

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 10, 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

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."

- MOVED CSSB 54(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 77 AM

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 104

"An Act relating to collecting information about civil litigation by the Alaska Judicial Council; repealing Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rules 511(c) and (e), Alaska Rules of Appellate Procedure; 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)
03/08/17 (S) Heard & Held
03/08/17 (S) MINUTE(JUD)
03/10/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 77

SHORT TITLE: 2017 REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/25/17 (H) READ THE FIRST TIME - REFERRALS
01/25/17 (H) JUD
02/06/17 (H) JUD AT 1:30 PM GRUENBERG 120
02/06/17 (H) Moved HB 77 Out of Committee
02/06/17 (H) MINUTE(JUD)
02/08/17 (H) JUD RPT 5DP 2NR
02/08/17 (H) DP: KOPP, KREISS-TOMKINS, FANSLER,
LEDOUX, CLAMAN
02/08/17 (H) NR: EASTMAN, REINBOLD
02/15/17 (H) TRANSMITTED TO (S)
02/15/17 (H) VERSION: HB 77 AM
02/17/17 (S) READ THE FIRST TIME - REFERRALS
02/17/17 (S) JUD
03/10/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 104

SHORT TITLE: REPEAL COLLECTION OF CIVIL LITIG. INFO

SPONSOR(s): JUDICIARY

02/03/17 (H) READ THE FIRST TIME - REFERRALS
02/03/17 (H) JUD
02/22/17 (H) JUD AT 1:30 PM GRUENBERG 120
02/22/17 (H) Moved HB 104 Out of Committee
02/22/17 (H) MINUTE(JUD)
02/24/17 (H) JUD RPT 4DP 2NR
02/24/17 (H) DP: KOPP, KREISS-TOMKINS, FANSLER,
CLAMAN
02/24/17 (H) NR: EASTMAN, REINBOLD
02/27/17 (H) TRANSMITTED TO (S)
02/27/17 (H) VERSION: HB 104
03/01/17 (S) READ THE FIRST TIME - REFERRALS
03/01/17 (S) JUD
03/10/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature
POSITION STATEMENT: Reviewed the Department of Corrections
fiscal note for SB 54.

LISA KIRSCH, Assistant Revisor
Legislative Legal Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska
POSITION STATEMENT: Presented HB 77.

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
POSITION STATEMENT: Introduced HB 104 on behalf of the sponsor.

SUZANNE DIPIETRO, Executive Director
Alaska Judicial Council
Anchorage, Alaska
POSITION STATEMENT: Answered questions and offered supporting
testimony for HB 104.

ACTION NARRATIVE

1:34:57 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 Costello, Wielechowski, Meyer, and Chair Coghill.

Chair John Coghill responded to Butch Moore's testimony on March 6, 2017 speaking to the following document: [Original punctuation provided.]

On March 6th, Mr. Butch Moore delivered false testimony to the Senate Judiciary Committee regarding SB 91 and criminal law and procedure generally:

False Claim #1

Criminally Negligent Homicide offenders can receive a Suspended Imposition of Sentence (SIS), and it goes off their criminal record.

Wrong. Persons charged with Criminally Negligent Homicide are not eligible for a Suspended Imposition of Sentence. And it stays on the criminal record.

False Claim #2

Prior to SB 91, the sentence for class B felonies was 1-3 years. Now it is 0-2 years.

Wrong. Prior to SB 91, class B felonies that were a first felony conviction were subject to a presumptive range of 1 to 3 years. There is no minimum in the presence of a mitigating factor, and there is a maximum of ten years in the presence of an aggravating factor. If there are prior felonies, the sentence goes higher.

False Claim #3

SB 91 allowed Esteban Santiago to murder five people in Fort Lauderdale, Florida.

Mr. Moore said Santiago was charged with multiple C-felonies in January 2016.

Wrong. He was charged with A-misdemeanors.

Mr. Moore said that the Municipality of Anchorage entered into a Deferred Sentencing Agreement because "SB 91 was coming".

The Municipality of Anchorage prosecutor's office called those claims false, and that the decision to enter into a Deferred Sentencing Agreement had nothing to do with SB 91, which was not law at the time.

Additionally, if an individual successfully completes the requirements of a Deferred Sentencing Agreement, prosecution generally dismisses the case. In Santiago's case, he violated his conditions, which is why the charges were not dismissed, and it remains an open case.

Mr. Moore said that, because of SB 91, "they let him go" after violating the conditions of release.

That is not true. SB 91 was not law at the time, and Santiago was charged with Violation of Conditions of Release (punishable by up to 180 days, per MOA code) following a compliance check by an APD officer in February.

Mr. Moore said that, because of SB 91, subsequent contacts with law enforcement did not lead to arrest or incarceration.

Santiago had several contacts with law enforcement following SB 91's passage. According to the Municipality of Anchorage, law enforcement officers chose to not arrest Santiago and the municipality did not bring charges, both of which had nothing to do with SB 91. The decision to arrest and charge offenders is based on facts of the investigation, not newly-enacted legislation.

Mr. Moore asserts that there is no jail time for "violating a restraining order".

That is false. The crime of Violating a Protective Order is an A misdemeanor.

"While there may be some perceived value in blaming the 2016 Fort Lauderdale airport shooting on SB 91, the facts do not support that claim."

CHAIR COGHILL emphasized that testimony does matter and it's important to get it right. He will try to correct the record

when people make claims in their testimony that is patently untrue.

SB 54-CRIME AND SENTENCING

[1:35:58 PM](#)

CHAIR COGHILL announced the consideration of SB 54 and asked Mr. Shilling to review the fiscal note. He stated displeasure that it took so long in coming and that there is no one from the department available to speak to it. His understanding is that there is tension among the departments, and that this is a very conservative fiscal note. He stated his intention to bring the matter up in the next committee of referral, so it will be scrutinized.

[1:40:35 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, reviewed the Department of Corrections fiscal note for SB 54. He reported that the requested appropriation for FY2018 and beyond is \$4.33 million. Based on assumptions that were used last year for Senate Bill 91, the department is projecting an increase to the inmate population of about 286 inmates per day, based on a daily marginal rate of \$41.49 per inmate.

[1:42:10 PM](#)

SENATOR KELLY joined the committee.

SENATOR MEYER said he would have anticipated an indeterminate fiscal note because the projected cost ranges from zero to \$4.33 million.

CHAIR COGHILL explained that the range is based on the bill providing zero to 2-year terms of incarceration for three different felony and misdemeanor charges.

[1:45:00 PM](#)

SENATOR MEYER expressed frustration that the department wasn't available to provide an explanation. He added that if the fiscal note were indeterminate, that would indicate the cost could be somewhere between zero and \$4.33 million. As currently written the upper limit stands out.

CHAIR COGHILL said he shares the frustration but he doesn't want to hold the bill any longer.

SENATOR MEYER recapped the chair's statement to rely on the Finance Committee to scrutinize the numbers.

CHAIR COGHILL said that's correct and he intends to pass along the concerns expressed in this committee.

He asked Mr. Shilling to continue.

1:46:21 PM

MR. SHILLING detailed the anticipated FY2018 fiscal impacts by individual policy. He said the class C felony policy provides a presumptive range of active incarceration of zero to one year. The fiscal note projects an increase to the inmate population of about 196 persons per day at a cost of up to \$2.96 million, based on the daily marginal rate per person of \$41.49.

CHAIR COGHILL clarified that the marginal rate is the cost of incarceration minus the facility charges.

MR. SHILLING advised that the policy for mandatory minimum probation term lengths for felony sex offenders is expected to result in an increase of 24,837 probation supervision days. This would increase the daily average probationer by 68, which would require additional resources. He highlighted that the fiscal note does not provide for any additional full-time employees to accommodate the increase in probation and caseloads resulting from this policy.

The policy whereby a second conviction of a class A misdemeanor would result in a sentence of zero to 60 days is projected to increase the inmate population by about 73 persons per day. This could increase the cost by up to \$1.1 million based on a daily marginal rate of \$41.49.

The policy regarding violation of conditions of release allows for a sentence of not more than five days. It is projected to increase institutional expenditures from zero (no persons) to \$136,294 (nine persons) annually, based on a daily marginal rate of \$41.49.

The policy regarding theft in the fourth degree and similar offenses provides a sentence of up to 10 days of active imprisonment for a third and subsequent offense, and up to five days of active imprisonment for a second conviction. This change would impact the inmate population reductions predicted in passing Senate Bill 91 and it anticipates increasing the inmate population by about eight persons per day. This could increase

the institutional expenditures by zero (no persons) up to \$121,150 (eight persons) annually, based on a daily marginal rate of \$41.49.

The narrative next addresses the five-year lookback for the purpose of counting prior convictions for class A misdemeanor aggravators. It says the department is unable to quantify the impacts of the section.

The narrative also refers to two aspects of SB 54 that are not anticipated to cost money. The first is the sex trafficking provision that removes the loophole and seeks to address the original problem that Senate Bill 91 attempted to address. The second is the provision that limits the use of pretrial risk assessments for defendants who are not detained in a DOC facility following arrest.

[1:50:31 PM](#)

SENATOR COSTELLO referenced the lookback for counting prior convictions on page 3, paragraph 2, and asked if he discussed the potential for the department to return with an additional request from the legislature.

MR. SHILLING opined that it would likely be a reduction if the department could quantify the impact of the provision.

[1:51:33 PM](#)

CHAIR COGHILL found no further questions and solicited a motion.

[1:52:04 PM](#)

SENATOR COSTELLO moved to report the CS for SB 54(JUD), labeled 30-LS0461\R, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, CSSB 54(JUD) is reported from the Senate Judiciary Standing Committee.

[1:52:32 PM](#)

At ease

HB 77-2017 REVISOR'S BILL

[1:55:20 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of HB 77.

[1:56:26 PM](#)

LISA KIRSCH, Assistant Revisor, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, advised that the revisor's bill is an opportunity to correct deficiencies, conflicts, and obsolete provisions in the statutes. She described it as a "housekeeping" bill that is presented to the legislature to review and determine that it changes nothing of a substantive nature.

She explained that the bill has: six sections that delete, repeal, or update obsolete provisions; 22 sections that correct errors or oversights; and 32 sections that improve the form and substance of the law. There are also several sections that remove the words "but not limited to." AS 01.10.040(b) says that using the words "including" or "includes" also means "but not limited to." It's a global provision in Title 1 that applies throughout the Alaska statutes unless stated otherwise. She asked how the chair would like her to proceed.

[1:59:10 PM](#)

CHAIR COGHILL related that he reads revisor bills looking to see that state statutes match federal code updates and to ensure that individuals are properly referenced. He asked what amendment was passed on House floor.

MS. KIRSCH said the floor amendment was to remove AS 47.07.900(14) from the repealer Section 60 in version O. It is an orphaned definition for the term "nurse midwife" that is no longer used and was repealed in 2016.

CHAIR COGHILL said he would like to give members time to look at the bill before getting any further committee review. He asked if anything in the bill comes close to a policy call.

MS. KIRSCH answered no; her office tries to avoid policy matters within a revisor bill.

[2:03:31 PM](#)

SENATOR MEYER asked if there would be public testimony on the bill.

CHAIR COGHILL answered no.

SENATOR COSTELLO asked for an explanation of the process that results in a revisor's bill.

MS. KIRSCH explained that the drafting attorneys are given a title or two to review and report to the revisors who do

research of the session laws to tease out whether it is a change that can be done in the context of a revisor's bill. That information is compiled with information that comes in throughout the year from other branches of government, legislators, the publisher, and practitioners.

[2:07:47 PM](#)

CHAIR COGHILL held HB 77 in committee for further review.

HB 104-REPEAL COLLECTION OF CIVIL LITIG. INFO

[2:08:10 PM](#)

CHAIR COGHILL announced the consideration of HB 104.

[2:08:52 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, introduced HB 104 on behalf of the sponsor, speaking to the following prepared statement:

House Bill 104 eliminates the automatic reporting information about civil case settlements currently required by law. The bill follows the advice of the Alaska Judicial Council, which has recommended that the legislature eliminate this requirement.

To give some historical context: In 1997, responding to public interest in tort reform and the work of the Governor's Advisory Task Force on Civil Justice, the legislature passed tort reform legislation. One part of the legislation responded to the Task Force's recommendation that the Alaska Judicial Council report on closed civil cases, using data from forms completed by attorneys and parties in the cases. Since then, pursuant to statute, the Judicial Council has collected data provided by attorneys and litigants and has produced three reports. However, much more often than not, attorneys and litigants have failed to comply with the reporting requirement.

In its most recent report from November 2011, included in your bill packets, the Alaska Judicial Council reports that from January 2001 through December 2010, 88,873 cases were resolved in the Alaska Court system that were subject to the reporting requirement. Because each case had at least two parties, the Council should have received 177,746 or more reports. However, the Council only received 23,257 reports.

This represents 13 percent of the Council's conservative estimate of the number of reports it should have received.

The low rate of reporting is the reason the Council has not issued a report since 2011. An analysis based on 13 percent of potentially available data would not be reliable. Eliminating the requirement has also received support from attorneys and civil litigants, as the reporting requirement is onerous for those who follow it and unenforceable for those who don't.

The Alaska Judicial Council lacks the authority and resources to enforce this outdated requirement and the Council renews its recommendation that the legislature eliminate it.

MS. KUBITZ offered to provide a sectional analysis, and noted that Suzanne DiPietro from The Alaska Judicial Council was available to answer questions.

CHAIR COGHILL asked for an explanation of "outdated" in this context.

MS. KUBITZ offered her understanding that the Judicial Council's efforts to encourage reporting achieved limited success. She deferred further explanation to Ms. DiPietro.

CHAIR COGHILL asked Ms. DiPietro to answer the first question and whether there is value in maintaining the requirement.

[2:12:58 PM](#)

SUZANNE DIPIETRO, Executive Director, Alaska Judicial Council, Anchorage, Alaska, opined that the information on closed civil cases is no longer of great value to the legislature. The purpose for collecting the information was to inform the legislature about the effect of tort reform and those effects are well established. The Judicial Council does not receive requests about the data it collects and its efforts to encourage reporting initially were resource intensive and never achieved anything close to 100 percent.

CHAIR COGHILL voiced support for the bill. He asked Ms. Kubitz to go through the sectional analysis.

[2:15:11 PM](#)

MS. KUBITZ provided the following sectional analysis for HB 104:

Section 1. Repeals Rule 41(a)(3), Alaska Rules of Civil Procedure and Rules 511 (c) and (e), Alaska Rules of Appellate Procedure.

Section 2. Repeals AS 09.68.130, relating to collection of settlement information by the Alaska Judicial Council.

Section 3. Provides that the Act will only take effect if sec. 1 of the Act receives the two-thirds majority vote required by the Constitution of the State of Alaska for a court rule change.

Section 4. Provides that the Act will take effect immediately if it receives the two-thirds majority vote under sec. 3 of the Act.

MS. KUBITZ said copies of the referenced Court Rules and Statute are included in the bill packets.

[2:16:19 PM](#)

SENATOR MEYER asked why the bill didn't pass in previous years.

CHAIR COGHILL opined that it was a matter of timing and perhaps personality.

SENATOR COSTELLO asked what will happen to the reports that the Judicial Council has received.

MS. DIPIETRO explained that once the data is transferred to the database the paper documents are disposed of correctly considering that they are confidential documents. Should the bill pass, any documents that have not been entered into the database would be destroyed. The information already entered will remain in the database.

[2:18:13 PM](#)

CHAIR COGHILL held HB 104 in committee for further consideration with public testimony open.

[2:18:40 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:18 p.m.