

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 8, 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

CONFIRMATION HEARINGS

Commissioner, Department of Public Safety

Walt Monegan

- CONFIRMATION ADVANCED

Attorney General of the State of Alaska

Jahna Lindemuth

- CONFIRMATION ADVANCED

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 54

SHORT TITLE: CRIME AND SENTENCING

SPONSOR(s): SENATOR(s) COGHILL

02/10/17 (S) READ THE FIRST TIME - REFERRALS
02/10/17 (S) JUD, FIN
02/17/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/17/17 (S) Heard & Held
02/17/17 (S) MINUTE(JUD)
02/24/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/17 (S) -- MEETING CANCELED --
03/01/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/17 (S) Heard & Held
03/01/17 (S) MINUTE(JUD)
03/03/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/03/17 (S) Heard & Held
03/03/17 (S) MINUTE(JUD)
03/06/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/06/17 (S) -- MEETING CANCELED --
03/08/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JAHNA LINDEMUTH, Attorney General Designee
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the position of Attorney General, Alaska Department of Law.

WALT MONEGAN, Commissioner Designee
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the position of Commissioner of the Department of Public Safety.

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

POSITION STATEMENT: Described the changes between version O and version R of SB 54.

ACTION NARRATIVE

[1:34:37 PM](#)

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 Wielechowski, Kelly, Costello, and Chair Coghill.

CONFIRMATION HEARINGS

Attorney General of the State of Alaska

[1:37:05 PM](#)

CHAIR COGHILL announced the first order of business would be a confirmation hearing for the governor's appointee to the position of Alaska Attorney General. He welcomed Attorney General Designee Jahna Lindemuth and asked her to make an opening statement.

[1:37:26 PM](#)

JAHNA LINDEMUTH, Attorney General Designee, Alaska Department of Law (DOL), advised that she was born and raised in Anchorage, attended law school at the University of California Berkley and graduated in the top 10 percent of her class in 1997. When she returned to Alaska she clerked for Alaska Supreme Court Justice Robert Eastaugh for one year. Until she accepted this position six months ago, she spent her entire career working at the practice now known as Dorsey and Whitney LLP ultimately becoming managing partner of the Anchorage office. She had a large commercial litigation practice and did a lot of attorney malpractice defense.

In 2015 the firm took on an Alaska Innocence Project case for the Fairbanks Four. That year she spent more than 1,000 hours of pro bono work for that and some other cases. She described that work as a call to public service. That is largely what brought her to this position. After the Fairbanks Four case she applied for a position on the Alaska Supreme Court. She met with the Alaska Judicial Council and was recommended for the short list. She interviewed with the Governor last April, but was not selected for the position. Several weeks later the Governor asked her to take the position of Attorney General. It felt like the right time to make a change and she accepted the offer. She said it has been an honor to serve the state in this role.

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SENATOR MEYER joined the committee.

[1:42:41 PM](#)

CHAIR COGHILL asked if she is a servant to the Governor or the people of Alaska, and how she balances those two things.

ATTORNEY GENERAL LINDEMUTH said she serves at the pleasure of the Governor, but is always cognizant that she also serves the people. The department provides legal representation to all the state entities other than the university and railroad. One of the main issues in representation is to keep in mind who the client is in any particular matter, she said. She described the three hats she wears as attorney general. She is the top law enforcement officer in the state, she is the manager of the Department of Law, and she is a member of the Governor's cabinet.

The Governor is the top elected official she responds to and she views that role in a fairly traditional way. She provides the legal analysis, advice and framework for the governor to make the policy call. She said she doesn't want to make policy calls because she is not an elected official. She opined that is consistent with the ethical rules that lawyers face when they involve the client in decision making.

CHAIR COGHILL said attorneys general in the past have issued opinions that carry nearly the weight of law. Most recent was the opinion regarding the state's taxing authority on the gas pipeline. He asked if she had reviewed that opinion.

ATTORNEY GENERAL LINDEMUTH answered no.

CHAIR COGHILL encouraged her to look at it because that issue is likely to come up this session. He asked her understanding of her role as an advocate for the public and what she believes legislators can do better.

ATTORNEY GENERAL LINDEMUTH replied consumer protection rights and antitrust cases are for the protection of the public. She noted that the Department of Law recently hired someone who she believes will revitalize the area of consumer protection. Regulatory affairs for utilities also fall within the public interest arena and the Department of Law takes this seriously.

CHAIR COGHILL asked her perspective on improving the collection of restitution for victims.

ATTORNEY GENERAL LINDEMUTH said the Department of Law is not required under the constitution and statutes to undertake restitution for victims and as a budgetary matter it was cut for this year. The Court System decided to take that on and she believes it will likely result in a better result for the

public. Judges will be able to deal with it on a case-by-case basis when the defendant is before the judge.

CHAIR COGHILL asked her to think about ways to improve restitution and what the legislature can do to help.

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CHAIR COGHILL asked Attorney General Lindemuth to talk about the reasons that the Department of Law has had to refuse some cases.

ATTORNEY GENERAL LINDEMUTH said a variety of issues are going on with public safety while Senate Bill 91 changes play out. One of the larger pieces is that prosecutions are down because the Department of Law has had to cut prosecutors. "That's one of those direct correlations - the fewer prosecutors you have, the less crime that you can prosecute." The department asked for a flat budget this year in the hope that it would not impact services. In large part the hope was that this legislature would develop a plan for fiscal certainty for the state and then the department would come back and talk about what laws should look like going forward to address public safety.

CHAIR COGHILL said the conversation needs to take place sooner rather than later. He added that he already had some conversations about the budget because public safety must be addressed properly.

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SENATOR MEYER asked her to discuss why, as one of the first things she did as attorney general, she joined other states in a suit against ExxonMobil over the issue of climate change.

ATTORNEY GENERAL LINDEMUTH clarified that the amicus brief was on the issue of states' rights, not whether ExxonMobil should be investigated for issues related to climate change. The question in that case was whether an outside company could go to another jurisdiction to challenge the subpoenas and investigations a state puts forward in an investigation of that outside company. Basically, can a Texas court tell her as attorney general what she can and can't do under Alaska law? She said she has no position on the larger issue of whether those states should be investigating ExxonMobil.

SENATOR MEYER asked if she supports changes to the Ninth Circuit Court of Appeals.

ATTORNEY GENERAL LINDEMUTH said she has litigated in the Ninth Circuit and she doesn't think that court is amenable to many of the state's rights issues Alaska brings against the federal government. She noted that is one reason that Alaska joins cases in other states when it decides to challenge federal issues. As a state attorney general she doesn't have a position on whether that circuit should be broken into two, she said. It's more a federal issue.

CHAIR COGHILL asked her to comment on the potential settlement between Ahtna Corporation and the state [downgrading the right-of-way designation] from an R.S. 2477 to a 17-B easement.

ATTORNEY GENERAL LINDEMUTH said that litigation was ongoing for 9 years and about 3-4 months before trial the state filed a pleading asking the court to stay the case to allow the parties to talk further about settlement. While a settlement isn't in place, there has been enough negotiation for her to be confident that the litigation could be put off.

She said that while the attorney general has the power to settle cases, her approach is to involve the clients. In this case four departments and the governor's office are involved so she wants all four commissioners and the governor engaged in talking about the framework and the potential terms. Her role is to make a recommendation and give the legal framework and the pros and cons. She said there are risks and benefits to every action, but everyone felt comfortable that they could reach a settlement within the framework that was discussed.

Because negotiations are ongoing and litigation is pending, she said she can't discuss the details of the settlement. However, she is mindful of the state's interest in protecting access to the 24 mile right-of-way from Copper Center to Klutina Lake and making sure that the things the state considers most important are part of the settlement. She cautioned that there is compromise with any settlement and she hopes that at the end of the day Alaskans will look at this as a win-win. Neither party will get everything it is asserting.

ATTORNEY GENERAL LINDEMUTH explained that Ahtna was challenging whether the R.S. 2477 right-of-way corridor even exists. Even if it does exist they were challenging the scope of use - what the state and the public can do on that right-of-way. A little over two years ago Judge Guidi entered what she considers a bad order saying you can drive from point A to point B, but you can't do anything along the way. That would really limit access. She said

she didn't want to get into the particulars of her advice to the clients, but she believes that settling to achieve access does benefit Alaskans.

She advised that rolling the dice and going to litigation will result in an all-out win or an all-out loss. That's something to weigh, she said, because an all-out loss would be a loss of access for every R.S. 2477 right-of-way corridor across the state. In part because of Judge Guidi's order, she didn't think this was the case to make that challenge.

ATTORNEY GENERAL LINDEMUTH said that once there is a settlement, she would be happy to talk through the particulars of the terms and her thoughts about why a settlement in that case is beneficial.

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SENATOR KELLY emphasized that he didn't want the attorney general to reach a win-win solution. "Your client is the State of Alaska and I want you to win on this; and that should be your approach." He asked if she had "pulled the pin" on the April 24th or April 27th court date.

ATTORNEY GENERAL LINDEMUTH said yes.

SENATOR KELLY asked what advice the agencies involved in this litigation had and if they felt they had a good case.

ATTORNEY GENERAL LINDEMUTH replied there were a lot of different people involved from the four departments and all the voices and viewpoints were considered.

SENATOR KELLY emphasized the importance of R.S. 2477 rights-of-way easements. He advised:

I don't want you dropping this case and pulling the pin before we get involved because I'm not as interested in process or win-win or anything like that. R.S. 2477 exists and the problem we've had over the years is getting governors to assert. And we need to make sure all the noise is out of the way as we assert our state's right on R.S. 2477, which is the federal law.

I'm not going to claim to know a lot about this case. I only heard about it a few days ago, ... but it appears as if you're going to a settlement that isn't going to

make sense to the State of Alaska. We want to make sure that what we have is consistent with what was given to us in R.S. 2477 and not negotiated to a point where we somehow are accepting less than the rights the state was given in ANCSA [the Alaska Native Claims Settlement Act of 1971].

Point is, we have R.S. 2477 rights. We need to assert those rights and we need to make sure that we don't diminish what R.S. 2477 means in a settlement that hopes to achieve a win-win.

For my purposes Mr. Chairman, as far as my participation in this committee, I need a bunch of answers on R.S. 2477 before I will recommend that your name be forwarded.

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CHAIR COGHILL asked if Judge Guidi's order affected the federal 17-B easement. His understanding is the state's right would be on the R.S. 2477 right-of-way easement.

ATTORNEY GENERAL LINDEMUTH replied the R.S. 2477 easement is far better than the 17-B easement for a variety of reasons. The main issue in the Ahtna case is R.S. 2477. She reiterated that she can't discuss the terms of the settlement, but it's not final. She clarified that this is not an easement across federal land. It is an easement across private land so any court that makes a final decision on the case will consider R.S. 2477 across private land and the scope of use issues in that context.

CHAIR COGHILL commented on the balance between the rights of private landowners and the limited access Alaskans have to land that traditionally had open access.

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SENATOR COSTELLO commented on the significance of R.S. 2477 right-of-way easements and the impact they will have on the state's future. She asked Attorney General Lindemuth if she sought input from her counterparts in other western states about the best approach for fighting for states' rights on the R.S. 2477 issue.

ATTORNEY GENERAL LINDEMUTH said she had not discussed that with other attorneys general. Her focus has been on this case and the best outcome for the citizens of Alaska.

CHAIR COSTELLO expressed surprise at the answer and echoed Senator Kelly's comments, advising her to take a stand and not fear failure. She referred to an earlier statement about not making policy calls and asked if her job is different than elected attorneys general.

ATTORNEY GENERAL LINDEMUTH said there are pros and cons to both systems. A concern she has with an elected attorney general is that when money enters the system there could be a question about whether one entity is favored over another based on campaign contributions.

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CHAIR COSTELLO asked if she agrees that as a member of the governor's cabinet she does influence policy.

ATTORNEY GENERAL LINDEMUTH agreed that as a cabinet member she has the opportunity to influence policy and when she advocates for legislation she is making a policy call. She clarified that when she said she doesn't set policy it was in the context of the top law enforcement officer. It's when she's wearing that hat that she takes the more traditional view of offering legal advice to the client and having the client made the policy decision.

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SENATOR KELLY provided a grammar lesson on the proper uses of the term attorney general.

CHAIR COGHILL asked if the state should challenge the transfer of Native land into federal trust.

ATTORNEY GENERAL LINDEMUTH said the state has been addressing lands in trust on a case-by-case basis since the Akiachak litigation ended. Right now, just one application has been noticed and the state provided comment. In January the federal government allowed the application to go forward and now there is a one-acre parcel in the Village of Craig that is held in the name of the federal government for Craig. She advised that her office prepared a hundred plus page memo on the legal issues involved, and they will look at those issues whenever an application comes up.

She highlighted that Alaska is a Public Law 280 state so all the state's criminal laws and all the regulatory statutes that are prohibitory still apply. For example, fish and game laws apply. She opined that this may be a small issue in Alaska because the

amount of tribal land that could be subject to application is very small.

CHAIR COGHILL suggested she and the committee have a follow up conversation about the structure of Public Law 280.

SENATOR KELLY asked if the legislature receives notice when there is an application to put tribal land in trust.

ATTORNEY GENERAL LINDEMUTH said she didn't know if it was set up that way but it's a public issue and she would make sure the legislature is apprised.

CHAIR COGHILL asked Attorney General Lindemuth to seriously consider the committee's concern about the RS 2477 issue. He thanked her for appearing and requested she return, at a mutually agreed time, under the confirmation process.

Commissioner of the Department of Public Safety

[2:24:36 PM](#)

CHAIR COGHILL announced the confirmation hearing of Walt Monigan for Commissioner of the Department of Public Safety (DPS). He asked him to discuss his duties and the reason the governor picked him for this position.

[2:25:16 PM](#)

WALT MONEGAN, Commissioner Designee, Alaska Department of Public Safety stated that he served in this position once before and has spent most of his adult life working in public safety. He said he views his duties as being responsible for the boots on the ground for the enforcement of criminal laws, the regulations governing wildlife resources, fire safety and training, outreach on issues related to domestic violence and sexual assault, and the Police Standards Council.

He related a goal he has as commissioner is to strengthen public safety for every Alaskan in the state regardless of where they reside. He acknowledged this will be a challenge due to budget cuts, but he is looking at long-term and intermediate steps to achieve this goal. He highlighted that the department will shortly be in active discussion with the contractors that employ village public safety officers. He summarized his intention to strengthen the current system and enhance public safety in the state.

CHAIR COGHILL asked him to comment on three issues: 1) his perspective of Senate Bill 91 and the proposed revisions based on comments from law enforcement and the public; 2) what is happening in the area of domestic violence and sexual assault since Lauree Morton was removed as executive director of the Council on Domestic Violence and Sexual Assault (CDVSA); and 3) what can be done to improve communication between agencies.

COMMISSIONER MONEGAN said he supported Senate Bill 91 in concept because the current system wasn't working. Change is always difficult and some tweaks are warranted, but the bill should be given time to work once it is fully implemented. He stated support for extending the Criminal Justice Commission another five years and opined that law enforcement officers will eventually see the benefits.

Regarding Lauree Morton and CDVSA, he said she is an outstanding advocate and great resource, but he wanted someone in that position who would be more aggressive in denouncing domestic violence and sexual assault. "I needed somebody more dynamic and somebody more willing to take risk." He reiterated his continuing support and admiration for Ms. Morton and the work she has done.

He said he agrees that communication between agencies needs to be improved. He described the efforts when he was commissioner last time to improve communication in the criminal justice working group and his regular conversations with judges. That notion can be extended to departments. He professed his love for the state and its residents.

CHAIR COGHILL said he shares that love as well as the concern that some people need public safety, some need to be held accountable, and some people need to change direction.

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SENATOR MEYER observed that Commissioner Monigan has the perfect resume for this job. He asked three questions: 1) if there is a policy the legislature can and should adopt to deal with the bad element in society; his view of public safety and the corrections system; and how to deal with drugs inside institutions.

COMMISSIONER MONEGAN said education is the element that's been missing in the policy dealing with crime and disorder. During the formative years there is time to reinforce what parents should tell their children about respect and making good

choices. He noted that he has initiated conversations with the commissioner of education to discuss ways to collaborate. Regarding corrections, he said it's a large system and there is always some pressing issue. Drugs inside the institutions is one of the ongoing issues. He expressed his belief that technology will eventually help with surveillance and interception but right now dogs are being used successfully to search for contraband. He described a current situation where people on the outside are using slingshots and drones to drop drugs into the prison yard.

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SENATOR COSTELLO asked how his work with 1st-12th graders in the Anchorage School District will affect his work in this position.

COMMISSIONER MONEGAN said the biggest takeaway he has from working with young people is that they have hope in their eyes and that renews his energy. Kids all have their hopes and dreams and he would like to work with education and other agencies to remove adverse childhood experiences to every extent possible.

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CHAIR COGHILL thanked Commissioner Monegan and requested he return, at a mutually agreed time, under the confirmation process.

SB 54-CRIME AND SENTENCING

[2:47:21 PM](#)

CHAIR COGHILL announced the consideration of SB 54. He asked for a motion to adopt the proposed committee substitute (CS) and expressed disappointment that his office had yet to receive a fiscal note for the CS.

[2:48:40 PM](#)

SENATOR COSTELLO moved to adopt the CS for SB 54, labeled 30-LS0461\R, as the working document.

CHAIR COGHILL objected for an explanation of the changes.

[2:49:06 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, described the following changes between version O and version R of SB 54:

Section 6

AS 12.55.125(e) - Sentences of imprisonment for felonies.

Increases the presumptive range for C-felonies that are a first conviction from 0 to 120 days to 0 to 1 year.

CHAIR COGHILL asked about suspended time.

MR. SHILLING replied the zero to one-year term can be comprised of any portion of suspended or active time.

Section 10

AS 12.55.135(1) - Sentences of imprisonment for misdemeanors.

Provides for up to 5 days of active imprisonment for a second conviction of Theft in the Fourth Degree (or similar offenses), rather than no active time for a second conviction. Up to 5 days of suspended time may be imposed for a first conviction.

MR. SHILLING explained that the previous version only provided active imprisonment upon a third and subsequent conviction of theft in the fourth degree or similar offenses. Version R provides up to five days of active imprisonment and a term of probation of up to six months upon a second conviction. A change was also made for a first conviction; version R provides up to five days of suspended time for the first conviction of theft in the fourth degree.

CHAIR COGHILL added that the Department of Law supported increasing the level of the crime to a class A misdemeanor. "We thought the active jail time and suspended time would probably suffice."

[2:52:26 PM](#)

SENATOR MEYER expressed appreciation for the changes in Sections 6 and 10. They address the concerns and frustrations that both the police and public have articulated.

CHAIR COGHILL said his hope is that this will not only give judges flexibility but also provide the opportunity for more people to receive risk assessments and diversionary programming.

MR. SHILLING continued to review the changes between version O and version R.

Section 18

AS 33.07.030(a) - Duties of pretrial services officers.

Former section 18 is deleted. It required the Department of Corrections to provide the result of the pretrial risk assessment to the defendant and prosecutor.

MR. SHILLING advised that internal work groups are working on how and when the defendant and the prosecutor receive the results of the risk assessment so subsequent committees will need to address that issue.

CHAIR COGHILL added that cross-agency work is ongoing to devise a solution and it seemed best to wait and see the result of that work.

SENATOR COSTELLO voiced support for increasing the presumptive sentence to zero to one year for a class C felony. She said she likes that it gives discretion to the judges. She noted that John Skidmore [from DOL] also emphasized the importance of flexibility.

CHAIR COGHILL removed his objection. Finding no further objection, version R was adopted, and SB 54 was held in committee.

2:58:20 PM

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