

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 1, 2017

1:32 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**

IMPLEMENTATION OVERVIEWS OF SENATE BILL 91

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Discussed implementation issues related to Senate Bill 91.

DEAN WILLIAMS, Commissioner  
Department of Corrections (DOC)  
Anchorage, Alaska

**POSITION STATEMENT:** Participated in the discussion of the implementation of Senate Bill 91.

CARRIE BELDEN, Director  
Division of Probation and Parole (DPP)  
Department of Corrections (DOC)

Anchorage, Alaska

**POSITION STATEMENT:** Discussed the steps the Division of Probation and Parole has undertaken to implement Senate Bill 91.

GERI MILLER-FOX, Director  
Division of Pretrial Services  
Department of Corrections (DOC)  
Anchorage, Alaska

**POSITION STATEMENT:** Discussed what the Division of Pretrial Services has done to implement Senate Bill 91.

JAHNA LINDEMUTH, Attorney General  
Department of Law (DOL)

**POSITION STATEMENT:** Discussed implementation and training the Department of Law has undertaken to implement Senate Bill 91.

#### **ACTION NARRATIVE**

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**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Costello, Kelly, Meyer, Wielechowski and Chair Coghill.

#### **Implementation Overviews of Senate Bill 91**

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**CHAIR COGHILL** announced the business before the committee would be to hear overviews on the implementation of Senate Bill 91.

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**LT. KRIS SELL**, Commissioner, Alaska Criminal Justice Commission ("Commission"), said she works as a lieutenant for the Juneau Police Department. She was asked to serve on the Commission in the fall of 2014, when the state first started looking at reforming criminal justice. She described the journey as stressful. "We made some changes, some things were really hard, some things did not go as envisioned, and now there's even talk of rolling back." She relayed that she found this stress pattern very familiar and finally realized that it was like the many domestic violence cases she has worked during her career as a police officer. The parallel is that change is difficult, enough so that some people might think about rolling the law back or convincing themselves that the domestic violence situation really wasn't that bad.

LT. SELL said that as she thinks about the process right now with respect to Senate Bill 91, she correlates it with sitting in the shelter. "People are angry, it's not where we're comfortable, and things are just not going well." The war within ourselves is whether to go back or go forward. Human nature is to go back, but she is asking everyone to be smart about it, because some things can be made better. She continued:

There were some implementation things that did not work out as we anticipated. We've relied on structures that were not in place yet, and we can't just gut it out until they are. We need to change some things between now and then. And there were interpretations of the law that we didn't necessarily foresee happening, like that someone couldn't be held in jail to even see a judge if there was no potential jail time at stake. So the arrests in the field weren't happening.

LT. SELL asked legislators, just as she has asked DV victims, to keep looking at the future that could happen. Exactly what that will look like isn't clear, but there is hope. "If we can keep the hope robust, then we won't give in to the fear and to the stress that is happening right now. Because if we give in, we will have fed that [fear] and we will be right back where we were, if not worse off." People keep cycling through jail and their behavior isn't changing.

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LT. SELL related that she attended an Alaska Peace Officers' Association meeting in Anchorage last weekend and the business manager was incredulous that she was pleased to have been part of this criminal justice reform. Her response was, "Well it hasn't been easy, but I think we need to keep in mind: if not us, then who, and if not now, then when?" She said she is committed to stay in the Commission and work for a better future. "We don't have to go back to the bad status quo. Let's keep moving forward to a better future even if we don't know exactly what that's going to look like in a year."

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CHAIR COGHILL said the testimony has been loud and clear that some of the tools just didn't fit. In recognition of this, the Commission presented 14 recommendations, 3 of which have tools to help stay the course.

LT. SELL said developing those 14 recommendations was difficult because in some instances the Commission had to step outside what the science in corrections has said. "We had to make some assessments from what we saw." For example, repetitive small thefts not resulting in jail time. The idea was to keep from spending \$150 per day to incarcerate somebody for stealing mouthwash. However, it became clear that perhaps this created a path where a drug addict stood less risk of going to jail by doing 10 shopliftings instead of one burglary. Also, there are interpretations that field arrests aren't being made on class C felonies. "That just can't happen. We've got to make sure that they answer for that charge in a relatively quick fashion." The Commission has addressed these.

She said she considers the bail schedule the equivalent of a domestic violence victim's dog being held at the pound. It is an added stressor that may not be directly associated with the situation. She pointed to the bail schedule that suggested OR release for things like violent assault in the fourth degree, and the officer had to call to get an exception. "Different departments are claiming to have had different experiences with magistrates, including being told they can't adjust the bail schedule." She opined that the assumption needs to be that some bail is required in those situations. She noted that the bail schedule is under the purview of the presiding judges, but Judge Trevor Stevens has indicated the judges are open to discussion.

LT. SELL said the fact that prosecuting budgets are being cut and more cases are being dismissed for financial reasons adds another layer of difficulty. Senate Bill 91 is heavily relied on to identify incorrigible criminals through repetitive convictions, but if convictions are not being funded, career criminals are not going to be identified.

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SENATOR WIELECHOWSKI observed that Senate Bill 91 deals predominantly with nonviolent offenses.

LT. SELL replied that was the intent.

SENATOR WIELECHOWSKI reviewed four articles from the Alaska Dispatch News in the last 19 hours. They included a death and wounding in an Anchorage gun battle; a wounding in a Spenard area shooting; murder of a 20-year-old in Chenega Bay during an alcohol-fueled fight; and a head stabbing in Juneau. He said he assumes these are not related to Senate Bill 91.

LT. SELL replied there was actually an attempt to impose more severe penalties for murder and other high crimes. The concern was that people who commit certain crimes are not safe to have in society under any rehabilitation or redemption.

SENATOR WIELECHOWSKI said that clarification is important, but there is an explosion of violent crime in Anchorage and throughout Alaska. He asked what advice she has to stem that explosion.

LT. SELL said it's complicated but people who are addicted to drugs need treatment and people who have a mental health issue also need treatment. If they are simply given a timeout in jail, they will get out at some point and commit more crimes. It's the violent, incorrigible criminals that need to stay in jail. She emphasized the need to attack drug use from both the consumer and supply side and the need for tools that work.

CHAIR COGHILL said Senate Bill 91 attempted to change the behavior of the consumer as a way to address the crime rate.

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LT. SELL replied the shortage of resources is also a great impediment. She shared a story about a known drug addict and burglar who said he wanted to stop using heroin, so he could attend his daughter's functions and get a job. She did not have resources available on Friday night, and he continued to use over the weekend and did not show up for his NCADD appointment on Monday.

SENATOR WIELECHOWSKI said there is an obvious need for more resources, but he wonders what other things can be done.

LT. SELL said it's necessary to stop illegal drug use, but that will be more difficult than trying to eradicate smallpox.

SENATOR WIELECHOWSKI pointed out that marijuana is legal now.

LT. SELL said it's particularly difficult to tell an addict who wants to stop that help is not available. "It's basically telling them to continue on their violent and criminal ways." Drugs today are too powerful to bootstrap your way out. Treatment and prevention address this, but the police can't enforce a standard that does not exist in the community.

CHAIR COGHILL thanked Lt. Sell for highlighting the need for solutions. Senate Bill 91 brought to light that there are solutions, but they won't be easy.

He welcomed Dean Williams, Commissioner of the Department of Corrections, and Carrie Belden and expressed interest in hearing what the department has been able to do, what is working, what is anticipated to work, and the implementation issues they have identified.

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DEAN WILLIAMS, Commissioner, Department of Corrections (DOC), recapped that Senate Bill 91 has three parts. Last summer some statutory changes related to sentencing were implemented. In January 2017 changes dealing with probation were enacted. Director Belden will discuss those. The final changes will be to the pretrial services and those will take place in January 2018. Director Fox will give this part of the presentation.

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CARRIE BELDEN, Director, Division of Probation and Parole (DPP), Department of Corrections (DOC), stated that the Division of Probation and Parole did a substantial amount of work to ensure compliance with the Alaska Criminal Justice Commission ("Commission") recommendations associated with relevant provisions of Senate Bill 91. They basically changed their processes and procedures in less than six months. She congratulated her staff for "being exceptional state employees."

CHAIR COGHILL stated his agreement.

MS. BELDEN explained that all probation officer IIIs and any probation officers that wanted to be part of the change worked together to establish four workgroups to create and update division policies. The groups were guided by DPP management and regional chiefs. They relied heavily on technical assistance provided by the Criminal Justice Institute and criminal justice agency stakeholders. This change was too large to do in a vacuum. The workgroups met for several hours each week as well as outside of that to answer questions and talk with colleagues to develop something that would be effective and have buy-in from the staff.

A mandatory statewide, in person training for all POs was conducted in the fall of 2016. This was to introduce the concepts of Senate Bill 91, the best practices, and the policy framework. In November and December 2016, the DPP team began

conducting weekly teleconferences called "The Learning Community." These will continue so staff can ask about any implementation questions, concepts or anomalies so everyone can be informed. Draft policies were sent out, including "Learning Community" feedback, and then designed a mandatory Web-ex training based off staff questions and concerns. The process encouraged staff involvement in the new policies and procedures being implemented. The final products were released in December for January implementation.

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MS. BELDEN presented DPP's approach to comply with [the 2016] Recommendation 12 from the Alaska Criminal Justice Commission: **Implement Graduated Sanctions and Incentives**. DPP developed the Graduated Responses Grid and requires probation Officers (POs) to investigate and respond to allegations of positive and negative behaviors. Responding to negative behavior can range from informal PO use of grid to a formal violation filed with the court or Parole Board. Probation Officers have been trained to respond to negative behaviors with an intervention, a sanction, or a combination of both. Examples of incentives are verbal praise, letters of recognition, reduced supervision, and expanded travel permits. There is also a list of interventions in the grid. They are designed to move the probation or parolee toward positive behavior. This can be changing the case plan, referral to treatment, or referral to a job center. The sanctions can be verbal or written warnings, restrictions of travel permits, curfews, increased reporting, and filing with probation and parole officials. It is a robust grid and staff did a good job of being fair and just, she said.

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MS. BELDEN presented DPP's approach to comply with [the 2016] Recommendation 13 from the Alaska Criminal Justice Commission: **Reduce pre-adjudication length of stay and cap overall incarceration for technical violations**. The first revocation is up to 3 days; the second revocation is up to 5 days; the third revocation is up to 10 days; the fourth and subsequent revocation is up to the remainder of the sentence; and absconding from supervision is up to 30 days.

She said this proved to be difficult because it meant the hearings had to happen promptly. The sanctions appropriately follow the bill, but some bugs still need to be worked out.

SENATOR COSTELLO clarified for the listening public that these are the Alaska Criminal Justice Commission [2016] recommendations that were incorporated in to Senate Bill 91.

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MS. BELDEN presented DPP's approach to comply with [the 2016] Recommendation 14 from the Alaska Criminal Justice Commission: **Earned Compliance Credits**. Offenders who comply with their supervision for one month will earn 30 days off their term of supervision. She said they tried to stay very true to the bill and she believes the product is good.

MS. BELDEN presented DPP's approach to comply with [the 2016] Recommendation 15 from the Alaska Criminal Justice Commission: **Early Termination and Discharge of Supervision**. People who meet the statutory requirements will automatically go forward to the parole board for early termination. She described this as a good carrot.

MS. BELDEN presented DPP's approach to comply with [the 2016] Recommendation 16 from the Alaska Criminal Justice Commission: **Extend good time eligibility to offenders on Electronic Monitoring (EM)**. She said that staff conducted emergency reviews of time accounting records and issued "good time" to offenders on EM to comply with this mandate. This had to be done immediately because this requirement adjusted release dates.

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MS. BELDEN said the computer programming to assist in the implementation of Senate Bill 91 provisions was extensive. A workgroup consisting of management, POs, and programmers created or significantly upgraded offender management modules for incentives and sanctions; earned compliance credits, community work service, and fines and restitution. The programming work is ongoing and progressing. Going forward, more data will be captured so things will be a little more evidence-based. She expressed profound gratitude for the implementation funding.

The next steps will be to continue the weekly "Learning Community" teleconferences for staff; to continue to update policies; to continue to hold stakeholder meetings; and to validate the risk assessment tool and the Level of Service Inventory.

CHAIR COGHILL thanked Ms. Belden and asked her to extend gratitude to her staff.

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SENATOR WIELECHOWSKI asked for the department's position on the recommendations that the Commission made.

CHAIR COGHILL said that is a discussion for another day. Today the focus is on implementation. He welcomed Geri Miller Fox.

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GERI MILLER-FOX, Director, Division of Pretrial Services, Department of Corrections (DOC), displayed a graph of Alaska's incarcerated population as of July 1, 2014. It shows that the pretrial population accounts for 81 percent of the growth in the incarcerated population since July 1, 2005. "It is clearly out of proportion to what else is happening in the system."

She highlighted some of the history of recommendations for pretrial services in the state. In 1973, an Alaska Judicial Council report on repeat bail recidivists recommended establishing a pretrial agency. In 2003, the Alaska Criminal Justice Council recommended establishing pretrial processes, supervision, and diversion. In 2009, an Alaska Law Review publication by author Elizabeth Johnston recommended Alaska develop an independent pretrial services agency. In 2015, an Alaska Judicial Council workgroup proposed sentencing alternatives and recommended pretrial diversion and deferred disposition. She emphasized, "This state has been asking for pretrial services for more than 40 years and Senate Bill 91 has brought this to our state."

MS. MILLER-FOX reviewed some of the things that have been highlighted as problematic for pretrial in Alaska. These include: a lack of available information for judiciary; a lack of information about offender risk; a lack of oversight for those who post bail and need supervision; and a lack of options for release supervision and diversion.

She relayed that by January 2018 she will be overseeing the implementation of pretrial services for Alaska. Offenders will be assessed within 24 hours of booking. Those reports and recommendations will go to the court so information about the risk of the offender is available at the initial bail hearing. Low risk offenders will receive monitoring while moderate and high-risk offenders may be eligible for supervision if released.

MS. MILLER-FOX displayed a member list of the pretrial development team. Some are required by Senate Bill 91 while others are stepping up to the plate. She highlighted courts and

judiciary, law enforcement, defendant representatives, victim rights, treatment services, researchers, prosecutors, and communities. Currently, there are 74 participants on the implementation team. There is a lot of interest and people want to be part of it. She thanked the stakeholders and stakeholder participants.

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She reviewed some of the reasons this is valuable in Alaska. First, Article 1 of the Alaska State Constitution speaks directly to defendants being eligible for bail. This population is presumed innocent, has the right to bail, the right to non-excessive bond, and to equal protection under the law. The state constitution also speaks to victim rights and that stakeholder group is also at the table.

MS. MILLER-FOX related that the purpose of bail generally is to accomplish three things: 1) to provide a process of releasing people from custody; 2) to reasonable ensure they will show up for a future court appearance; and 3) to minimize the likelihood that they will commit a new criminal act between the time they are arrested and the case is disposed.

She displayed a list of the forms of release. These include: Own Recognizance (OR) release, Unsecured Bond (UB) release, Secured Bond (SB), and Conditional Release/Pretrial Services Supervision and /or Monitoring (CR) release.

MS. MILLER-FOX highlighted that one of the Alaska Criminal Justice Commission findings in the 2015 Justice Reinvestment Report was that courts generally should consider two factors in deciding whether to release a defendant pretrial: the likelihood that the defendant will miss a court hearing and the likelihood the defendant will engage in new criminal activity if released. She said that research has shown that risk assessment tools can accurately predict these risks by identifying and weighing factors that are associated with each type of pretrial failure. She noted that this is not only a recommendation of the Commission, but a requirement under Senate Bill 91. The Department of Corrections will implement a new risk assessment for the pretrial population and it will measure those two components.

She clarified that the pretrial risk assessment tool is different than the risk assessment tool for people under probation and parole. "It is a different purpose, it's a different function, but it's well researched for this

population." Some examples of pretrial tools currently in use come from the Virginia Pretrial Risk Assessment (CPRA), the Ohio Risk Assessment System-Pretrial (ORAS-PAT), Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)-Pretrial, and the Public Safety Assessment-Court (PSA-Court) used by Kentucky, North Carolina, and Santa Cruz, California.

MS. MILLER-FOX reported that the Department of Correction pretrial assessment parameters will require three primary objectives: current data sources will be utilized, the assessment design will be based on existing Alaska data, and there will be ongoing analysis and validation. She highlighted that research shows that interviews do not make a large difference in the outcomes of the assessments. Conducting no defendant interviews will save money and still result in equal or better results.

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She displayed a grid of pretrial recommendation guidelines for low, moderate, and high-risk defendants who allegedly committed misdemeanor, class C felony, DUI/Refusal FTA/VCOR, and "Other" crimes. She clarified that offenses that fall under "Other" are unclassified offenses, class A and B felonies, person offenses, sex offenses, and domestic violence offenses. For example, a low-risk offender would likely receive a recommendation of an own recognizance (OR) release; whereas a high-risk defendant in an "Other" crime might receive a recommendation for a secure, money, bond. The court would then make its decision based on a judicial matrix. This allows for greater discretion than the pretrial officers. She clarified that this process does not remove any other decision processes stemming from input from: law enforcement, victims, defense attorneys, or prosecutors. "Those things remain in place and the pretrial assessment tool provides for one other objective weight in evaluating the appropriate release or detention decision."

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MS. MILLER-FOX listed some of the limitations of a pretrial risk assessment tool: it will not predict behavior 100 percent of the time for 100 per of the population; it will not replace experienced and quality professionals, but it does lead to better decision making; and despite some limitations, this process is an enhancement to public safety and it fulfills a gap and a request of criminal justice professionals that has existed for more than 40 years.

She reported the following Alaska-specific data: only 12 percent of defendants in the sample were released on personal recognizance, and an additional 10 percent were released on an unsecured money bail; 52 percent of sampled defendants were never released prior to their case being resolved; and offenders whose bail was set at \$1,000 or more were detained an average of seven weeks before they were able to secure their release. She noted the latter were likely eligible for release on day one.

MS. MILLER-FOX pointed to a study done in Harris County, Texas that looked at the potential cost savings between 2008 and 2013, if misdemeanor defendants whose bail was \$500 had been released pretrial without financial conditions. This would have resulted in 40,000 more defendants being released pretrial and would have saved \$20 million in supervision costs. She highlighted that that money could have been spent on prevention for things like drug addiction services.

She reviewed data from Kentucky to emphasize what Alaska could potentially save if it changed pretrial procedures. In the state of Kentucky, 88 percent of all arrested people are released at the pretrial phase and approximately 3 percent are given extra supervision conditions. Kentucky saved counties approximately \$25 million in jail costs in one year by increasing the pretrial release rate by 5 percent. Supervision costs in Kentucky are 2 percent to 10 percent of the associated detention costs.

MS. MILLER-FOX displayed a grid that shows that for FY14 and FY15, public safety in Kentucky has improved these pretrial changes were initiated. In FY15, the overall release rate was 75 percent, the appearance rate was 85 percent, and the public safety rate was 89 percent. She noted that Alaska currently does not have this type of data, but it will in a year or two. She relayed that data going back to the 1990s can be found on the Kentucky state website. "And very little change in these numbers over the course of that time," she added.

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SENATOR COSTELLO questioned whether people released pretrial tend to reoffend. "If there is an 88 percent public safety, does that mean that 12 percent of the people released actually reoffended?"

MS. MILLER-FOX replied a public safety rate is defined by each state or county. She relayed her belief that Kentucky looks at these as a new criminal arrest.

She reviewed the comparative cost of services. The cost of pretrial supervision is estimated to be about \$4.60 per day, whereas the cost of keeping that same person in jail is about \$149.62 per day. She explained that pretrial supervision would include an assessment within 24 hours to determine level of risk, followed by a report and recommendation to the court. At the initial appearance, the court has the option from pretrial supervision or some other decision, such as detention. A low-risk offender who is released would be eligible for monitoring. A moderate- or high-risk offender would be eligible for an enhanced level of supervision.

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She noted that the DOC has many partners that are interested in diversion opportunities for a mental health population, a tribal court, or a substance abuse program. She highlighted that the Division of Pretrial Services is working with Chief Michael Hicks with the Cordova City Police Department and Sarah Kathrein from the Native village of Eyak on a pilot tribal court pretrial process. The intention is to start in September. Pretrial services will be available statewide, but each community must help determine how robust the program should be in their area.

CHAIR COGHILL thanked Commissioner Williams and Ms. Miller-Fox, and welcomed Attorney General Lindemuth and John Skidmore to discuss implementation issues for the Department of Law. "We found out along the way that communication issues were almost as big a part of the implementation as the actual collaborations issues within a department," he added.

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JAHNA LINDEMUTH, Attorney General, Department of Law (DOL), said she has been in this position for six months, is a member of the Alaska Criminal Justice Commission ("Commission"), and has attended all the meetings since she started. She relayed that implementation is discussed at the meetings and the heads of affected agencies are members of the Commission. The Criminal Justice working group and subcommittees both meet and focus on implementation and having the agencies communicate and coordinate. Offline meetings are held to look for any gaps between departments and the training efforts of these agencies are compared to ensure consistency in implementation.

She described the active role the Department of Law, specifically John Skidmore the director of the Criminal Division, has taken to ensure that prosecutors, district attorneys, and law enforcement statewide understand the changes

brought about by Senate Bill 91. She shared that she not only attended some of these presentations, but also did her own research on criminal justice reform. She related that when she ran across a TED Talk where Adam Foss was presenting a prosecutor's vision for a better justice system, she wanted to suggest Mr. Skidmore include this in a future presentation, but decided against interfering. However, separately he had come up with the same TED Talk and showed it to the prosecutors.

ATTORNEY GENERAL LINDEMUTH referenced the training materials in the packets that Mr. Skidmore used in two statewide trainings for law enforcement and at the FBI National Academy Associates Executive Development Conference. She estimated that more than 100 law enforcement attended the conference from across the state. "These are high-level people who can then take this back to their departments and do further trainings." She also described Department of Law's outreach to communities. This includes district attorneys regularly attending community council meetings to help educate the public on changes to the law and her op-ed for the Anchorage Daily News on the connection between Senate Bill 91, the impacts of budget, and the heroin epidemic. She maintained that Senate Bill 91 has been blamed for more than it is responsible for. "There's these other factors out there that have really complicated the picture for public safety."

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SENATOR WIELECHOWSKI referenced an article she wrote last November that said the Department of Law had lost 80 positions over the last four years and its budget had been cut over 26 percent. He asked if she had any data to show whether that impacted the way that felonies and misdemeanors have been prosecuted and whether that is contributing to the public safety crisis the state is experiencing.

ATTORNEY GENERAL LINDEMUTH reported that in 2015, the Department of Law had to turn down 6 percent more cases than the year before. Significantly, this was before Senate Bill 91 passed. Since FY14, the Criminal Division [budget] has been reduced 11 percent or \$3.3 million. That is a loss of 31 attorney and staff positions. "That's a real significant loss of capacity at the Department of Law to prosecute crimes." Current efforts are being focused on felony crimes and those prosecutions are down just 3 percent from 2013 numbers. However, the capacity to prosecute misdemeanors has decreased 33 percent from 2013 numbers. That represents nearly 7,000 cases that were not prosecuted for budget reasons alone.

CHAIR COGHILL said, "That is one reason that people are just absolutely frantically wearied by thievery, especially at the misdemeanor level."

SENATOR COSTELLO asked if 80 people actually lost their jobs or if some of those positions were not filled prior to the budget cut.

ATTORNEY GENERAL LINDEMUTH clarified that those were filled positions; 80 people in both divisions lost their job. Currently, the Department of Law has 455 positions, whereas in 2013 that number was 541.

CHAIR COGHILL advised that two bills will be drafted. One is technical and will include just the corrections that the Commission highlighted in Recommendation 14-2017. The second will be a substantive, policy bill that will primarily deal with class C felonies, the question of escalating misdemeanor, and violations of conditions of release. The other 10 recommendations have reasonable fixes.

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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.