

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

January 25, 2017

1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Kevin Meyer
Senator Pete Kelly
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATIONS BY THE ALASKA CRIMINAL JUSTICE COMMISSION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SUZANNE DIPIETRO, Executive Director
Alaska Judicial Council
Anchorage, Alaska

POSITION STATEMENT: Delivered an overview of the Alaska Criminal Justice Commission.

LT. KRIS SELL, Commissioner
Alaska Criminal Justice Commission;
Lieutenant, Juneau Police Department
Juneau, Alaska

POSITION STATEMENT: Commented on the implementation of SB 91.

BRENDA STANFILL, Commissioner
Alaska Criminal Justice Commission;
Executive Director, Interior Center for Non-Violent Living;
Member, Network on Domestic Violence and Sexual Assault

Fairbanks, Alaska

POSITION STATEMENT: Commented on the implementation of SB 91.

ACTION NARRATIVE

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CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Costello, Meyer, Wielechowski, Kelly and Chair Coghill. He asked the members to introduce their judiciary staff and then he reviewed his expectations for this session.

Presentations by the Alaska Criminal Justice Commission

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CHAIR COGHILL announced the business before the committee would be to hear presentations from the Alaska Criminal Justice Commission about the work it has been tasked to do, the implementation of SB 91, and the areas that may need additional attention. He welcomed Suzanne DiPietro and thanked her work.

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SUZANNE DIPIETRO, Executive Director, Alaska Judicial Council, delivered an overview of the Alaska Criminal Justice Commission ("Commission"). She reminded the committee that the Commission was established in 2014 as part of the omnibus crime bill, Senate Bill 64. In 2016, Senate Bill 91 extended the sunset for the Commission to June 30, 2021 and added duties. When the Commission was created, the legislature asked the Alaska Judicial Council to staff it and provide administrative support.

She reviewed the membership of the Alaska Criminal Justice Commission ("Commission"). It has 11 voting and 2 non-voting members. The two Governor appointees are from municipal law enforcement and a victims' rights advocate. These positions currently are filled by Lt. Kris Sell with the Juneau Police Department and Brenda Stanfill with the Interior Center for Non-Violent Living. The member from the Alaska Native community designated by the Alaska Native Justice Center is Greg Razo, Chair of Cook Inlet Region Incorporated (CIRI). The director of the Mental Health Trust or designee is Jeff Jessee, Mental Health Trust Authority (MHTA) Program Officer. The Chief Justice appointees from each level of court are: District Court Judge Stephanie Rhoades, Superior Court Judge Trevor Stephens, and retired justice Alex Bryner. The state agency commissioners include Attorney General Jahna Lindemuth, Department of

Corrections Commissioner Dean Williams, Department of Public Safety Commissioner Walt Monegan, and Public Defender Quinlan Steiner. The non-voting legislative appointees are appointed by the Senate president and Speaker of the House of Representatives. These members are Senator John Coghill and Representative Matt Claman.

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MS. DIPIETRO reviewed the powers and duties of the Alaska Criminal Justice Commission that are laid out in the authorizing statute, AS 44.19.645. The first responsibility is to look at the laws and practices in the criminal justice system and evaluate whether the state is getting the desired results. The factors to consider include protection of the public, community condemnation of offenders, the rights of victims, the rights of the accused, restitution and the principle of reformation. She noted that some of these factors work together and some work in tension.

The second general area of responsibility is data collection and analysis. She said the Commission is in a unique position to consider empirical information about how the system is or is not working, and consider studies about the most effective things to do in the criminal justice system. The Commission has embraced the concept of being data-driven and making decisions based on what is happening on the ground, what has proven to work, and what has been proven not to work.

In 2015, legislature leadership sent a letter to the Commission giving it a third special charge. The Commission was asked to develop recommendations to meet the following goals: 1. avert all future prison growth; 2. avert all future prison growth and reduce the current prison population by 15 percent; and 3. avert all future prison growth and reduce the current prison population by 25 percent. A large part of the discussion about meeting these goals is whether prison growth can be controlled while public safety is protected.

MS. DIPIETRO reviewed the Commission methodology. The Commission has been meeting approximately every other month since September 2014. Working groups were established to deal with technical aspects of proposals. These groups met once or twice between Commission meetings to get all the commissioners familiar with the empirical information and data so they understood the problems that were facing the state. Early in the process the entire Commission agreed to make decisions based on evidence, data, and empirical information.

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MS. DIPIETRO displayed a list of the factors included in AS 44.19.645 that the Commission must consider when it formulates recommendations. She again pointed out that some of the factors work in tension. "We want to be able to rehabilitate the offender [and] we also want to have victims be heard. We want the offenders to be able to pay restitution and to be able to make the community whole for the harm that they've caused [and] we also want to express community condemnation of their conduct."

She talked about the ways the Commission has worked on the statutory charge to "[S]olicit information and obtain views from a variety of constituencies so as to obtain the broad spectrum of views that exist with respect to possible approaches to sentencing and administration of justice in the state." The Commission electronically publishes all its meeting schedules and sends email to people who want notification of meetings and agendas. The Commission also actively solicits stakeholder participation, public comment, and participation from rural areas. She relayed that she is particularly proud of the work the Commission did in 2014 and 2015 reaching out to victim groups. She displayed a list of additional factors included in AS 44.19.646 that the Commission considers when it makes recommendations. They illustrate the complex level of analysis the Commission undertakes.

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MS. DIPIETRO reviewed the challenges facing the Commission. One of the motivating factors for the Commission is the rather high rate of recidivism. Depending on the study, between 58 and 66 percent of inmates return to jail within three years. Most return within six months of release. "Alaska can do better," she said. The Commission has also learned through stakeholder involvement that community treatment resources and violence prevention programs are not available for many offenders who need them.

The Commission is also very aware that Alaska's prison population grew by 27 percent in the last decade. That is almost three times faster than the growth of the resident population. At that rate of growth, Alaska will exceed the current prison bed capacity this year.

The Commission also learned that Alaska has been over reliant on prison as a response to crime. The data shows that 75 percent of

offenders that entered prison in 2014 had been convicted of a nonviolent offense. Prison time for sentenced felony offenders had risen 31 percent over the past decade. In 2014, 28 percent of prison beds were occupied by pretrial detainees. These are people who had not yet been convicted of a crime. Studies from other states and empirical information demonstrate that longer prison stays do not reduce recidivism more than shorter prison stays. She said that might seem counter intuitive but there is a point of diminishing returns. The expense of keeping someone in prison for a long period of time is not improving the recidivism rates.

The Commission also learned that more than 60 percent of offenders on probation and parole were returned to prison within the first three months of release.

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CHAIR COGHILL noted that this topic had generated a lot of interest; Senator Micciche, Senator Hughes and Representative Reinbold were in the audience.

MS. DIPIETRO asked if there were any questions or comments.

SENATOR WIELECHOWSKI said it's startling to hear that 75 percent of inmates have committed a nonviolent crime, but he's been hearing from constituents that nothing is happening to people who commit property crimes. The police have also expressed concern that there is not a lot of action they can take. He asked her to comment.

MS. DIPIETRO said the Commission has heard those concerns from both law enforcement officers and municipal prosecutors, and there are two separate issues. The first is whether a person should be incarcerated pretrial. The officer has to decide whether to issue the person a summons to appear in court later or arrest the person and take them to jail. Once they are in jail, it's a matter of whether they can make bail or be held until their case is resolved. The practice in this state has been to arrest and rely on prison. The Commission had to consider whether that was a good use of prison beds. The Commission learned that about 50 percent of the people that were arrested, taken to jail, and charged with a crime were held the entire time before their case was resolved. [Senate Bill 91] had a solution that is being implemented.

The second issue is about whether a person should receive jail time as part of their sanction. This also relates to Alaska's

overreliance on prisons. In 2014 over 300 people were serving a sentence for stealing something that was worth less than \$250. Ninety-three percent of the cases were shoplifting, and toiletries and alcohol were most frequently stolen. On average, those people spent 23 days in jail.

CHAIR COGHILL said the committee will look at the bail schedule, the escalating incidence of small theft crimes, and sentencing associated with class C felonies. He hopes to come out of the next two meetings with some recommendations.

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SENATOR WIELECHOWSKI said he too has heard that crime is up in Anchorage and people are scared because of the bill that passed. He asked her to remind the committee about which portions of Senate Bill 91 have been implemented. If areas need to be changed that should be said, but if there is a misperception it should be corrected. He asked if she has empirical data that would lead her to believe that the bill has led to an overall uptick in crime in Alaska.

MS. DIPIETRO said the commission has been looking at the crime rate in Alaska and Anchorage over 30 years, and there have been times in the past when the rate was quite a bit higher than it is now. The current uptick in crime began 2-3 years ago, before the Commission was created. She explained that the bill has three parts. The part that became effective in July 2016 had to do with penalties for crimes. The part that became effective in January 2017 has to do with the changes in the way that people on felony probation and parole are supervised. The third part, that has not gone into effect yet, has to do with the pretrial release provisions.

She said she too has heard that people are confused about the bail schedule. That is something that the presiding judges of the Court System put into effect and it wasn't really part of the bill. The idea was that by 2018 there will be important changes to the pretrial process. There will be a tool to help attorneys and judges decide who can be safely released while they are waiting for their case to be resolved and who should be held. She said both the Department of Corrections and the Commission are working hard to implement that piece.

CHAIR COGHILL commented that timelines are an issue in several areas.

MS. DIPIETRO relayed that she is personally excited about some of the changes in probation and parole.

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MS. DIPIETRO directed attention to the Alaska Criminal Justice Commission report in the packets on alcohol-related offenses in Title 28. This was mandated by Senate Bill 91. The Commission looked at what is currently happening with DUI and refusal offenses and what studies show is effective. The Commission also made recommendations for the legislature to consider.

CHAIR COGHILL commented that the committee will also be looking at the Title 4 reforms.

MS. DIPIETRO said the legislature also directed the Commission to submit a restitution report. It contains several recommendations on ways to improve restitution collection for victims of crime. The report also provides a substantial background on restitution processes in Alaska and statistics on restitution collection. She noted that the Commission will continue to work on restorative justice going forward.

Senate Bill 91 also mandates a report on the potential for social impact bonds to reduce recidivism rates. This report explains how social impact bonds work, how they might be used in conjunction with programs that reduce recidivism, and how other similar projects have worked in other states.

On November 1, 2016, the Commission submitted its annual report to the legislature. It summarizes the Commission's work in the past year and lays out its plans for the future.

CHAIR COGHILL relayed that each of the reports are in members' packets.

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MS. DIPIETRO discussed other recommendations the Commission has made. Recognizing the connection between behavioral health issues and criminal offenses, the Commission formed a behavioral health committee. It is looking at how the behavioral health and criminal justice systems can work together to reduce recidivism. To this end, the Commission has recommended the Commissioner of the Department of Health and Social Services become a member of the Commission. A second recommendation is that the legislature enact a statute creating a standardized "release of information" form that will be universally accepted by all state-funded agencies providing health and behavioral health services.

The Commission also reviewed Alaska's presumptive sentencing structure and proposes a mitigator that would allow prosecutors, defense attorneys, and victims to resolve cases more timely.

CHAIR COGHILL requested a final report to the legislature that lists all the recommendations.

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MS. DIPIETRO reviewed the future work of the Commission. As required by Senate Bill 91, the Commission formed a workgroup to study Alaska's laws on sex-related offenses to determine "if there are circumstances under which victims' rights, public safety, and the rehabilitation of offenders are better served by changing the existing law." This is a complex topic and there isn't a timeline for the report.

Senate Bill 91 also directed the Commission to oversee the implementation of the statutory changes it brought about. The Commission is collecting data from the Department of Corrections, the Alaska Court System, and the Department of Public Safety to monitor the effect of new criminal laws. The data will be reported to the legislature in November of 2017.

MS. DIPIETRO said the Commission also is reviewing the concerns that have been expressed about the implementation of Senate Bill 91 and hopes to get through the list by Friday.

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LT. KRIS SELL, Commissioner, Alaska Criminal Justice Commission, said she works as a lieutenant for the Juneau Police Department. She has been on the Commission since it started, and she joined with a commitment to be tough on crime, just as she has throughout her law enforcement career. "I want people who are hurting other people to be in jail and I want us to be safe walking our streets." She related that she sat through the first year of meetings with her arms mentally crossed, because there was a lot of science she did not want to hear. Nevertheless, she was forced to confront some of her secret theories about criminal behavior.

She described the secret theory that there's a sweet spot that correlates the time in prison with a certain crime. After the person serves their time in prison, they can be released and the public will be safe. She admitted that the science doesn't bear that out. When she saw she was arresting the same people repeatedly she finally had to admit that continuing addiction or

untreated mental illness has a lot to do with why people continue to commit crimes. "I had to come to a place in my own reasoning that what I was thinking was tough on crime was actually just being tough on people."

LT. SELL related that when she made a mistake as a child it didn't matter why she did it or what she was thinking. She was punished. She opined that the state has been treating its criminal population in much the same way, and it hasn't worked out very well.

LT. SELL said her new vision is to look at why a person committed a crime, identify the motivator to change the behavior, and relentlessly supervise that. Put things in place like drug testing, required employment, and supervision that actually treats the situation. It's being tough on crime by rehabilitating the person from being a criminal. These things cost money and budgets are getting smaller, so the idea is to try to save money by keeping people out of prison and spending that money on things that actually change the criminal behavior.

She acknowledged that some parts of the bill have not been implemented and some didn't work out as envisioned. The 18 months suspended sentence for a class C felony is an example. Some felons would rather flat-time so they won't need to be drug tested or supervised when they are released. Drug and alcohol treatment is expensive, but the cost of not providing treatment is also very expensive. It just shifts the expense to whatever the drug addict steals to feed his/her habit.

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LT. SELL concluded her comments saying "It's always been my intent to be tough on crime. I think we owe that to our communities, but we need to resist the emotional satisfaction of believing that being tough on people is the same thing."

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CHAIR COGHILL said there has been a lot of outcry that the tools for petty theft have not worked. The police need the tools to hold offenders so they don't become scofflaws.

LT. SELL said she didn't foresee the operational problems associated with changing violating conditions of release to a violation. It was a surprise when judges said they didn't have the authority to open the underlying case.

CHAIR COGHILL said he likes the idea of being tough on crime but not tough on people.

LT. SELL added that refusing to provide treatment for a drug addict encourages crime.

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SENATOR COSTELLO expressed appreciation for the response she has gotten from Ms. DiPietro, the Mayor of Anchorage, the head of the crime unit for the Anchorage Police Department, the director of the Alaska State Troopers, the deputy commissioner of the Department of Public Safety, the member of Recovery Alaska, and the UAA Justice Center for participating in the roundtable in her community to discuss concerns about Senate Bill 91.

She said a comment on a social media site held legislators responsible for police no longer having the tools to do their job. She asked, "Have we in any way affected your personal interaction with an Alaskan who's been victimized and you're looking at what to do with the perpetrator?"

LT. SELL said each situation is different, but there has been some frustration expressed about no jail time for the first-class C felony. There are impacts that are a response to the bill, there's interplay with other things like less prosecutions because district attorney offices don't have adequate funding to prosecute, and there is a bail schedule that suggests OR release for all misdemeanor crimes unless a judge is contacted. At the same time, the Department of Corrections (DOC) is trying to manage the risk of in-custody deaths by not taking people who are very drunk into custody. Those are the people that often commit crimes so that consumes more resources for law enforcement.

A lot of things are going on in the same environment as Senate Bill 91 and several of those things contribute to frustration for law enforcement and the public.

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CHAIR COGHILL said the level of frustration has risen and Senate Bill 91 has become the focus of those frustrations. What this committee will do is try to address those frustrations. "Drugs and alcohol and behavioral health [issues] are just kicking the feet out from under us."

LT. SELL said it's a tough environment right now, but Senate Bill 91 did not happen in a vacuum.

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SENATOR WIELECHOWSKI related the frustration and resistance he is hearing from both constituents and the police. One constituent maintained a lady was robbed because of SB 91 and that the bill would protect the offender from arrest even if the police did catch him.

LT. SELL said that is probably a reference to the change in penalty for a first-time class C felony.

SENATOR WIELECHOWSKI emphasized the need to effectively communicate to the police about what the bill actually does. "If there are problems, I want to address those problems head on."

LT. SELL agreed that communication about the bail schedule needs to improve because it appears that there is no visible enforcement. She related that officers in Anchorage quit calling magistrates, even when they thought someone was dangerous, because the magistrates wouldn't approve any bail. "We need to drill down on what exactly caused that particular assessment."

CHAIR COGHILL said it's also important to keep in mind that the Municipality of Anchorage, Juneau, Fairbanks, and North Pole have police departments that enforce misdemeanants whereas the rest of Alaska is enforced by the state. "We don't want to shift things to communities if they don't have the resources."

CHAIR COGHILL thanked Lt. Sell and invited Ms. Stanfill to come forward.

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BRENDA STANFILL, Commissioner, Alaska Criminal Justice Commission, stated that she is also the Executive Director of the Interior Center for Non-Violent Living and a member of the Network on Domestic Violence and Sexual Assault. She relayed that she too came to the Commission with a tough on crime mindset after working 21 years in social services. She had advocated for tougher penalties when she saw the same people show up as a new victim year after year. The advocacy was successful, and the legislature imposed felony level penalties for repeated domestic violence and theft offenses. But it didn't reduce the numbers of these crimes.

She referred to the previous testimony that the uptick in crime started 2-3 years ago. She pointed out that at that same time, the mental health system in Fairbanks went bankrupt. Assisted

living homes closed and there were just eight treatment beds in the entire community. Communities statewide experienced the same sort of cutbacks and opioids and heroin use increased. She said she never found a needle for the first 15-16 years that she operated the Fairbanks shelter, but now it's common to find needles when a room is cleaned.

Detox services are similarly difficult to access. Chronic inebriates used jail as a homeless shelter but the new OR release conditions mean they can't stay even when it's 50 degrees below and they want to stay in jail. She relayed that this has caused some violent outbursts and jeopardized the safety of law enforcement. "We have to be aware that when you have no resources for where you can go and it's 50 below and you're cold and you're drunk, you're going to do something to get in jail, because that's the only place safe for you to go right then."

MS. STANFILL said she has embraced the statement that "We can't criminalize our way out of social issues." What she's excited about now is that they are starting to see the results of the reinvestment dollars that SB 91 put into prevention programs such as "Coaching Boys to Men." She related a story that ended tragically and emphasized the pressing need to provide resources so victims don't become offenders. She also highlighted the positive experience of a magistrate. She asked what made a difference for him and he said three people entered his life at a pivotal point and helped him get into sports.

She said she understands the frustrations with Senate Bill 91 from the victim advocacy perspective, but she believes it was the right thing to do. Putting people in jail without any opportunity for treatment just perpetuates the cycle. She expressed willingness to go back and take another look at the things the Commission may have gotten wrong and excitement about what it continues to do. She concluded, "As the person who is representing victims, we really need to focus on restitution."

CHAIR COGHILL thanked Ms. Stanfill and all the Commission members and briefly discussed the agenda going forward.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:58 p.m.