

[9:26:04 AM](#)

MR. SHILLING addressed the pretrial population and revealed that 40 percent of the state's prison population is pretrial. He specified that the pretrial population consists of people that have not been found guilty yet, but the group is one of DOC's biggest cost drivers; some are going to be found not guilty, some are going to have their cases dismissed, but those people already cost the state money before decisions are reached. He specified that the bill creates an ability for a judge to determine if someone can be restricted to home confinement with GPS monitoring with possible alcohol monitoring during pretrial. He detailed that if a judge deems home confinement is a safe approach, the individual will get credit for time served. He revealed data from a recent survey that 340 nonviolent pretrial offenders in prison for drug or property crimes were costing the state \$53,000 per day.

CHAIR STOLTZE asked if all drug crimes are nonviolent.

MR. SHILLING replied that the Alaska Department of Corrections (DOC) classifies drug offenders as either nonviolent or violent. He agreed that some of the crimes technically classified as nonviolent are invasive and fall into some gray areas.

CHAIR STOLTZE commented that some drug crimes are pretty black and white.

SENATOR MCGUIRE revealed that she had heard a claim in the Senate Judiciary Committee that 90 percent of all crimes in all categories includes some form of drug or alcohol use. She asked him to verify that the pretrial population identified by Mr. Shilling specifically involve drugs without a crime against a person.

[9:29:46 AM](#)

MR. SHILLING answered correct. He specified that many of the individuals are Class C felons for drug possession.

SENATOR COGHILL added that the judge's discretion for the pretrial population has to be significant where bail is immediately set and either the person is kept in jail or allowed to be held accountable outside of jail.

CHAIR STOLTZE stated that he wants to be careful. He pointed out that a drug bill from the previous year had falsely referenced the disposition of an individual that fueled a lot of debate.

SENATOR MCGUIRE replied that she respects what Chairman Stoltze said. She remarked that she has watched the state go in cycles between incarceration and rehabilitative deterrent models. She said Senator Coghill's model is a good one that takes into account changing policies, but does not over react and let the "pendulum" swing too far. She asserted that no one in the committee would envision letting somebody in the pretrial population out that is a violent offender with a propensity to hurt somebody. She remarked that the bill addresses nonviolent offenders who have been divided into a particular category. She said the conversation is worth having whether or not to expand the housing of nonviolent offenders on electronic monitoring with a 24/7 sobriety program.

[9:32:41 AM](#)

MR. SHILLING said there are two other electronic monitoring reforms. He revealed that offenders in prison currently get one third off of their sentence for good behavior. He specified that the bill would extend good-time when DOC deems an offender safe enough to release on electronic monitoring. He said the second aspect addresses domestic violence offenders. He explained that a statutory prohibition exists that does not allow DOC to put any domestic violence offender on electronic monitoring. He specified that electronic monitoring would only be considered

for non-intimate partner domestic violence offenders and not for intimate partner domestic violence offenders.

He revealed that one of the main drivers for the state's prison population are the nonviolent offenders. He explained that prisons used to be filled with a majority of violent offenders. Just in the past decade, the majority are now nonviolent offenders. He said the bill encourages nonviolent offenders to seek and complete treatment while in prison with a goal for the individual to not recidivate. He noted that Alaska has the third highest recidivism rate in the U.S. where two thirds reoffend within three years. He revealed that DOC has reported that nonviolent offenders who complete treatment while in prison reduce their likelihood to reoffend by 21 percent.

MR. SHILLING detailed that DOC has a range of treatment programs, including: Life Success Substance Abuse Treatment (LSSAT) and Residential Substance Abuse Treatment (RSAT). He specified that LSSAT is an outpatient program that takes about six months to complete, RSAT is a more intensive program that takes about a year to complete. He revealed that according to DOC, 80 percent of its prison population has a drug or alcohol problem.

He concurred with Senator McGuire that drug and alcohol use is a nexus to many crimes. He noted that public defenders have said that 90 to 95 percent of their clients committed their crimes while under the influence of some substance. He revealed that 32 states have some form of earned credit, either for probation or in a facility, when an individual completes a treatment program. He pointed out that prisoners are currently given good-time for doing virtually nothing where two thirds of their sentence is taken off in a block up front. He specified that the bill proposes that credit will only be applied if an offender does something of merit, like pass their General Educational Development (GED) exam.

[9:36:13 AM](#)

He said the same logic of the earned credit would be applied to probation and parole reforms where month to month compliance would result in credit off of probation sentences. He explained that probation officer (PO) caseloads are extremely high where each PO averages 84 probationers. He added that caseloads have increased 36 percent over the last 10 years. He asserted that establishing earned credits would allow limited supervision resources to be focused on high risk offenders while also encouraging probationers to comply with their terms. He detailed

that eligibility for credit would include meeting obligations such as victim restitution. He added that a cap for technical violations on jail terms was also created. He revealed that 20 percent of DOC's prison population is due to probation violations where new crimes are not committed, but terms of conditions are violated.

CHAIR STOLTZE asked if the violations are for infractions outside of incarceration.

MR. SHILLING answered yes.

CHAIR STOLTZE asked that the committee have discussions with DOC employees as well.

[9:38:18 AM](#)

MR. SHILLING declared that the bill's proposes to put a cap on the amount of time someone can spend in prison on a technical violation. He noted that many states have placed caps on technical violations, some with 90 days.

CHAIR STOLTZE asked if technical violation would apply to a sex offender who does not stay away from a playground.

MR. SHILLING answered that not all technical violations are equal, some are much worse than others.

CHAIR STOLTZE replied that his instincts were correct where he should be concerned.

MR. SHILLING specified that a technical violation for missing an appointment is one thing, but violating the terms for sex offender treatment is obviously much worse.

CHAIR STOLTZE opined that skipping class and hanging around grade schools would be worse.

MR. SHILLING explained that SB 91 proposes to do something similar to technical violations where minimums and maximums are placed on a number of crimes; example, burglary would be 3 to 7 years. He added that the bill also creates an alternative for DOC's administrative sanctions where a PO would have more discretion to swiftly punish an individual other than strictly petitioning to revoke probation and remanding back to prison.

[9:40:47 AM](#)

SENATOR MCGUIRE asked if there is anything in the bill that expands the 24/7 Sobriety Program to give judges the discretion to use the program for probation violations that involve alcohol. She revealed that approximately 6,000 Alaskans are participating in the 24/7 Sobriety Program. She detailed that participants blow into a breathalyzer twice a day and the program has successfully turned people's lives around. She noted that there have only been 3 violations in the last couple of months out of 6,000 participants. She detailed that the 24/7 Sobriety Program is used in pretrial as a sentencing mitigator. She agreed with Chairman Stoltze that a violation for a sex offender is a totally separate issue; however, consideration should be given for allowing judges to extend the 24/7 Sobriety Program to those on probation with an underlying addiction. She detailed that violators could be extended the opportunity to go into the 24/7 Sobriety Program as opposed to going back to jail for 90 day at \$150 per day.

CHAIR STOLTZE opined that most second time offenders have used treatment options as a ploy.

SENATOR MCGUIRE replied that her understanding is the 24/7 Sobriety Program has not been used in the probation violation breaks.

MR. SHILLING explained that SB 64 created the successful 24/7 Sobriety Program. He disclosed that judges have the ability to apply the program as a bail or probation condition. He said the court system does not frequently use the 24/7 Sobriety Program for probation. He surmised that Senator McGuire may be talking about a diversion program that allows POs to send someone into the 24/7 Sobriety Program for a violation. He said he is not sure if POs have the authority to send someone into a 24/7 Sobriety Program and noted the probability for due process considerations.

9:44:27 AM

He explained that due to comprehensive welfare reform in the mid-90s, assistance was not allowed for individuals convicted of felony drug charges. He added that prisoners are released without identification and some individuals need to support a family. He explained that SB 91 purposes to provide a bridge while a released inmate finds a job by providing food to an individual and their family rather than having the individual fall back into criminal activity as a way to make money. He added that a second component tasks DOC to establish a reentry program that a prisoner would participate in 90 days preceding

their release. He detailed that prisoners would address: community resources, reentry planning, probation overview, and how to get a photo ID. He added that future consideration may be given to requiring DOC to provide an ID when a prisoner is released.

He summarized that SB 91 expands a mitigating factor for those who complete treatment, reforms community work service where conversion into jail time is not allowed if service is not completed, makes a small change to the protective order statutes, and increases the police training surcharge.

CHAIR STOLTZE noted that the sponsor has worked with a lot of stakeholders that are trying to do some unprovoked good, including national organizations like the Pew Charitable Trusts. CHAIR STOLTZE revealed that the fastest growing website originating in his and Senator Huggins' districts is Stop Valley Thieves, a website with over 6,000 participants. He asserted that an under represented point of view in the legislative process is the person that stays away from the criminal system and only encounters it on the victim end.

[9:47:46 AM](#)

SENATOR HUGGINS asked if Mr. Shilling knew the statistical gender breakdown for DOC inmates.

MR. SHILLING answered no. He said DOC keeps offender profile data. He stated that the women's population is increasing at a quicker pace and added that the Alaska native population is over represented.

SENATOR HUGGINS opined that the young men and women that ultimately end up in prison can be predicted with some degree of confidence in middle school.

CHAIR STOLTZE pointed out that some of the young men and women that Senator Huggins noted do straighten themselves out too, some through good sports programs.

[9:49:33 AM](#)

RONALD TAYLOR, Commissioner, Alaska Department of Corrections, Anchorage, Alaska, noted that he worked on SB 64 with Senator Coghill and Senator Ellis, a complex bill that required everyone to work through the bill's nuances to make sure the end result was something that could be supported and could continue to be supported. He said SB 91 was also a complex bill that has to be delved into. He asserted that DOC is committed to working with

the senators and their staff. He said concerns raised by Chairman Stoltze will be taken into account. He declared that category definitions will be provided to accurately identify which of those are nonviolent versus violent. He set forth that DOC will work to make sure that the legislative goals are accomplished, goals that the department believes are positive. He stated that the department's goal is to do a better job to ensure that those in DOC's custody or released on probation and parole stay in their community rather than going back into custody for minor technical violations. He asserted that he wants to make sure that technical violations are distinguished from those that are significant enough for jail; however, there are some that DOC believes should not be in jail. He stated that DOC can do some alternatives and do a better job tying to an individual's risk and need.

COMMISSIONER TAYLOR noted that Mr. Shilling said, "We want to punish." He asserted that the wrong mindset is to have probation officers in a mindset that DOC needs to punish. He said the people who need to do the punishing or give the sentences are the judges and parole boards. He declared that DOC's job is to give a person a recommendation on a plan to be successful and not a plan of punishment.

[9:52:46 AM](#)

CHAIR STOLTZE asked if Commissioner Taylor supports any administrative changes while people are incarcerated, such as the power to take away good-time.

COMMISSIONER TAYLOR replied that DOC currently has the power to take away good-time.

CHAIR STOLTZE asked if DOC should be limited in taking away good-time or should good-time remain untouched by the Legislature.

COMMISSIONER TAYLOR replied that he does not think SB 91 targets good-time.

CHAIR STOLTZE specified that he is asking a broad question if he thinks that good-time is an important management tool for DOC, especially when the department is undermanned.

COMMISSIONER TAYLOR answered that the administrative tools that DOC uses are important and the department does not want anything that takes away from that. He stated that DOC wants to take full advantage of any additional tools that can be utilized inside

its institutions. He pointed out that SB 91 focuses on the administrative sanctions when persons are outside of the institutions on probation and parole.

CHAIR STOLTZE said he would like to make sure that DOC employees and their representatives address the committee. He stated that DOC employees know the inmates better than anybody can imagine.

COMMISSIONER TAYLOR addressed Senator Huggins' question regarding gender, he revealed that 88 percent of inmates are male, 12 percent female.

He summarized that DOC looks forward to working with the Legislature on SB 91 and taking care of the concerns that were raised.

CHAIR STOLTZE admitted that the Legislature has taken a piecemeal approach to corrections reform and noted that he had a discussion on another piece of legislation that addressed probation. He said the committee will have Commissioner Taylor back for further discussions.

SENATOR HUGGINS remarked that prison is really like any other society where somebody is in charge, sometimes it's the guards and sometimes it's the prisoners. He said prisons have an ethnic makeup with regional pieces, power-brokering, contraband, and visitation issues. He asked how the variables that he described affect the profile of inmates. He pointed out that DOC gets a different look at inmates inside prison where an individual shows their hand whether they may be more hardened or victimized.

[9:56:40 AM](#)

COMMISSIONER TAYLOR responded that Senator Huggins described prisons quite well. He said DOC deals with a range of issues when a person is brought into the institution and the un-sentenced population brings even greater challenges. He said DOC sort of knows what to expect from the sentenced population, but the un-sentenced population comes in with many unpredictable variables. He detailed that DOC has to determine the right place to house a person and to make sure not to place someone with the wrong people where rehabilitation inside and out of prison becomes more difficult.

CHAIR STOLTZE noted his skepticism, but conceded that the Legislature will have to figure a way to do things differently. He thanked Commissioner Taylor and invited correctional officers

to attend a future meeting. He reiterated that he does not think there is anybody in the system that knows what the Legislature is dealing with as well as the correctional officers.

[10:00:18 AM](#)

CHAIR STOLTZE announced that he would hold SB 91 in committee.

SB 1-REGULATION OF SMOKING

[10:00:31 AM](#)

CHAIR STOLTZE announced the consideration of SB 1.

[10:00:53 AM](#)

SENATOR PETER MICCICHE, Alaska State Legislature, Juneau, Alaska, Sponsor for SB 1, stated that his hope is that with everyone's help that some lives can be saved and less spent on healthcare. He read the following sponsor statement into the record:

SB 1 seeks to safeguard working Alaskans and their children from the adverse health effects of secondhand smoke by providing a statewide smoke-free workplace law for businesses and public places. This is about protecting workers, this is not an anti-smoker bill at all.

As a conservative Alaskan, I actively support a philosophy that works to limit and reduce the role of government in our daily lives. I work towards that every day in this building, but I believe Thomas Jefferson got it right when he said, "The legitimate powers of government extend to such acts only as are injurious to others."

This case, I believe that both the right to breathe smoke-free air and the significant, documented public health risks of secondhand smoke exposure compel us to view the protection of Alaska's labor force and their families as an appropriate governmental responsibility. With the new issues with marijuana Mr. Chairman, I also believe this bill reduces the potential of folks smoking marijuana at the workplace as well. Similar comparisons include the government role in establishing speed limits, seat belt laws, motor vehicle design safety improvements, electrical codes, pipeline safety laws, and agency responsibilities. There are places in our society

where regulation is the right thing to do and it's largely why we are here in this building. As judicial philosopher Zechariah Chafee said in the Harvard Law Review in 1919, "Your right to swing your arm ends just where the other man's nose begins;" that's kind of what SB 1 is about, it doesn't preclude Alaskans' right to smoke, but it protects the rights of working Alaskans who choose not to smoke.

This law is much like the law that is in half of the states right now. Over half of the population of Alaska including those in Bethel, Anchorage, Juneau, Barrow, Dillingham, Haines, Skagway, Petersburg, Klawock, Nome, Unalaska, and Palmer are currently living under a similar law. You also can't smoke in healthcare facilities, schools, childcare facilities, and public meeting rooms in government buildings. These laws are well established and once they have been on the books there has been some effort to reverse them and not once have those reversal processes been successful. Communities, once they have been successful learn the value of smoke-free workplaces, they've kept them intact.

[10:03:38 AM](#)

This applies a uniform safeguard from secondhand smoke for workers in Alaska. Why is a conservative willing to take on this issue? The reality of it is for me, simply to protect the lives of nonsmokers. We think about the staggering health costs of secondhand exposure to tobacco products and I'm not talking about the over half million Americans that die from lung cancer that do smoke, we are talking about the folks that choose not to. It's a critical public health issue in my view and when you think about it, people are now talking about expanding Medicaid, people are talking about us taking on expanded roles of healthcare in the state, this is just an added expense and it hits the taxpayer heavily. It kills more than 41,000 adult non-smokers from coronary heart disease and lung cancer each year. For example, it is four times the number for DUI fatalities each year. While our DUI laws are rightfully stringent, our response to stopping an enormous loss of life due to secondhand smoke has been comparatively lax.

I often hold up a photo of my dad, who I lost last year, this bill is not about my father, my father chose to smoke, that was his right. This is about the folks that are effected that choose not to but have to go to work every day. What this bill is about is essentially asking smokers to take it outside. More than 860 Alaskan businesses and organizations, and many more representing all regions of the state have signed on to support this smoke-free workplace law.

We have some opposition as well, I believe we have a few hundred opposition letters; virtually 100 percent of those letters are asking us to exclude vaping or e-cigs from the bill.

10:05:44 AM

There are very many well-meaning governmental actions that are simply not good examples of the use of common sense; one of them is Positive Train Control. For the billions of dollars it will cost to do Positive Train Control, it will save about three American lives per year in the U.S., that's a government added control trying to spend a lot of money protecting folks that are not at risk. In this case we have the number, we have the overwhelming evidence that at no cost to our government, and we can protect a lot of Alaskans.

I've got to say out of respect for you and your committee that we are listening. We will be listening to your comments, we're open to suggestions, we want this to be the best bill it can be, and we want to impact Alaska businesses as little as possible, so we are open to reasonable exemptions.

This bill effects my core belief in the self-evident truths and the Declaration of Independence and its desire to conserve life and protect liberty. I think forcing Alaskan employees to smoke on the secondhand aspect is challenging those rights. The other thing that I've got to say is this bill is purposely designed not to be heavy handed, it doesn't come with control, it comes with no imposing enforcement actions, all this bill does is it asks smokers to take it outside while they are at work, it's just respect for their neighbor's right to breath clean air.

I'd like to reiterate again, this bill is not about my father, this is not about folks who choose to smoke, if they choose to smoke, they have every right to continue to do that, we just ask for them to not affect the rights of their friends at work.

[10:07:42 AM](#)

CHUCK KOPP, Staff, Senator Micciche, Alaska State Legislature, Juneau, Alaska, noted that the bill packets contain a copy of the slide show that is considered the "Take it Outside Act." It is from the Smoke Free Alaska website.

MR. KOPP read the following statement:

SB 1 is about healthier citizens and spending less on healthcare, providing a smoke-free work environment for workers in Alaska and a statewide standard with regard to secondhand smoke, it puts all businesses and workplaces in Alaska on a level playing field.

About half of the population in Alaska is covered by workplace law now. In the members' packets was a 2012 Dittman Research survey that shows 82 percent of Alaskans support a statewide, smoke-free indoor air law that includes restaurants and bars. You see the support we have from across the state from every members' district, which is consistent with that 82 percent polling. Also in the members' packets is a documentation from the Institute of Social and Economic Research (ISER) in 2014, and a Journal of Cancer article in 2007 which shows that smoke-free air laws do not have adverse economic consequences for restaurants and bars subject to them.

What does SB 1 not do? SB 1 does not ban cigarette smoking and it does not ban e-cigarettes. What does SB 1 do? SB 1 provides a statewide smoking prohibition in enclosed public spaces, public transportations and facilities, places of employment, government owned or operated places, buildings or residences that are used to provide paid childcare, healthcare facilities, the Pioneer Homes and the Veterans Homes, and vehicles that are places of employment with certain exceptions. Included are school grounds, public parks for children, outdoor arenas sitting, and areas within certain distances from entrances, open windows, and air intake vents where smoking is prohibited. The bill

requires the Commissioner of Health and Social Services to adopt regulations for filing, processing, and investigating reports of violations of the smoking prohibition, which may include filing complaints and issuing citations.

The Department of Health and Social Services (HSS) role in implementing this statewide smoking prohibition is to provide education and respond to complaints as they come forward. Under the Anchorage law, which was enacted in 2000 and updated in 2007, the average number of enforcement actions a year is between 3 and 6. The bill allows the HSS commissioner to delegate to other agencies any other responsibilities to implement the bill's provisions. The bill also requires a person who is in charge of a place where smoking is prohibited to post it with specific signs saying that smoking is not allowed and it requires the HSS department to furnish signs to anyone who had requested them. The Division of Public Health's Tobacco Prevention and Control Program would be responsible for developing public education materials regarding the new requirements and for educating business owners, grantees, and the public on the specifics of the law.

[10:11:01 AM](#)

MR. KOPP addressed "2014 Surgeon General Report" and "Premature Deaths Caused by Smoking, 1965-2014" as follows:

Over the last 50 years, there have been 31 Surgeon General's reports that have utilized the best available evidence to expand our understanding of the health consequences of smoking and involuntary exposure to tobacco smoke. We have heard of these staggering statistics about the repercussions of this exposure and the recent data indicates it is something akin to a public health emergency. Just looking at smoking related incidents all together, including primary and secondhand exposure for the last 50 years, we see there's been over 20 million American lives lost. Looking at just secondhand smoke in two categories: lung cancer and heart disease, it's almost 3 million Americans. Looking at just the numbers in comparison just for analysis, there have been 20 million Americans die in that period, 2.5 million were non-smokers, and more than 100,000 babies were

impacted due to smoking related issues with secondhand smoke. That's a lot of people, it's 68 times the combat deaths in WWII and 30 times the number of U.S. deaths from the 1919 flu pandemic.

[10:12:16 AM](#)

He addressed "What We've Learned in 50 Years" as follows:

With respect to secondhand smoke, we know now that smoking and passive smoking causes disease in nearly every organ. Exposure to secondhand smoke is causally linked to cancer, respiratory and cardiovascular diseases, and adverse effects on the health of infants and children. 41,000 non-smokers a year die from secondhand smoke according to the U.S. Surgeon General's report in 2014, and as Senator Micciche said, this is 4 times the number of DUI fatalities in 2013, which according to the National Highway Transportation Safety Association was 10,046. In our 50 year history of progression with our response to DUI as a country, we started off with no jail and a 0.15 breath alcohol limit, lowered that to a 0.10 and started bringing on jail time, now we are down to a 0.08 with mandatory 3 days in jail as a national standard in all 50 states. The point here is the response to something that kills at 4 times the rate is we think, more measured than that.

[10:13:16 AM](#)

MR. KOPP addressed "Health Consequences Causally Linked to Secondhand Smoke" as follows:

Stroke is more recently acknowledged by the U.S. Surgeon General as being causally linked to secondhand smoke with about a 30 percent increased risk due to secondhand smoke exposure. The annual number of deaths attributable to smoking and exposure to secondhand smoke is now approaching 500,000 people. The exposure to secondhand smoke we now know is more immediate than thought, even a decade ago, as far as its impact to the cardiovascular system, damage to blood vessels, making blood more likely to clot, and increasing the risk for heart attack and stroke. The 2006 and the 2010 Surgeon General's report both reported that there is no safe level of secondhand exposure.

Our national cost in 2006 was \$5.6 billion in lost productivity alone due to exposure to secondhand smoke. The estimate from the American Cancer Society for Alaska is 60 deaths and more than \$1 million per year. The evidence is sufficient to infer a causal relationship between the implementation of a smoke free law or a policy and a reduction in coronary events among people under 65 years of age. Doctor Urata with the Juneau hospital is here to speak to that.

In conclusion, this is a question of rights, the choice to smoke versus the need to breathe. A clean indoor air policy does not prohibit smoking, it only requires that those who choose to smoke do so in a manner that does not threaten or harm others.

[10:15:06 AM](#)

MR. KOPP addressed "What About E-cigarettes?" as follows:

There's a lot of discussion about e-cigarettes. The science is still maturing with respect to e-cigarettes, there are studies that show that because of the unregulated nature of the market, depending on the tool that is being used, that you can have a significant amount of toxins, ultra-fine medical particles, volatile compounds, and other carcinogens that become part of the vaping or the aerosolized air. The biggest problem is that the U.S. Food and Drug Administration (FDA) has not assumed regulation of them and there are 470 different brands. According to Alaska state law, it is illegal to sell or give any product containing nicotine to anyone under 19 years old, and because e-cigarettes retailers do not need a sales license endorsement to sell their products like tobacco retailers, there is no program of compliance checks for youth sales in place for these retailers.

[10:16:06 AM](#)

He addressed "Why Smoke-Free Workplaces?" as follows:

The implantation of comprehensive clean indoor laws has been shown to significantly reduce heart attacks. We talked about separating smokers from non-smokers. Air clean technologies and ventilation systems, it's very hard to get those to remove carcinogens from the air, you can sometimes get down toward the detectable

smoke is not there, but they are not reliable to protect public health. In addition, eliminating exposure of secondhand smokers to secondhand smoke helps reduce tobacco use among smokers. The Surgeon General's quote is probably the most relevant on the page, "The right of smokers to smoke ends where their behavior effects the health and wellbeing of others."

[10:16:51 AM](#)

He addressed "Smoke-free Laws in Alaska" as follows:

Half of Alaska's population is protected by a local law from secondhand smoke at work and the remaining part, largely in the unorganized boroughs or boroughs that do not have healthcare laws, are not affected. We also recently have support from the Kodiak Borough, and Bristol Bay Native Corporation just signed on with this bill, not the smoke-free Alaska act, but actually this bill. 82 percent of Alaskans agree, according to the Dittman 2012 survey, that Alaska workers should be protected from secondhand smoke in the workplace. Support even among smokers is strong for a smoke-free indoor workplace laws according to Dittman. Alaska's support for smoke-free indoor workplaces is high throughout all regions of the state.

CHAIR STOLTZE commented that the bill's concept is simple and there is no reason to go through a sectional analysis. He said he believes that the committee understands the politics and the public opinion. He related that C. Everett Koop was vilified when he was a nominee for Surgeon General because he was pro-life and deified when he was anti-tobacco.

[10:18:40 AM](#)

DR. JAY BUTLER, MD, Chief Medical Officer/Director, Department of Health and Social Services, Anchorage, Alaska, stated that he wants to provide perspective of a physician as well as a bit of a baseline skeptic and touch briefly on the health effects of secondhand smoke, but really focus on the health benefits of avoiding smoking environments. He stated that he would focus on one outcome which is heart attacks, an outcome that is not junk-science and not an idea that is based on a single study in the journal of irreproducible results.

DR. BUTLER detailed the link between heart attacks and cigarette smoke as follows:

There are three lines of evidence, two of which have already been touched on. There's multiple epidemiological studies linking smoke exposure to the risk of heart attack; we also understand how this works, the path of physiology if you will, this isn't magic, the platelets become stickier, the lining of the vessels in the heart change function within minutes after tobacco smoke exposure for people who are non-smokers, increasing the risk of a clot, which is what causes a heart attack.

Finally, I wanted to really emphasize the fact that taking cigarette smoke outdoors has been found in numerous places to reduce the overall hospitalization rates for heart attacks and in places as diverse as Helena, Montana; Saskatoon; to the entire nation of Scotland. I also wanted to stress that in most of these places, the enforcement is passive, there's not storm troopers sweeping in with squirt guns to extinguish the stogies the cigar bars. It is worth pointing out though that some of the very earliest evidence of the very short term benefits of smoke-free laws were observed among barkeepers and tavern owners. It's also worth noting that in places where these laws have been in place for a number of years, these benefits have been sustained and actually increased as time passes.

[10:20:56 AM](#)

DR. BUTLER explained the impact of cigarette smoke on children as follows:

Secondhand smoke exposure has been associated with the sudden infant death syndrome, respiratory infections, middle ear infections, and asthma attacks in kids; in fact, in Scotland they found that their trends in asthma or hospitalizations among children which had been increasing, part of a global trend, actually began to turn after they passed their smoke-free laws. It's also worth pointing out that concerns that smoke-free laws force people to smoking indoors at home has not been borne out, in fact the data has shown that using Cotinine in urine as a marker of cigarette exposure, this marker has actually gone down among children in areas where these laws have been enacted.

We are all concerned about the high cost of healthcare. Avoiding secondhand smoke helps avoid the cost of illness associated with secondhand smoke that employers, government, and all of the "average Joes," with the exception of Joe Camel, have to bear.

10:22:15 AM

SENATOR MCGUIRE asked Dr. Butler to comment about e-cigarettes. She noted that the bulk of complaints she has received pertains to the bill defining smoking to include the use of e-cigarettes. She revealed that there have been some pretty personal e-mails from folks in her community where individuals at one point were addicted to smoking nicotine through tobacco use and have found reprieve smoking e-cigarettes as a perceived health benefit.

DR. BUTLER replied that the role of e-cigarettes as a harm reduction tool or even as a tobacco cessation tool is an ongoing debate.

He pointed out his concerns with e-cigarettes as follows:

- Aerosol exhaled from an e-cigarette is not always easy to detect unless a person is very close.
- E-cigarettes normalize smoking behaviors.
- Using marijuana in an e-cigarette is virtually impossible to differentiate.

He reiterated that e-cigarettes are not regulated by the FDA and not approved as tobacco cessation instruments. He noted that nicotine replacement products already exist. He revealed that he has received more than a dozen emails that all cite the same study that addresses contaminants and not what is intentionally in the liquids. He said he questions the renormalization of smoking where e-cigarettes target the junior high school age group with flavors like Candy Crush, Vanilla Dream, Captain Crunch, and Mountain Dew. He stated that he remains skeptical and asserted that e-cigarettes should be included in the bill for ease of enforcement.

10:25:12 AM

JOE DARNELL, Investigator, Tobacco Youth Education & Enforcement Program, Division of Behavioral Health, Alaska Department of Health and Social Services, Anchorage, Alaska, stated that he works on under aged tobacco enforcement and compliance. He said enforcement of SB 1 will be done statewide through passive enforcement with the use of a toll-free number and website.

MR. DARNELL specified that an initial complaint will result in a letter to let a business know that a complaint was received. He added that educational information about the bill with details on health effects will be sent as well. He said a second complaint will result in a more strongly worded letter as well as a follow up by a local coalition or one of the statewide grantees. He stated that a third complaint will lead to a follow up in-person. He opined that he does not anticipate a third complaint situation. He noted that Anchorage has never had a third complaint and added that a second letter has rarely been sent out.

10:26:52 AM

DR. ROBERT URATA, MD, volunteer, American Heart Association, Juneau, Alaska, revealed that he was born and raised in Wrangle, Alaska and that he has practiced medicine in Juneau since 1984. He noted that he has been an American Heart Association volunteer for the past 15 years. He stated that he supports SB 1 with the inclusion of e-cigarettes.

DR. URATA read the following statement:

Every 34 seconds an American dies of a heart attack, every 40 seconds an American dies of a stroke. Cancer and cardiovascular disease are the number one and two causes of death in Alaska. Secondhand smoke kills over 100,000 Americans every year and it also costs a lot of money. This state may save up to \$5 million if this law goes through. Smoke-free working places are really important for the health of this country and this state. In Pueblo, Colorado, smoke-free ordinance found a 20 percent gain in their combined bar and restaurant sales tax and a 27 percent decrease in heart attacks when they compared a year and a half before the law and a year and a half after the law; I believe this was also reproduced in Helena, Montana when they passed their clean air law. I would also wish to include e-cigarettes because there are serious questions to their safety. The FDA has found known toxins in nicotine, but currently there are over 240 products and they are not all tested, so it is hard to know what's going on there. The FDA is still studying this and my feeling is this should be included because what we do in medicine is first, "do no harm;" I think this should be included in this bill until we have more knowledge because harm could be done. Imagine the many lives saved if cigarettes had been studied

properly before putting it on the market. On behalf of the American Heart Association I urge you to support this bill and thank you for your time.

10:29:58 AM

CHAIR STOLTZE announced that SB 1 will be held in committee.

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10:30:33 AM

There being no further business to come before the committee, Chair Stoltze adjourned the Senate State Affairs Standing Committee hearing at 10:30 a.m.