ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
March 21, 2018
1:31 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Pete Kelly
Senator Bill Wielechowski
Senator Mike Shower

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 184
"An Act restricting the release of certain records of convictions; relating to criminal history information for state employment applications; amending Rule 37.6, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 175
"An Act authorizing the commissioner of natural resources to disclose confidential information in an investigation or proceeding, including a lease royalty audit, appeal, or request for reconsideration and issue a protective order limiting the persons who have access to the confidential information."

- HEARD & HELD

SENATE BILL NO. 150
"An Act relating to pretrial release procedures; amending Rule 41, Alaska Rule of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 184
SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS
SPONSOR(s): SENATOR(s) BEGICH

02/12/18	(S)	READ THE FIRST TIME - REFERRALS
02/12/18	(S)	JUD, FIN
03/21/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 175
SHORT TITLE: DNR: DISCLOSURE OF CONFIDENTIAL INFO
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/05/18	(S)	READ THE FIRST TIME - REFERRALS
02/05/18	(S)	JUD, RES
03/21/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 150
SHORT TITLE: PRETRIAL RELEASE; NON-AK CRIM HISTORY
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/18	(S)	READ THE FIRST TIME - REFERRALS
01/18/18	(S)	JUD
03/21/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR TOM BEGICH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 184.

SYDNEY LIENEMANN, PhD., Staff
Senator Tom Begich
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Delivered the sectional analysis for SB 184.

KATHRYN MONFREDA, Chief
Criminal Records and Identification Bureau
Department of Public Safety
Anchorage, Alaska
POSITION STATEMENT: Provided information related to SB 184.

ANDREW MACK, Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Introduced SB 175 on behalf of the administration.

ED KING, Special Assistant to the Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska
POSITION STATEMENT: Delivered the sectional analysis for SB 175.

JAHNA LINDEMUTH, Attorney General
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Provided introductory remarks on SB 150.

ROBERT HENDERSON, Deputy Attorney General
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Provided supporting information for SB 150.

GERI FOX, Director
Pretrial Services Division
Department of Corrections (DOC)
Anchorage, Alaska
POSITION STATEMENT: Provided supporting information for SB 150.

ACTION NARRATIVE

1:31:41 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Costello, Shower, Wielechowski, and Chair Coghill. Senator Kelly arrived soon thereafter.

SB 184-ACCESS TO MARIJUANA CONVICTION RECORDS

1:32:07 PM
CHAIR COGHILL announced the consideration of SB 184 and stated his intention to hear an introduction and take questions.

1:33:03 PM
SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, sponsor of SB 184, stated that the bill is the result of meetings in his district on public safety that occurred last September. He continued the introduction speaking to the following sponsor statement:

Senate Bill 184 would make confidential the records of individuals who have been convicted of minor marijuana crimes, and no other crime. In 2014, Alaskans voted to legalize the cultivation, sales, and possession of marijuana for those 21 years old or older. This legislation led to a robust and growing marijuana industry, but some Alaskans remain blocked from employment and housing by previous marijuana possession.

According to a report by Legislative Research, between 2007 and 2017 there were more than 700 Alaskans convicted of low level marijuana crimes. Those convictions can make obtaining housing and gainful employment challenging, even though marijuana possession would not be a crime today.

Further, Senate Bill 184 would prevent the State from asking if someone has been convicted of a felony on a job application, with an exclusion for any position related to the criminal justice field. This type of 'ban the box' legislation has been shown to reduce barriers to gainful, fulltime employment, amongst the most important factors in reducing recidivism.

Now that voters have legalized marijuana, this legislation would allow those previously convicted to move on with their lives, while ensuring those in the criminal justice field still have access to needed background information.

SENATOR BEGICH pointed out that entities would not be prohibited from investigating an applicant.

1:34:37 PM
SENATOR KELLY joined the committee.

1:36:09 PM
SYDNEY LIENEMANN, PhD., Staff, Senator Tom Begich, Alaska State Legislature, Juneau, Alaska, delivered the following sectional analysis for SB 184:

Section 1: Describes the legislative intent to reduce barriers to re-entry for those convicted of low-level marijuana possession, which would no longer be considered crimes today.

Section 2: Prohibits the Department of Public Safety, and any designated reporting agency, from disclosing any criminal records associated with possession of less than one ounce of a schedule VIA controlled substance conviction, covering both State Statute and municipal ordinance. These cases will be protected from disclosure only if marijuana possession is the only crime for which the person was convicted in a particular criminal case. A schedule VIA controlled substance considered to have the lowest degree of danger to users. Marijuana is the only VIA drug.

Section 3: Makes Alaska Court System's records of criminal cases involving convictions for possession of less than one ounce of marijuana confidential. Those cases would not be available on Court View.

Section 4: Limits a State agency's ability to ask a job applicant if they have been convicted of a crime. This section makes an exception for any position associated with the criminal justice field.

Section 5: Indirectly amends Alaska Court System Rules of Administration by making certain cases confidential.

Section 6: Because Section 5 indirectly amends a court rule, this legislation will require a two-thirds vote as described by the Alaska Constitution.

Section 7: Provides 120 days for this legislation to take effect after bill signing, giving the Courts as well as affected agencies time to change their reporting protocols.

1:37:49 PM
SENATOR BEGICH advised that he and his staff have worked with the Department of Law and the Court System, and they participated in the Criminal Justice working groups that looked at barriers to reentry and explored issues ranging from expungement to confidentiality of records. He noted that at least nine other states have passed legislation like SB 184 proposes. At least 30 other states have laws with some element of expungement. He offered to provide that information to the committee.

CHAIR COGHILL offered his understanding that in this instance confidentiality makes these cases unavailable on CourtView, but it does not expunge the record.

SENATOR BEGICH agreed that the record is not eliminated; it would still be searchable by law enforcement and other entities.

1:38:52 PM
SENATOR SHOWER asked if a private investigator could access the record on CourtView.

SENATOR BEGICH said his understanding is that the entity could do a background search, but the record would not be available on CourtView. He deferred further explanation to Dr. Lienemann.

DR. LIENEMANN advised that those records would be available for a more detailed background check, but someone who is doing a Google search would not find those records.

CHAIR COGHILL asked what a "ban the box" application would look like.

SENATOR BEGICH clarified that the "ban the box" would only apply to state agency applications, not private entities. The box and direction to check the box if the applicant has convictions of minor marijuana crimes would not appear on state applications. He reiterated that this would not stop an employer from doing necessary background checks. The idea is to keep state hiring managers from tossing an application that indicates a prior marijuana conviction that is no longer against the law.

CHAIR COGHILL said the Criminal Justice Commission has debated the issue and that is the positive aspect. The negative is that more agencies might require background checks.

SENATOR SHOWER asked for clarification. The third paragraph of the sponsor statement talks about a felony conviction, but the bill doesn't specifically mention that.

1:42:16 PM
SENATOR BEGICH referenced Senator Coghill's last comment and advised that the Department of Administration issued a zero fiscal note indicating that the bill would not increase costs. He deferred Senator Shower's question to Dr. Lienemann.

DR. LIENEMANN advised that the bill says a person convicted of any crime, not just a felony.

CHAIR COGHILL asked if the bill has generated any opposition.

SENATOR BEGICH said he hasn't heard any opposition but there have been questions requesting assurance that the bill would not place public safety at risk. The intent is to offer people who have prior low-level marijuana convictions an opportunity to be considered fairly in the job market. The bill does not ask for expungement.

CHAIR COGHILL asked how many Alaskans have a record of a VIA controlled substance conviction.

SENATOR BEGICH said the research his office asked for shows that there were 721 convictions going back to 2007.

1:45:12 PM
CHAIR COGHILL thanked the sponsor and his staff for presenting the bill. He said he would be in touch when it would be heard again.

SENATOR WIELECHOWSKI noted that the Court System submitted a zero fiscal note and the Department of Public Safety (DPS) indicated it would need additional staff to go through the records. He expressed interest in the difference in procedure to make these records confidential between the two agencies.

SENATOR BEGICH deferred the explanation to the departments.

1:46:41 PM
KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Department of Public Safety, Anchorage, Alaska, advised that each of the more than 11,000 entries in the criminal history system for AS 11.71.060 would need review to make sure the conviction was for possession of less than an ounce of the schedule VI substance. That is the reason for the DPS fiscal note.

SENATOR WIELECHOWSKI commented that it seems odd that the fiscal impacts are so different.

CHAIR COGHILL said his understanding is the Court System would simply block the information. They would probably depend on DPS to identify the individuals.

1:48:10 PM

CHAIR COGHILL stated that he would hold SB 184 for future consideration.

SB 175-DNR: DISCLOSURE OF CONFIDENTIAL INFO

1:48:30 PM
CHAIR COGHILL announced the consideration of SB 175.

1:49:06 PM
ANDREW MACK, Commissioner, Department of Natural Resources, Anchorage, Alaska, introduced SB 175 stating the following:

> The department has a longstanding issue with respect to the handling of information considered confidential under Alaska law. Specifically, this issue impedes the department's ability to effectively audit and collect the appropriate amount of royalty and net profit share payments due under some leases held under oil and gas producers.
>
> A material term of the oil and gas lease requires producers to provide price information to the department. If this price information is higher than the value used by the audited company for computing royalty or net profit share due the state, the department will use this higher value in determining the payment due.
>
> Because this sales information is confidential - yet is used by the department in determining the royalty in net profit share values, disclosing the information to the audited party in limited fashion is necessary to complete and finalize the audits. Some audits have been completed using voluntary confidentiality agreements entered into by the department, the owner of the data, and the audited party. More frequently, one or more of the parties refuses to sign the agreements. This again is an obstacle to finalizing the audit.
>
> The leases in existing statutes allow for the disclosure of confidential information during an official proceeding or the investigation of the department. What they don't provide is the method of disclosure nor any additional protective measures to ensure the limited use of the confidential information. The department has taken a conservative

position and has chosen not to disclose confidential information over the objections of the information owner.

To be clear, every member of the Department of Natural Resources who has access to, uses, or handles confidential company information is well aware of the restrictions on that information. They are also well aware of how to safeguard that information and how to use it in the normal course of their duties. It is a trust we take very seriously. In fact, I am not aware of a single instance where inadvertent or malicious release of company confidential material or information has occurred. It is a very serious business to use and we do not take our responsibilities lightly.

What this bill does is provide myself, the commissioner, with the ability to determine [whether] disclosure of confidential information is required in the official conduct of state business. And if I do find disclosure is necessary, provide a tool for me to use to safeguard that information.

This bill is about protecting company information, not about disclosing it in some haphazard manner. As I mentioned earlier, DNR takes our responsibilities with respect to this kind of information very seriously. This bill gives the commissioner and the Department of Natural Resources a tool to describe in specific detail how that information is to be used, who gets to see it, what it is to be used for, and how to dispose of it if necessary. These are the things we think are important in the conduct of our official duties.

I'd like to add, what we're proposing here Mr. Chairman is not something new. It is very similar to the process the Department of Revenue uses when they have to determine tax issues.

1:53:24 PM
CHAIR COGHILL listed the individuals available to answer questions.

1:54:33 PM

ED KING, Special Assistant to the Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, delivered the following sectional analysis for SB 175:

Section 1 adds to the commissioner's authorities under AS 38.05.020(b). Paragraph (15) allows the commissioner to disclose confidential information under a protective order during an official proceeding such as a lease on an appeal or request for consideration. This statute would mirror the Department of Revenue statute AS 43.55.040. It lays out the process for which confidential information can be disclosed to a party that is under audit when another party's information was used to asses that audit value.

He explained that what occasionally happens is a lease term requires a lessee to pay royalty based on the highest price that is within the field. For example, if a lessee sells their oil for $50, they would pay DNR royalty based on that $50 sale. If another lessee within that same lease sold their share of the oil for $60, they would pay DNR based on $60. DNR would then audit the first company saying it owed additional royalty based on the second lessee who got more value. Because that sales information is confidential, DNR would need to figure out how to disclose that confidential data through the audited party. The current statute, AS 38.05.036(f), gives the department authority to disclose that information during an audit or during an appeal of an audit. What the statute does not do is provide a process to disclose that information. When the party whose information is to be disclosed objects to the disclosure, the department does not have statutory process to protect that information. What SB 175 seeks to do is provide that process for disclosure through a protective order.

Sections 2 and 3 are conforming language to adopt the new section into AS 38.05.020.

COMMISSIONER MACK advised that the department has about $40 million in outstanding appeals that are potentially impacted by this legislation. Embedded in the department's thinking is to get the most and best value for the sales contracts within a unit while protecting the confidential data of each of the working interest owners. He was unaware of anyone who has broken the obligation of confidentiality but the fact that there is the possibility of criminal prosecution catches the eye of an employee who is trying to do their job and trying to establish what is the royalty for that unit. What SB 175 seeks to do is

allow DNR to show working interests when another working interest has negotiated a higher price contract on that unit.

1:59:59 PM
CHAIR COGHILL summarized that competitors are worried that some of their internal workings would be disclosed.

COMMISSIONER MACK said DNR's primary objective is to ensure that the state is treated fairly. He referenced Mr. King's example of sales contracts on the same unit for $50 and $60. The entity that negotiated the $50 sales contract will be able to look at the higher priced contract, but the particulars of what is and is not disclosed in the protective order would be very focused. He noted that DNR has the option of going to the court and asking for a protective order but it's a little cumbersome to do so in each case.

MR. KING added that the information that would be disclosed is what is used in an audit. The information is several years old so the ability for a company to use it to gain a competitive advantage is very limited. The protective order can also impose limitations on who can see that information. It's necessary to have the flexibility to construct the protective orders to fit each situation. What is lacking is a process. He also pointed out that the higher of provision that DNR is enforcing is a lease term to which the lessee agreed. The department has the statutory authority to prosecute those terms, complete the audit, and get the money that's due to the state but what's lacking is a process. SB 175 provides that process, which is the same as the one the Department of Revenue has.

CHAIR COGHILL asked where the industry feels they might be violated.

MR. KING suggested the industry answer that because the department doesn't see this as a problem.

CHAIR COGHILL said he understands the department's perspective.

COMMISSIONER MACK said the department holds a lot of confidential information and has a stellar record for maintaining confidentiality.

CHAIR COGHILL commented that there is a notice provision for all parties. He asked if this is new.

MR. KING said there is a process in place to do a voluntary confidentiality agreement similar to a protective order. The problem arises in those cases where the other party won't consent to the confidentiality agreement.

COMMISSIONER MACK advised that many royalty issues are settled without this being an issue.

2:06:02 PM
CHAIR COGHILL stated that he would hold SB 175 in committee for future consideration.

2:06:29 PM
At ease

SB 150-PRETRIAL RELEASE; NON-AK CRIM HISTORY

2:08:30 PM
CHAIR COGHILL reconvened the meeting and announced the consideration of SB 150.

2:08:52 PM
JAHNA LINDEMUTH, Attorney General, Department of Law, Anchorage, Alaska, stated that, as attorney general, this is a top priority to pass this session. It is critical for public safety. Phase III of Senate Bill 91, which put the pretrial risk assessment tool in place, went into effect on January 1, 2018. She understands that DOC has already hired 35 new pretrial officers, which should have a good impact on public safety going forward.

She explained that in the process of putting this in place, the Department of Law recognized an oversight that requires a legislative fix this session. The division is using a pretrial risk assessment tool that generates a score that informs judges about whether a person should be released mandatory own recognizance (OR), presumptive OR, or whether the judge should use discretion on imposing conditions of bail or keep the person in prison pretrial.

The statute required a validating tool be put in place for the pretrial risk assessment. However, only in-state criminal history has been used. There was a problem using the out-of-state criminal history and getting the tool validated in time. That is something that may or may not happen in the future. SB 150 seeks to put in place a fix that would go away if the out-of-state criminal history is used in the future. In the interim, an override is necessary when the tool is generating a mandatory

OR if it’s taking discretion away from the judge to keep somebody in jail who has a risk factor based on out-of-state criminal history.

CHAIR COGHILL offered his understanding that the state went to the FBI for data to help validate this tool and access to the information was denied because the use was identified as a research purpose rather than a law enforcement purpose.

2:13:05 PM
ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Department of Law (DOL), Anchorage, Alaska, agreed. He said criminal justice information is highly confidential and can generally only be used for law enforcement purposes. The pretrial risk assessment tool mandated by Senate Bill 91 requires that information to be validated, but the FBI won't release that information for this non-law enforcement purpose.

CHAIR COGHILL said the idea is to give judges more discretion regarding mandatory release if the out-of-state criminal justice information indicates that more judicial discretion is warranted.

MR. HENDERSON said that’s correct. He said with the chair’s permission, he would give a general overview of the law, the problem that’s been identified, and how SB 150 proposes to fix the problem.

He advised that pretrial enforcement is a key component of criminal justice reform. It provides a way to apply analytics and empirical data to give judges as much information as possible in order to make release decisions. Bail is designed to ensure a person appears at court and to keep the public safe. Bail is not a sanction and it can't be used as such because a person is presumed innocent until found guilty.

Phase III of Senate Bill 91 put the pretrial risk assessment tool in place. It is objective, standardized, based on the analysis of empirical data, and validated by the state’s pretrial population. The rub is not being able to apply the out-of-state criminal history to the state’s pretrial population because it can affect bail decisions.

He directed attention to the bail matrix in the packets. He explained that an algorithm drives the decisions that judges make regarding bail. For example, if the Pretrial Enforcement Division finds somebody to be low risk (they are charged with

non-violent, non-sex misdemeanors), they would be mandatory OR. The judge would be required to release that person without setting a monetary bail. The mandatory decision is for low risk misdemeanors, moderate risk misdemeanors, and low risk felonies.

2:17:42 PM
CHAIR COGHILL clarified that out-of-state data is still being collected, but at this point it isn't factored into the different levels of recognizance.

MR. HENDERSON agreed that DOC is collecting the out-of-state criminal history information outside the FBI system in the hope that it can be used in the future to validate the tool. He referred to the proposed fix as a safety valve that won't be used if the FBI system is available. He acknowledged that using the FBI system is not a sure thing.

He reviewed the sample pretrial report generated by the Pretrial Enforcement Division. He explained that DOC collects information like the age of first arrest, and the number of criminal convictions, the number of times on probation, and the number of times in jail to determine whether someone is low, moderate, or high risk for appearing in court and for reoffending.

2:19:50 PM
SENATOR COSTELLO said that at Senator Coghill's suggestion, Suzanne DiPietro explained the process to her at length. The risk assessment tool is data driven and the questions on the tool were generated by actual situations. Certain factors result in the risk of committing a new criminal offense and a different set of factors result in the risk for failure to appear. This is why there are two different tools and two different scores. Out-of-state felony information is not part of the data that generated the tool so someone with a felony from another state could commit a felony in Alaska and still score zero on the risk assessment tool. She said the administration was alerted to this loophole after an incident in Anchorage. A felon from another state wielded a gun in a mall and subsequently scored zero on DOC's risk assessment tool. She said her concern is that similar incidents can occur until the loophole is closed. She asked if her understanding was correct.

MR. HENDERSON said the bill would address that issue. When the statute was created the intent was that out-of-state criminal history would be considered in the creation of the risk assessment tool. Because that did not happen, SB 150 creates a fix that allows the judge to exercise discretion in making an

appropriate bail decision in narrow, targeted circumstances. He noted that information from DOC indicates that one in three individuals who fall within the red boxes of the bail matrix have out-of-state criminal histories that were not taken into account.

2:24:21 PM
CHAIR COGHILL highlighted that Senator Costello was talking about felony behavior, whereas Mr. Henderson was talking about overall criminal history.

MR. HENDERSON agreed. The bill defines out-of-state criminal history to include convictions, arrests, and charges.

2:25:06 PM
SENATOR COSTELLO asked him to respond to the point that the department proceeded to develop the tool after it learned that out-of-state criminal history would not be part of it.

MR. HENDERSON said the department went ahead for several different reasons. Primarily, it was because the law was going into effect January 1, 2018 and that law mandated the use of the tool. The department used just Alaska data because that was what was available.

SENATOR COSTELLO noted that the bill required the department to promulgate regulations and she understands that hasn't happened. She asked if the department still intends to draft the regulations that were required by state statute.

MR. HENDERSON explained that the law requires DOC to adopt the regulations in consultation with the Department of Law, the Public Defender Agency, the Department of Public Safety, the Office of Victims' Rights, and the Court System. That workgroup is actively meeting and discussing the regulations that will be promulgated.

SENATOR COSTELLO said she is extremely supportive of this effort but is concerned that the process did not include the public. There was no public comment or public education about how the tool was generated and why it's being used.

2:27:55 PM
SENATOR WIELECHOWSKI wondered if the bill goes far enough because constituents have purported a cycle of people repeatedly being arrested and released. He asked if those stories are

accurate and what can be done to stop that cycle if that is the case.

MR. HENDERSON said they have started to see that type of cycle, but the bill doesn't address that. SB 150 proposes to address the issue of out-of-state criminal history. One other issue is how the tool considers new offenses committed during the pendency of bail. Something else that needs clarification is that pretrial services officers have the authority to arrest and file the subsequent criminal complaint. Because of different interpretations of the statute, the Court System has not allowed pretrial services officers to file criminal complaints.

CHAIR COGHILL said his intention is to address that in the bill.

ATTORNEY GENERAL LINDEMUTH said she believes that Senator Wielechowski's question focuses on stories that circulated before the pretrial unit was put in place. The Court System changing its bail schedule before the Pretrial Enforcement Division was up and running was also a factor. She said her general sense is that the program is very successful, but more data is needed to evaluate it completely.

SENATOR WIELECHOWSKI said he appreciates the bill because his constituents are very frustrated. In the past few days he's heard reports that people under observation by the Pretrial Enforcement Division have figured out how to manipulate their monitoring devices to evade observation. They are entering prohibited areas and circumventing alcohol prohibitions. He said he's curious about the accuracy of those reports and wonders how to fix the problem.

SENATOR COSTELLO shared that this morning she released the results of an unscientific survey of five questions about crime. It was circulated to 70,000. Almost 5,000 people responded to the questions and 1,000 shared their stories. Based on the responses she's read so far, she isn't sure the tool is as successful as she thought it would be as a co-sponsor of the governor's crime reform. She invited the attorney general to visit her office and read the stories. She described them as valuable feedback.

ATTORNEY GENERAL LINDEMUTH said she appreciates the offer because other than the fiscal crisis, public safety is the state's top concern. The crime statistics are unacceptably high, and the three branches of government need to work together to address the problem.

2:36:44 PM
SENATOR SHOWER said crime was a top concern at the two town halls he held last weekend. The UCR statistics support the concern and the law enforcement officers he talks to say the lack of prosecutors is causing a backlog of cases. He referenced the one in three statistic that Mr. Henderson cited and questioned whether the bill is too narrowly focused considering the broad scope of the problems the state is facing.

ATTORNEY GENERAL LINDEMUTH said she believes that one in three represents a significant population that will be impacted by the bill.

SENATOR SHOWER said his concern is waiting another year when crime is affecting people so much.

ATTORNEY GENERAL LINDEMUTH said the Department of Law had a number of concerns with Senate Bill 91 and all those were addressed in Senate Bill 54. SB 150 fixes a problem that was identified last fall and the fix is needed right now.

CHAIR COGHILL asked Senator Wielechowski to restate his question for Ms. Fox.

2:41:03 PM
SENATOR WIELECHOWSKI asked if it's true that people being monitored under the Pretrial Enforcement Division have figured out how to manipulate their monitoring devices to evade observation so they can enter prohibited areas, take drugs in violation of court order, and evade alcohol prohibitions.

2:42:08 PM
GERI FOX, Director, Pretrial Services Division, Department of Corrections (DOC), Anchorage, Alaska, said DOC is aware of the attempts people make to defeat their monitoring devices and the manufacturers have built in specific strategies to detect such attempts. She pointed out that prior to January 1, defendants were only monitored if they paid a private company for the service and judges did not have the broad authority to put individuals on electronic monitoring devices. Currently more than 228 defendants around the state are on electronic monitoring.

SENATOR WIELECHOWSKI said private companies have provided quite effective electronic monitoring in years past, but most of them

have gone out of business. He asked if the Pretrial Enforcement Division is using active, realtime GPS monitoring.

MS. FOX said they use four realtime GPS devices. One monitors curfew, another monitors curfew and alcohol, another is a handheld breathalyzer that monitors alcohol and GPS, and another is an ankle device that does realtime GPS monitoring.

SENATOR WIELECHOWSKI said he was disappointed that private industry was rebuffed when they offered to provide their expertise. Many have now gone out of business and that accumulated expertise is lost.

MS. FOX clarified that her role in DOC is to stand up the Pretrial Enforcement Division according to statute. She said she oversaw the process to get those private businesses certified to work with the department. Defendants still have the option to pay a private company for electronic monitoring. Some people exercise that option, but it's an expensive endeavor.

CHAIR COGHILL commented that an individual who pays for their electronic monitoring probably has the advantage of the Nygren credit. He asked if someone released on mandatory OR could still be under some monitoring.

MS. FOX said yes. Pretrial enforcement officers oversee individuals released on mandatory OR if the judge orders that and the orders may include electronic monitoring.

CHAIR COGHILL asked if the range of the offense in the out-of-state criminal history will be taken into consideration for the mandatory release measure.

MR. HENDERSON said yes. The judge will make certain findings and shall impose the least restrictive condition(s) that reasonably ensures the appearance of the offender and public safety.

CHAIR COGHILL offered his perspective that appearing in court is subtler than the safety question.

SENATOR WIELECHOWSKI asked what percentage of people monitored by pretrial enforcement are violating the terms of their release.

MS. FOX said there isn't enough data to answer that question, but after 2.5 months 3,864 assessments have been done and 1,069 individuals are under supervision in Alaska communities.

CHAIR COGHILL said he would reiterate that previously supervision only happened under a third-party, which was found to be very ineffective.

SENATOR WIELECHOWSKI disagreed that it was ineffective; a grant to provide electronic monitoring was found to be very effective.

CHAIR COGHILL said he stands corrected. It was third-party monitoring by a relative that was found to be ineffective.

He stated his intention to send the governor's bill to legislative drafting. He asked Mr. Henderson if he had any comments or suggestions on the language in the bill.

MR. HENDERSON said it's important to keep in mind that Section 1 allows the prosecuting attorney to ask the judge to postpone arraignment for 48 hours to allow time to obtain the out-of-state criminal history. That will be helpful in informing the judge regarding what release conditions should occur.

2:56:55 PM
CHAIR COGHILL said SB 150 seems to be a reasonable solution to the issue that was identified last fall. He said he appreciates the widespread effort that's gone into finding a resolution.

CHAIR COGHILL stated he would hold SB 150 in committee awaiting a committee substitute.

2:58:01 PM
There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:58 pm.