

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 2, 2018

1:39 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Pete Kelly

**COMMITTEE CALENDAR**

SENATE BILL NO. 214

"An Act authorizing the commissioner of corrections to establish a correctional industries program; establishing a correctional industries board; authorizing the Department of Corrections to receive money from the employment of prisoners; and providing for an effective date."

- 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

CS FOR HOUSE BILL NO. 307(JUD)

"An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by servicemembers; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

- SCHEDULED BUT NOT HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 214

SHORT TITLE: ESTABLISH CORRECTIONAL INDUSTRIES PROGRAM

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/05/18 (S) READ THE FIRST TIME - REFERRALS  
03/05/18 (S) JUD, FIN  
03/19/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/19/18 (S) Heard & Held  
03/19/18 (S) MINUTE(JUD)  
04/02/18 (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)  
03/21/18 (S) Heard & Held  
03/21/18 (S) MINUTE(JUD)  
03/28/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/28/18 (S) Heard & Held  
03/28/18 (S) MINUTE(JUD)  
04/02/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Described the changes in version J of SB 214 and version O of SB 150.

GERI FOX, Director  
Division of Pretrial Services  
Department of Corrections  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 150

ROBERT HENDERSON, Deputy Attorney General  
Criminal Division  
Office of Special Prosecutions  
Department of Law

Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to SB 150.

QUINLAN STEINER, Public Defender

Public Defenders Agency

Anchorage, Alaska

**POSITION STATEMENT:** Described the changes in version O of SB 150 as measured and targeted to address the concerns that were raised.

#### **ACTION NARRATIVE**

[1:39:29 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:39 p.m. Present at the call to order were Senators Costello, Wielechowski, and Chair Coghill.

#### **SB 214-ESTABLISH CORRECTIONAL INDUSTRIES PROGRAM**

[1:40:05 PM](#)

**CHAIR COGHILL** announced the consideration of SB 214 and noted the proposed committee substitute (CS).

[1:40:40 PM](#)

**SENATOR COSTELLO** moved to adopt the work draft CS for SB 214, version 30-LS2145\J, as the working document.

**CHAIR COGHILL** objected for an explanation

[1:40:59 PM](#)

**JORDAN SHILLING**, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, described the changes in version J for SB 214. He noted that the first three were technical changes that legislative legal made to conform to the "Manual of Legislative Drafting."

- (1) There is a new section in the CS amending AS 33.30.191(c). This is to correct a reference to AS 33.30.191(g)(5), which is repealed in sec. 12 of the bill that has been repealed in the bill.
- (2) The language regarding complying with federal and state health and safety regulations was moved into sec. 33.30.195(c)(3) to require this as a contract term. AS 33.30.191(d) already requires this for the commissioner, so it only made sense

- in this section as a contract term with an individual or private organization
- (3) Language from sec. 33.30.195 that referenced entering into contracts or cooperative agreements under AS 33.30.191 was deleted as this language is only in AS 33.30.191(b) which is repealed in sec. 12.

MR. SHILLING explained that the substantive change is to the advisory board. One of the designated union seats was changed to a designated business seat with active engagement in workforce development. Also, the commissioner of The Department of Corrections seat was made non-voting and replaced by the commissioner of the Department of Commerce, Community and Economic Development, which will be a voting member.

CHAIR COGHILL advised that the language for those changes appears on page 2, line 23, through page 3, line 23. He opined that it is more appropriate to have the commissioner of DCCED and a business member on the board.

[1:43:26 PM](#)

CHAIR COGHILL removed his objection and version J was adopted. He noted that the department was notified of these changes and that the matter would be discussed at a future meeting.

[SB 214 was held in committee.]

[1:45:24 PM](#)

CHAIR COGHILL recessed the Senate Judiciary Standing Committee meeting until 15 minutes after the floor session.

[2:44:52 PM](#)

CHAIR COGHILL reconvened the Senate Judiciary Standing Committee meeting. Present at the call to order were Senators Costello, Shower, Wielechowski, and Chair Coghill.

**SB 150-PRETRIAL RELEASE; NON-AK CRIM HISTORY**

[2:45:13 PM](#)

CHAIR COGHILL announced the consideration of SB 150. Finding no one who wished to comment, he close public testimony and requested a motion to adopt the proposed committee substitute (CS).

[2:46:02 PM](#)

SENATOR COSTELLO moved to adopt the work draft CS for SB 150, version 30-GS2814\0, as the working document.

CHAIR COGHILL objected for an explanation.

2:46:18 PM

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, stated that the first change is a more specific title. The bill also has intent language that states that once out-of-state convictions are considered in the tool as a predictive variable, the section of the bill [allowing a defendant to be detained for 48 hours and directing presumptive release on a person's own recognizance or on an unsecured bond when the person has a criminal history outside the state] would no longer apply.

The next change appears in Section 8 on page 5, lines 11-21. A new subsection (m) to AS 12.30.011 clarifies that this section of law only applies to the mandatory own recognizance (OR) parts of the pretrial release grid that members have in their packets. He noted that those are the red boxes. It also ensures that if an out-of-state conviction exists, that those red mandatory OR boxes revert to the process for the presumptive OR boxes in the release grid. That would require a judge to make a finding on the record using the clear and convincing standard, just like is done for most of the pretrial release grid. The most substantive change in the CS is the new five-year lookback in subsection (m). The out-of-state history would only be relevant and used in the preceding five years. That is commensurate with the way in-state convictions are treated, which is anywhere between three and five years.

Version 0 also contains additional language in Sections 10 and 11 that the Department of Law requested to make it clear that pretrial services officers can file criminal complaints in court. He read DOL's reasoning:

Because the law is unclear, some courts have decided not to allow pretrial services officers to file complaints. The only other option for filing complaints is to wait for a prosecutor to evaluate the case and file charges on behalf of the state.

CHAIR COGHILL noted that he had an amendment that removes the five-year lookback because it was deemed too constraining.

2:50:19 PM

SENATOR WIELECHOWSKI asked if the 3-5 year in-state lookback was in statute or something the department decided on.

MR. SHILLING replied it is through regulation, not statute. Senate Bill 91 did not assign weights to these factors in statute because there would be no way for the legislature to determine what weight to apply. Prior convictions have been found to be predictive and the tool currently only takes into consideration convictions in the last three years and arrests in the last five years. The bill adopts the higher number. He said it is also notable that the tool does not take past charges into consideration, but the bill does.

[2:51:18 PM](#)

SENATOR WIELECHOWSKI asked if a pending charge was a factor in the pretrial assessment tool.

MR. SHILLING replied the tool takes the current charge into consideration, not a pending charge.

SENATOR WIELECHOWSKI asked if a judge or prosecutor might benefit from being able to take a pending charge into account when considering someone's risk.

MR. SHILLING replied the developers of the assessment tool tested a lot of factors and identified six that were predictive. If that factor was considered and it's not part of the tool, the assumption is it wasn't found predictive of pretrial performance. He deferred to Geri Fox to discuss what was tested and found not predictive.

SENATOR WIELECHOWSKI said it would be helpful to have that information.

[2:53:02 PM](#)

GERI FOX, Director, Division of Pretrial Services, Department of Corrections, Anchorage, Alaska, advised that one of the questions in the assessment tool is the total number of prior arrests in the last five years. If an individual has a pending charge, they would receive a point for having an arrest. She noted that more than 4,000 calculations were run to identify what is most predictive.

SENATOR WIELECHOWSKI referenced the pretrial assessment detail in the packet under NCA (new crime arrest) and asked if a person receives two points if they have had three prior arrests or zero points if they had just two arrests.

MS. FOX replied she believes that is correct but at some point, the numbers of arrests are no more predictive.

SENATOR WIELECHOWSKI asked if a person with 10 prior arrests would get two points, but if two of the arrests resulted in convictions the person would get two more points under "total number of convictions in the past three years."

MS. FOX said she didn't have the scoring guide, but that's the basic concept.

[2:56:55 PM](#)

SENATOR COSTELLO noted that a memo from Legislative Legal Services and opined that it's important to recognize that the regulations that Senate Bill 91 called for have not been written. She understands that the reason is that there was a rush to get the law on the books by the effective date.

She offered her understanding that the state does not have access to out-of-state criminal histories because the federal government considers using the information for assessment as research and thus a violation of privacy. She asked how other states implemented these risk assessment tools when they didn't have access to out-of-state criminal histories.

MS. FOX said she understands that many states do not take out-of-state criminal histories into account.

CHAIR COGHILL said his research agrees with that; Alaska is breaking ground by including out-of-state convictions.

He asked Mr. Henderson to comment on the committee substitute, which still has the five-year lookback. He reiterated that he had an amendment to remove that provision.

[3:00:49 PM](#)

ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Office of Special Prosecutions, Department of Law, Anchorage, Alaska, said version 0 addresses many of the concerns the department identified. The only area of concern is that the lookback is limited to five years.

The department agrees with the change in Section 8 regarding the standard for bail and appreciates that the Pretrial Enforcement Division can file criminal complaints. Some judges have refused to allow pretrial enforcement officers to file criminal

complaints and that creates a delay and potentially a public safety concern.

MR. HENDERSON outlined the significant concerns the department had with limiting the lookback to five years. This does not allow judges sufficient discretion to evaluate the extent and significance of out-of-state criminal histories. There are too many scenarios where someone who was recently released from prison in another state for a significant crime moves to Alaska and commits a misdemeanor or class C felony. In that circumstance, the state would not be able to ask the judge to set monetary bail. The individual would be mandatory OR.

He pointed out that the five-year limit is not based on empirical evidence. Further, the tool considers certain aspects that are not based on a limited lookback of three to five years. For example, the tool looks at age at first arrest. A person who has an arrest that occurred before age 19 will receive at least one point. The total number of FTA warrants that a person has looks at the entire criminal history. Also, the total number of the probationary sentence looks at a person's entire criminal history. He pointed out that in-state criminal history is validated and until out-of-state criminal history is validated placing a time limitation is not something the Department of Law would support.

[3:05:21 PM](#)

SENATOR WIELECHOWSKI asked for an explanation of the difference between points on the FTA and NCA scales and how they work together.

MR. HENDERSON explained that the risk assessment tool generates two scores; one for the risk regarding failure to appear (FTA) and one for the risk of new criminal arrest (NCA) while on bail. The higher of the two scores - in addition to the current charge, dictates what box a person falls into. For example, if a person is high on FTA and low on NCA, the person would be determined to be a high risk for purposes of either mandatory release or presumptive OR.

SENATOR WIELECHOWSKI reviewed the potential points on the chart and observed that it seems difficult to get above a low score on failure to appear (FTA).

MR. HENDERSON suggested that if Ms. Fox has the scoring guide, she could provide the exact numbers that lead to a maximum score

of eight. In general, each question has a value of up to two points.

MS. FOX confirmed that most of questions have a value of up to two points. The combined score is where the predictive validity of the tool comes into play and is why it's so important to revalidate the tool on a regular basis. For example, pretrial officers are currently monitoring individuals on release and it may be that violations will be found more quickly. Each year the tool should be reevaluated to determine whether any predictive issues change or if the scoring or weighting should be different. Having a statute that calls for an evidence-based validating tool provides the best opportunity to have a flexible system. Actual data drives what information is included in the tool.

3:10:20 PM

SENATOR WIELECHOWSKI posed a hypothetical situation of someone who had 10 failure to appear (FTA) warrants in the last three years. He asked if that person would get a total of four points.

MS. FOX replied it would depend on the underlying offense. That is also why the preassessment tool looks at a number of factors. In Alaska, the tool looks at FTA, NCA, and the current charge.

SENATOR WIELECHOWSKI asked if someone with 10 prior FTA warrants who was over 21 at the time of first arrest and not currently booked on an FTA or property charge or motor vehicle charge would score four points.

MS. FOX said yes.

SENATOR WIELECHOWSKI observed that they would be deemed low risk even though they failed to appear 10 times.

MS. FOX answered yes.

CHAIR COGHILL suggested he keep in mind that there could still be release conditions for someone deemed low risk who was released OR.

MS. FOX agreed.

CHAIR COGHILL added that any failure could result in a warrant or the individual being picked.

MS. FOX said yes.

[3:13:45 PM](#)

CHAIR COGHILL advised that he had an amendment that removes the five-year lookback, but he wouldn't offer it today.

He asked Mr. Steiner to comment on version O.

[3:14:50 PM](#)

QUINLAN STEINER, Public Defender, Public Defender Agency, Anchorage, Alaska, said he believes the changes in version O are measured and targeted to address the concerns that were raised. He cautioned that if the five-year lookback is repealed, it could result in arbitrary or varied decisions across the state. That could result in people spending time in jail unnecessarily relative to their score for failure to appear or new crime arrest.

[3:16:07 PM](#)

CHAIR COGHILL removed his objection and version O was adopted. He held SB 150 in committee for future consideration.

[3:17:11 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:17 p.m.