

SENATE FINANCE COMMITTEE

April 3, 2017

9:19 a.m.

9:19:10 AM

CALL TO ORDER

Senator Anna MacKinnon called the Senate Finance Committee meeting to order at 9:19 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Mike Dunleavy
Senator Peter Micciche
Senator Donny Olson
Senator Natasha von Imhof

MEMBERS ABSENT

None

ALSO PRESENT

Juli Lucky, Staff, Senator Anna MacKinnon; Senator John Coghill, Sponsor; Jordan Shilling, Staff, Senator John Coghill; John Skidmore, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Quinlan Steiner, Public Defender Agency, Anchorage.

SUMMARY

SB 54 CRIME AND SENTENCING

CSSB 54(FIN) was REPORTED out of committee with "no recommendation" and with one new indeterminate fiscal note from the Department of Corrections and four previously published zero fiscal notes: FN1 (DPS), FN2 (LAW), FN3 (DHS), and FN5 (AJS).

HB 57 APPROP: OPERATING BUDGET/LOANS/FUNDS

HB 57 was SCHEDULED but not HEARD.

HB 59 APPROP: MENTAL HEALTH BUDGET

HB 59 was SCHEDULED but not HEARD.

#sb54

SENATE BILL NO. 54

"An Act relating to crime and criminal law; relating to violation of condition of release; relating to sex trafficking; relating to sentencing; relating to probation; relating to the pretrial services program; and providing for an effective date."

[9:19:45 AM](#)

Co-Chair MacKinnon noted that the public hearing had been taken on the legislation on March 28, 1017.

Vice-Chair Bishop MOVED to ADOPT proposed committee substitute for SB 54, Work Draft 30-LS0461\N (Martin, 3/31/17).

Co-Chair MacKinnon OBJECTED for discussion.

[9:20:30 AM](#)

JULI LUCKY, STAFF, SENATOR ANNA MACKINNON, explained that the CS incorporated the amendments that were previously adopted by the committee and could be found in Sections 18 and 19.

Co-Chair MacKinnon WITHDREW her OBJECTION.

There being NO further OBJECTION, it was so ordered.

[9:21:50 AM](#)

Co-Chair Hoffman MOVED to ADOPT Amendment 1, 30-LS0461\N.1 (Martin, 3/31/17)(copy on file).

Co-Chair MacKinnon OBJECTED for discussion.

Co-Chair Hoffman explained that the amendment offered a compromise between the 90-day and 360-day sentencing levels.

Co-Chair MacKinnon invited the sponsor to speak to the amendment.

[9:23:04 AM](#)

SENATOR JOHN COGHILL, SPONSOR, relayed that he supported the amendment. He stated that the Alaska Criminal Justice Commission (ACJC) had debated the issue hotly. He hoped that a sentencing range could be found that held people accountable for C felonies, and those who should be offered other diversionary sentencing under a court order. He felt that the amendment gave significant discretion to judges, while staying true to the principle of diversion.

[9:24:38 AM](#)

JORDAN SHILLING, STAFF, SENATOR JOHN COGHILL, agreed with the sponsor and added that the amendment would address the conflicts with the DUI statute raised by the Department of Law.

Senator Dunleavy asked about sentencing ranges in other states.

Mr. Coghill replied that he could not answer the question at this time.

[9:25:25 AM](#)

JOHN SKIDMORE, CRIMINAL DIVISION, DEPARTMENT OF LAW, testified that the amendment would address conflict with the DUI statute in an appropriate manner. He said that the department was concerned with the amount of discretion that the amendment would provide to judges. He said that when looking at the ranges of what other states do for low-level felonies, Alaska was the lowest in the nation for the sentencing discretion given to judges. He relayed that with the amendment the state would still be one of the lowest in the nation for sentencing discretion. He stressed that the department respected that the issue was a policy decision that the legislature had to make but asked that when setting appropriate policy, the legislature consider the

issues surrounding rehabilitation for substance abuse and violent crimes.

[9:30:05 AM](#)

Senator von Imhof wondered how "low-level offender" related to "first time offender". She said that the conversation was about first-time offenders and not low-level offenders.

Mr. Skidmore clarified that when he used the term "low level" he was referring to the classification of the offense. He continued that Class C felonies were the lowest level felony that existed within the state. He explained that the state's presumptive sentencing scheme began by saying that a first-time felony offense had a certain presumption, a second felony had another, and a third or above had yet another. He reiterated that a first-time felony offence meant that the person had not had a prior felony within the past ten years; a first-time felony offence did not mean that a person did not have a prior criminal history.

[9:32:01 AM](#)

Senator von Imhof stated that second and third felonies had significant sentencing in accordance with the bill. She thought it was important to highlight that they discussion was about first-time offenders. She understood that most low-level also meant first-time in most states.

Mr. Skidmore answered in the affirmative. He shared that when he had reviewed the practice of other states, there had been 26 that had a range for first-time, low-level felonies, from zero to 1 year all the way to zero to 20 years. He added that an additional 14 states that required some jailtime, whether it was a year or six months, up to 14 years. He concluded that most other states provided a wider discretion for their courts that Alaska currently did.

[9:33:21 AM](#)

Senator von Imhof asked about active jail time and rehabilitation programs. She wondered why a rehabilitation program could not last beyond 190 days, especially if the program was successful. She thought that jailtime and rehab programs should be one in the same.

Mr. Skidmore replied that the authority of the court to order specific sentencing guidelines was the main question, and how long the court could order someone to be in a residential rehabilitation program. He said that if the committee were to adopt a range of zero to 120 days the courts would be limited in ordering a defendant to residential treatment to 120 days. He recommended that the committee consider the amount of residential treatment that the court would be authorized to order. He said that if it were decided to authorize more than 120 days, a presumptive range for active jailtime of more than 120 days would be necessary for authorization under Alaska case law.

[9:35:18 AM](#)

Co-Chair Hoffman understood that successful rehabilitation occurred when individuals were willing participants, and that those that were court ordered had lower success rates.

[9:36:05 AM](#)

Senator Dunleavy wondered about judge's sentencing discretion for more serious violent crimes.

Mr. Skidmore stressed that the Department of Law was not in support of the amendment. He said that the department believed that zero to 1 year was the appropriate discretion that ought to be provided to the courts. He reiterated that the policy decision before the committee was whether or not to adopt an active range of zero to 120 days, or zero to 1 year.

[9:37:35 AM](#)

Senator Dunleavy understood that under the amendment, 120 days would be the maximum sentence for even more serious and violent crimes.

Mr. Skidmore replied in the affirmative.

Senator Dunleavy understood that a judge would not be able to go beyond the 120-day cap.

Mr. Skidmore answered in the affirmative.

[9:38:30 AM](#)

Senator Micciche understood that the amendment offered 18 months of potential imprisonment but 120 days of active imprisonment.

Mr. Skidmore replied in the affirmative.

Senator Micciche clarified that there had been precedence set that defined residential treatment as imprisonment.

Mr. Skidmore restated that the case was Nygren v. State of Alaska (1980).

Senator Micciche said that he wanted to help with more active intervention in drug related crimes.

Mr. Skidmore referred back to an earlier example case, in which an individual was convicted of theft in the second degree - a theft of over \$1000. He said that there had not been another conviction made and the original theft had been determined to be the result of supporting a drug habit. The offender had violated probation by continuing to use controlled substances and he had recommended that the court send them to residential treatment. He said that the defense had argued that the original offense had been a Class C felony, which meant that the judge did not have the authority to impose jailtime or send the offender to residential treatment.

[9:41:14 AM](#)

Senator Micciche wondered whether the Nygern case could result in a statutory change.

Mr. Skidmore stated that Nygren was an older case and he could not recall the exact premise upon which it was decided. He was unsure whether a simple statute alteration would be able to address the issue.

[9:42:35 AM](#)

Vice-Chair Bishop asked whether Mr. Skidmore had an idea of how long it took an offender to get in to residential treatment.

Mr. Skidmore relayed that the commission had identified a need for more treatment programs in the state. He understood that there was a waiting period to get into

residential treatment programs. He reiterated that the issue at hand was whether judges should have the authority, and the next issue would be whether the resources would be available to serve that authority.

Vice-Chair Bishop pointed out that regardless of whether a judge had the authority, if there were no resources to carry out the terms of the sentence then the point was moot.

[9:44:11 AM](#)

Senator von Imhof reiterated concern that there were enough beds to accommodate court ordered rehab.

Mr. Skidmore could not speak to whether there were enough beds or not, he shared that he had heard talk that there were not enough within state. He shared that many individuals left the state for residential treatment. He felt that serving those people in-state would be a better scenario. He stressed the importance of providing within the law and appropriate framework for judges to act.

[9:45:33 AM](#)

Senator von Imhof categorized the 1-year cap as a bargaining tool for the department and queried whether that cap would improve recidivism numbers. She wondered whether 120 days was enough of a bargaining tool for the department to get a fair suite of options to address certain crimes. She asked where the presumptive range of zero to 18 month would apply.

Mr. Skidmore responded that 90 to 95 percent of the cases in the criminal justice system were resolved through plea negotiations. He said that if the negotiations started with only probation then that would be taken off the table during negotiations. He stressed that some incentive had to be offered in order to negotiate without reducing the offence from a felony to a misdemeanor. He said that this reduction would mean the difference between supervised and unsupervised probation, which was related to offenders following their terms of probation. He reiterated that it was a question of what was appropriate for public safety.

[9:48:27 AM](#)

Mr. Skidmore said that under the proposed amendment 18 month was the amount of time that could be suspended; the court could impose a sentence of 18 months with all but 120 days suspended. He furthered that the 120 days would be the jailtime that a person would serve upfront and the additional time suspended would be the potential sanctions that would be imposed for violations of conditions of probation. The court would not be authorized to impose additional active jailtime absent a violation of probation under the amendment.

[9:49:26 AM](#)

AT EASE

[9:50:21 AM](#)

RECONVENED

Senator Dunleavy queried whether the Office of Victim's Rights supported the amendment.

Mr. Skidmore replied that he had not spoken to the office since the amendment had been proposed. He said that in previous conversations the office had supported the 1-year cap that was currently found in the legislation.

[9:50:55 AM](#)

Senator Micciche assumed that every prosecutor in the state would attempt to procure the maximum level of incarceration and that every defense attorney would attempt the lowest number of days of incarceration.

Mr. Skidmore stated that it would be a mistake to assume that prosecutors would advocate for the highest amount of incarceration. He provided two supporting stories. He stressed that SB 54 was proposing half of the past cap, when the data reflected that the average of the majority of past cases was 120 days. He understood that this would seem to suggest that 120 days was the right number to choose but he highlighted the 120 days was an average and that the courts needed to retain discretion to address cases on a case by case basis.

[9:53:44 AM](#)

AT EASE

[9:54:06 AM](#)

RECONVENED

Co-Chair MacKinnon solicited comments on the amendment from Quinlan Steiner, Director, Public Defender Agency, Department of Administration.

QUINLAN STEINER, PUBLIC DEFENDER AGENCY, ANCHORAGE (via teleconference), he believed that it was important that the committee consider that over sentencing lower-level offenders could cause them to fail at rehabilitation attempts; the when confronted by the system some individuals responded negatively. He noted that the amendment would increase costs and undermine the availability of treatment for individuals that were not going to jail. He lamented that one of the biggest challenged in the state was the availability of treatment when a person was ready. He said that with the proposal of 120 days, with up to 18 months suspended, up to 18 months in jail could be imposed for a violation and the more modest approach in terms of rehabilitation could be taken at the C Felony conviction, other alternatives could be available including longer-term treatment. He stated that the average sentences described by Mr. Skidmore had resulted in very high recidivism rates. He believed that the 120 days struck a balance between the community condemnation angle and maximizing public safety.

[9:57:48 AM](#)

Senator Micciche suggested that a first time Class C offender would be more likely to become a second time Class C offender than a person who had never committed an offense.

Mr. Quinlan replied that he did not recall any data that suggested that the level of a person's first offense would make a difference in the level of a second offense.

Senator Micciche asked whether the categories of C felonies should be examined in the future. He wondered whether the sentencing ranges for C felonies should be split between crimes that involved weapons from the other C felony crimes.

Mr. Quinlan stated that the commission had discussed the concept but did not recall data to substantiate that differentiating would have any benefit. He said that often

the driving force in most cases was drugs or alcohol. He thought that further discussion of the issue could be of interest to the commission.

10:00:54 AM

AT EASE

10:01:03 AM

RECONVENED

Co-Chair Hoffman recapped the various opinions surrounding the amendment.

Co-Chair Hoffman WITHDREW Amendment 1. There being NO OBJECTION, it was so ordered.

10:02:35 AM

Vice-Chair Bishop thought that there was room for improvement in the area of presumptive ranges and the Nygren Rule. He emphasized the importance of rehabilitation programs for Class C offenders. He believed that many of the public safety issues in the state were drug and alcohol related.

10:04:54 AM

Senator Dunleavy stressed that the issue was not an "exact science." He expressed appreciation for the work that had so far been done on the issues surrounding public safety.

10:05:54 AM

Vice-Chair Bishop MOVED to report CSSB 54(FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CSSB 54(FIN) was REPORTED out of committee with "no recommendation" and with one new indeterminate fiscal note from the Department of Corrections and four previously published zero fiscal notes: FN1 (DPS), FN2 (LAW), FN3 (DHS), and FN5 (AJS).

10:06:25 AM

AT EASE

10:09:30 AM

RECONVENED

Co-Chair MacKinnon discussed housekeeping.

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ADJOURNMENT

10:10:19 AM

The meeting was adjourned at 10:10 a.m.