ALASKA STATE LEGISLATURE
SENATE RULES STANDING COMMITTEE
May 8, 2018
5:19 p.m.

MEMBERS PRESENT

Senator Kevin Meyer, Chair
Senator Pete Kelly
Senator Peter Micciche
Senator Anna MacKinnon
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 312
"An Act relating to arrest without a warrant for assault in the fourth degree at a health care facility; and relating to an aggravating factor at sentencing for a felony offense against a medical professional at a health care facility."

- MOVED SCS HB 312(RLS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 312
SHORT TITLE: CRIMES AGAINST MEDICAL PROFESSIONALS
SPONSOR(s): REPRESENTATIVE(s) CLAMAN

01/26/18	(H)	READ THE FIRST TIME - REFERRALS
01/26/18	(H)	JUD
02/05/18	(H)	JUD AT 1:30 PM GRUENBERG 120
02/05/18	(H)	Heard & Held
02/05/18	(H)	MINUTE(JUD)
02/07/18	(H)	JUD AT 1:00 PM GRUENBERG 120
02/07/18	(H)	Moved HB 312 Out of Committee
02/07/18	(H)	MINUTE(JUD)
02/09/18	(H)	JUD RPT 4DP 3AM
02/09/18	(H)	DP: KOPP, KREISS-TOMKINS, STUTES, CLAMAN
02/09/18	(H)	AM: EASTMAN, LEDOUX, REINBOLD
02/16/18	(H)	TRANSMITTED TO (S)

02/16/18	(H)	VERSION: HB 312
02/19/18	(S)	READ THE FIRST TIME - REFERRALS
02/19/18	(S)	JUD
03/02/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/02/18	(S)	Heard & Held
03/02/18	(S)	MINUTE(JUD)
03/19/18	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/19/18	(S)	Moved HB 312 Out of Committee
03/19/18	(S)	MINUTE(JUD)
03/21/18	(S)	JUD RPT 4DP 1AM
03/21/18	(S)	DP: COGHILL, WIELECHOWSKI, KELLY, SHOWER
03/21/18	(S)	AM: COSTELLO
05/08/18	(S)	RLS AT 4:00 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE CLAMAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 312.

ACTION NARRATIVE

5:19:28 PM
CHAIR KEVIN MEYER called the Senate Rules Standing Committee meeting to order at 5:19 p.m. Present at the call to order were Senators Kelly, MacKinnon, Micciche, Gardner, and Chair Meyer.

HB 312-CRIMES AGAINST MEDICAL PROFESSIONALS

5:20:13 PM
CHAIR MEYER announced consideration of HB 312 [version 30-LS1225\O was before the committee]. He said the discussion today is about adding other crime bills to HB 312 and the sponsor was agreeable to talking about that.

REPRESENTATIVE KELLY moved to adopt SCS HB 312(RLS), version 30-LS1225\M.

CHAIR MEYER objected for discussion purposes.

REPRESENTATIVE CLAMAN, sponsor of HB 312, Alaska State Legislature, Juneau, Alaska, said the Senate Committee Substitute for HB 312 reflects what Alaskans want in public safety issues and continues their commitment to find ways to use public safety dollars wisely. The sectional analysis followed.

5:22:34 PM
Section 1 provides the legislative intent stating that the 48-hour hold on defendants with out-of- state criminal histories will no longer apply once the assessment tool includes those convictions with charges.

Sections 2-7 address the concepts initially introduced in SB 146, HB 291, and HB 387 regarding the attorney general (AG) scheduling controlled substances.

Section 2 designates the president of the Board of Pharmacy as the chair of the Controlled Substances Advisory Committee.

Section 3 makes conforming changes to Controlled Substance Advisory Committee enabling statute.

Section 4 adds a new duty to the Controlled Substance Advisory Committee, which is to advise the attorney general on the need to schedule substances for emergency regulation.

Section 5 allows the attorney general to schedule substances by emergency regulation and clarifies that the AG may schedule a substance by emergency regulation only if the substance is currently listed on the Federal Controlled Substance Schedule.

REPRESENTATIVE CLAMAN commented that the original version of the bill didn't place that limit on the AG's authority; she could have listed any substance. The attorney general shall also post a notice on the Alaska online public notice system 60 days before the effective date of an emergency regulation that schedules a substance, and the notice must include written findings.

5:24:01 PM
Section 6 defines "controlled substances" to include those scheduled by the attorney general by an emergency regulation.

Section 7 defines "substance" to include a drug-controlled substance or immediate precursor in the schedule set out in statute or that is scheduled by the attorney general by emergency regulation.

Sections 8&9 are the part of HB 312, which is where all this started: crimes against medical professionals. Section 8 establishes that a peace officer may arrest a person without a warrant when the peace officer has probable cause to believe

that the person has committed an assault in the fourth degree, a misdemeanor, at a health care facility and that person was not seeking medical treatment at the facility or was stable enough for discharge. He noted that the police officer's authority to arrest without a warrant extends here to misdemeanors without any change. The present law today specifically allows peace officers to arrest for probable cause for any felony assault without a warrant.

Section 9 establishes the definition of "health care facility."

Sections 10-16 address out-of-state convictions in the context of pretrial release, an area in which the public has had a lot of interest.

Section 10 allows the prosecution additional time to demonstrate that the release of the person will not reasonably assure their appearance in court or the safety of the community if the person is to be held up to 48-hours. They are allowed a 48-hold if the person has an out-of-state criminal conviction or charge that has not been used in determining the person's risk level in the risk assessment tool.

5:26:03 PM
The whole topic of the pretrial risk assessment tool and the topic of out-of-state felonies is central to issues that have been under discussion. They have learned that giving judges unfettered discretion in making pretrial release decisions was not improving public safety. Detailed analysis of 20,000 Alaska cases from 2014 - 2015, which was studied before the passage of any justice reform legislation, showed that 37 percent of those on pretrial release were arrested for new crimes. This historic level of new offenses while on pretrial release was simply not acceptable.

REPRESENTATIVE CLAMAN explained that Alaska has a long history of restricted judicial discretion. When judges were inconsistent in their felony sentencing decisions from one judge to another and from one region to another in the 1960s and 1970, a comprehensive sentencing reform structure was enacted in 1980 to ensure more consistent sentences and established mandatory minimums and sentencing ranges for all classes of felonies. Similarly, when judges were too lenient with DWI offenders and Mothers Against Drunk Driving became much more involved, the legislature changed the laws to require mandatory minimum sentences for first time and repeat offenders, another example of restricting judicial discretion.

This bill and the existing justice reform legislation places similar limits on judges' discretion. The good news is that their investment in stronger pretrial supervision is already showing public safety improvements. Data from April of this year shows that of the individuals under pretrial supervision, less than 5 percent had active arrest warrants. That's a substantial improvement from the new offense rate of 37 percent when judges had unfettered discretion.

5:28:17 PM
Section 11 makes conforming changes to clarify that a judge may order a person released on his own recognizance or upon an unsecured bond unless other provisions of the statute provide otherwise.

Section 12 makes conforming changes so that persons who have an out-of-state criminal charge or conviction that has not been used in determining the person's risk level by the risk assessment tool will not be required to be released on their own recognizance or upon an unsecured bond.

Section 13 changes the mandatory release on their own recognizance for low risk class C felonies to presumptive own recognizance (OR). Low risk misdemeanors and moderate risk misdemeanors remain mandatory release on their own recognizance except when modified by out of state criminal history as described earlier.

5:29:15 PM
REPRESENTATIVE CLAMAN commented that the misdemeanor crimes against the person, misdemeanor sex offenses, misdemeanor crimes involving domestic violence, misdemeanor DWI offenses, misdemeanor failure to appear offenses, and misdemeanor violation of conditions of release are not included in the mandatory release on their own recognizance. So, all the violent offenses against the person are not included in any of the mandatory release provisions.

Section 14 makes conforming and technical changes to the mandatory conditions of release.

Section 15 makes conforming changes to clarify that the court shall consider out of state convictions when determining the conditions of release.

Section 16 changes the law so that when a defendant who would otherwise be mandatorily released on his own recognizance has an out-of-state criminal conviction or a charge, the judicial officer may require monetary bail upon a finding that there is clear and convincing evidence that other conditions are not sufficient to ensure public safety.

5:30:26 PM
Section 17 addresses the bills introduced as SB 149 and HB 294 regarding surcharges for criminal offenses and increases the felony surcharge upon conviction from $100 to $200. It increases the surcharge for a misdemeanor DUI offense from $75 to $150; increases the surcharge for a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation other than a provision identified in Sections 2 increasing the surcharge from $50 to $100. It increases the surcharge for misdemeanors and violations or infractions under state of municipal code where incarceration may not be imposed from $10 to $20. In rough terms, this means all the criminal surcharges are doubled.

5:31:08 PM
Section 18 returns language that address crimes against medical professionals to the bill. It adds an "aggravated" to Alaska's felony sentencing statute when a defendant commits the offense at a health care facility and knowingly directs the conduct constituting the offense at a medical professional during or because of the medical professional's exercise of their professional duties.

5:31:33 PM
Sections 19-21 return to the issue of out-of-state convictions and pretrial release. Section 19 authorizes pretrial services officers to file complaints with the court, arrest with or without a warrant, and request the court to issue warrants related to any violation or conditions of release.

REPRESENTATIVE CLAMAN said the current law as passed by the legislature has led to some dispute within the trial courts. Some courts have ruled that pretrial services officers have the authority to file complaints with the court while other courts have rules that do not have that authority for them. This exercise of judicial discretion highlights the need for the legislature to step in from time to time and remove judicial discretion by, in this instance, confirming the authority of pretrial services officers to file complaints with the court.

Section 20 makes conforming changes to ensure pretrial services officers can file complaints with the court, arrest with or without a warrant, and request the court to issue warrants related to a violation of conditions of release.

Section 21 allows the attorney general to schedule a substance by emergency regulation.

Section 22 requires notice of an emergency regulation scheduling a controlled substance to be published on the Alaska online public notice system.

Sections 23-28 all relate to the AG controlled substance authority. Section 23 requires the public notice of an emergency regulation scheduling a controlled substance to include a summary of the AG's compliance with the procedures set out in proposed AS 11.71.125.

5:33:25 PM
Section 24 exempts the procedure for scheduling a controlled substance by emergency regulation from the regular emergency process.

Section 25 adds authority to issue regulations to schedule a controlled substance by emergency regulation to the current emergency regulation procedure.

Section 26 exempts the procedure for scheduling a controlled substance by emergency regulation from the 120-day time limit for other emergency regulations.

5:33:56 PM
Section 27 provides that a substance scheduled by the AG for emergency regulation will remain on the schedule for a period not to exceed 1,095 days (3 years) unless the legislature schedules the substance by law or annuls the regulation by law. This is one of the changes suggested originally by the governor. There was a real interest in having the legislature maintain its authority to have the final word on scheduling the substances, but they wanted the AG to have the ability to do it quickly, but if the legislature chose not to act after three years it would become unlisted, and during that three-year period the legislature could act as quickly as it wanted. If it's a bad idea, the legislature would not have to wait three years to unlist it. Basically, final authority would come to the legislature, but this provision would give the governor and the AG the flexibility to list substances more quickly.

5:35:06 PM
Section 28 amends the state policy on emergency regulations to clarify that the section does not limit the AG's authority to schedule the controlled substance by emergency regulation.

5:35:16 PM
Sections 29-32 address court changes, applicability, and conditional effective dates. Section 29 involves the indirect court rule amendment. Sections 11-15 have the effect of changing Court Rule 41 by changing release conditions for defendants so there would be changes to the Court Rule based on section 29.

Section 30 provides applicability provisions. The act applies to offenses committed on or after the effective date.

5:35:46 PM
Section 31 is the conditional effect that the act only takes effect if the indirect Court Rule amendment receives a two-thirds majority vote.

Section 32 provides an effective date that only sections applicable to pretrial release will take effect immediately. That concluded the sectional analysis.

5:36:14 PM
CHAIR MEYER said he brought up a good point that HB 312 has several other bills rolled into it and that they were originally introduced by the governor and have since been enhanced in the House and Senate Judiciary Committees and then rolled into one bill.

5:36:50 PM
CHAIR MEYER removed his objection and announced that SCS HB 312(RLS), version 30-LS1225\M, was adopted.

SENATOR GARDNER asked if a substance is currently on the federally controlled substance schedule, it's not automatically on the state-controlled substance schedule. Does it have to be incorporated?

REPRESENTATIVE CLAMAN answered that is correct. Before this bill, any addition to the state-controlled substance list had to be done by an act of the legislature. For example, when spice first came out, it took a while for the legislature to approve it, so only the federal government could prosecute spice. This

bill would allow the attorney general, after the federal government has acted, to say she wants to prosecute spice, too.

SENATOR GARDNER said section 18 says, "knowingly directed the conduct" and comes to the heart of the concern about the original bill, which has to do with people who are in a mental health crisis, under the influence of some substance, or something has happened to them where they wouldn't be held responsible for the things they say and do and asked if this is the aspect that might give comfort to vulnerable people.

REPRESENTATIVE CLAMAN replied that was the intent of the bill and crimes against medical professionals included an automatically enhanced sentence. So, if certain factors were proved, the sentence would be higher. But because of the concern about what happens to someone who is not in their right mind, even if it could be established, it would be an aggravating factor that the judge might choose to apply or not.

SENATOR GARDNER asked him to elaborate on the indirect court rule amendment in section 29 that talks about changing release conditions for defendants. Is that the mandatory OR releases that are being changed?

REPRESENTATIVE CLAMAN replied that it's only the changes that are in the bill. The changes to the court rule would involve two different parts: one would be changing the mandatory own recognizant (OR) release for class C felonies that would now be presumptive OR release but not mandatory. The other changes relate to information regarding out-of-state charges and convictions, which previously had not been considered. The expectation with the Department of Corrections (DOC) is that the assessment tool would incorporate those out-of-state charges and convictions by the end of the year, and at that point once they are incorporated in the tool, that wouldn't be a basis to go outside the analysis. Today, once the bill passes, the judge would be able to go to a presumptive OR based on those out-of-state charges and convictions.

5:41:18 PM
SENATOR GARDNER asked him to describe how pretrial is working now.

REPRESENTATIVE CLAMAN answered that the Department of Corrections (DOC) has described the pretrial risk assessment tool and the use of the pretrial services officers as showing improvements already. Sixty pretrial services people have been

hired and trained. Part of what they do is supervise people who are charged with crimes for more consistency. So, they are tracking and paying more attention to folks on pretrial release. Practitioners in the field have said the noticeable change, particularly on Monday mornings after the weekend, is over who is still in jail. More folks with prior histories and charged with violent crimes are being seen in jail.

5:43:47 PM
CHAIR MEYER said one concern has been not being able to see out-of-state criminal charges, which they can now do. And secondly, this bill provides the judge discretion in sentencing class C felonies, especially for car theft that is prevalent in Anchorage now. For some this bill doesn't go far enough, and he gets that. He is still not comfortable with how lower and moderate level misdemeanors are dealt with and asked what Representative Claman's response would be to that.

REPRESENTATIVE CLAMAN replied that auto thefts are part of the reason they discussed whether to take any category of mandatory OR and put it into presumptive OR. The dominant thing they heard from the community about auto theft was that judges had to have discretion. Regarding the misdemeanors, the most important part to communicate to the public is that the group of misdemeanors that would qualify as low and moderate risk, by definition, don't include violent crimes. All the places that put the public at greatest risk and have the greatest potential for injury are the crimes that will never be mandatory OR. They are only talking about folks that have very limited criminal history and the crimes they are charged with are non-violent.

CHAIR MEYER assumed even for non-violent misdemeanors that the more times a person gets picked up the higher they rate in the risk assessment category and ultimately will get to the higher level where the judge will have discretion.

REPRESENTATIVE CLAMAN said that was exactly correct.

5:46:49 PM
SENATOR MICCICHE asked if the effects of alcohol or substance abuse would be a defense for a defendant who "knowingly directed the conduct" at a health care facility. Does that have a personal responsibility requirement?

REPRESENTATIVE CLAMAN answered that he couldn't quote the statute, but one can't claim intoxication as a defense to knowingly doing something. It is an aggravating factor at

sentencing as opposed to an element of the crime, itself, as opposed to someone who is suffering from a psychiatric disorder. He also reminded them that someone can be arrested there would need to be a finding that they were stable for discharge, which addresses both physical, psychiatric, and psychological issues.

5:48:36 PM
REPRESENTATIVE KELLY moved to report SCS HB 312(RLS), version 30-LS1225\M, from committee with individual recommendations and forthcoming fiscal note(s). There were no objections and it was so ordered.

5:50:09 PM
CHAIR MEYER adjourned the Senate Rules Standing Committee meeting at 5:50 p.m.