

SENATE FINANCE COMMITTEE

April 24, 2019

1:33 p.m.

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CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Lyman Hoffman
Senator Peter Micciche
Senator Donny Olson
Senator Mike Shower
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

John Skidmore, Director of the Criminal Division, Department of Law; Michael Duxbury, Deputy Commissioner, Department of Public Safety; Senator Shelley Hughes; Senator Mia Costello; Senator Cathy Giessel; Senator Laura Reinbold.

SUMMARY

SB 32 CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

SB 32 was HEARD and HELD in committee for further consideration.

#sb32

SENATE BILL NO. 32

"An Act relating to criminal law and procedure; relating to controlled substances; relating to

probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

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JOHN SKIDMORE, DIRECTOR OF THE CRIMINAL DIVISION, DEPARTMENT OF LAW, discussed the presentation, "A Look-back on Criminal Justice Reform (copy on file). He highlighted slide 2, "Goals of Reform":

"Local legislative interest in these efforts were heightened by reports that the Alaska prison population was up 27 percent over the last decade, growing at a rate of 3 percent a year, and that recidivism remained high with nearly two out of three offenders returning to prison or jail within three years. Absent further reforms, it was projected that the number of persons incarcerated would soon exceed current hard-bed capacity."

Source: Alaska Criminal Justice Commission 2015 Annual Report, p 1, Dated: Feb 1, 2016

1. Reduce the prison population
2. Reduce Recidivism

Mr. Skidmore addressed slide 3, "Projected Prison Population." He stated that the reform was expected to cut prison population by approximately 13 percent, and the number of projected inmates was by 27 percent. He noted that the grey began July 1, 2016, and prior to that there was a continued increase in the prison population. The slide could still be found in Pew reports.

Mr. Skidmore discussed slide 4, "Actual Prison Population." The slide was dated in 2018, and pointed to 2014, 2015, and 2016. He remarked that the prison population decreased substantially prior to the passage of SB 91.

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Mr. Skidmore looked at slide 5, "Goal: Reduce Recidivism":

"The state's growing prison population and increased corrections spending, however, had not produced

commensurate improvements in public safety outcomes: nearly two out of every three people released from Alaska prisons returned within three years.”

Source: Alaska Criminal Justice Commission 2016
Annual Report, p 3
Dated: Sept 30, 2016

[1:41:04 PM](#)

Co-Chair Stedman looked at slides 3 and 4, and noted that slide 3 reflected an inaccurate depiction of the prison population relative to slide 4. He stated that slide 3 was made by the Alaska Department of Corrections (DOC) as a source document; and the source document on slide 4 was the Alaska Criminal Justice Commission 2018 annual report. He queried the discrepancy.

Mr. Skidmore replied that slide 3 was created by the Pew Trust, and was presented to many committees during the consideration of SB 91. The data, they say, they received from DOC. He noted that slide 4 was placed in and published by Alaska Criminal Justice Commission in 2018, and DOC helped present the slide.

Co-Chair Stedman felt it odd that the presentations from Pew were inaccurate, and that no one would notice that discrepancy.

Senator Wielechowski looked at slide 4, and noted that the former Attorney General had testified that either 5000 or 7000 were set free because of the lack of resources to prosecute those criminals. He wondered whether that had an impact on the declining prison populations.

Mr. Skidmore recalled that the testimony was about the number of cases that were being prosecuted had fallen, not that there were not resources to prosecute. He felt that it was possible that it had an impact on the prison population. He stated that the point of the slides was not to discuss causes, rather the intent was to discuss the fact that there was a drastic difference in what was presented to the legislature and the actual occurrence.

Senator Wielechowski remarked that lacking resources to prosecute would result in a decline in a prison population.

Mr. Skidmore agreed that it would cause a decline, but did not recall the number being 5000.

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Co-Chair von Imhof stressed that the purpose of the bill was to determine what resources were needed to give law enforcement officials the tools that were needed to lower crime and recidivism.

Mr. Skidmore highlighted slide 6, "Recidivism: National Perspective":

30 States
Prisoners released in 2005
Followed for nine years

Mr. Skidmore looked at slide 7, "States included in the BJS recidivism study of prisoners released in 2005."

Mr. Skidmore displayed slide 8, "What is "Recidivism"":

Measuring recidivism
Recidivism measures require three characteristics:

- a starting event, such as a release from prison;
- a measure of failure following the starting event, such as a subsequent arrest, conviction, or return to prison;
- an observation or follow-up period that generally extends from the date of the starting event to a predefined end date (e.g., 6 months, 1 year, 3 years, 5 years, or 9 years)."

Mr. Skidmore addressed slide 9, "National Recidivism":

- The 401,288 state prisoners released in 2005 had an estimated 1,994,000 arrests during the 9-year period - an average of 5 arrests per released prisoner.
- An estimated 68 percent of released prisoners were arrested within 3 years, 79 percent within 6 years, and 83 percent within 9 years.
- More than three-quarters (77 percent) of released drug offenders were arrested for a non-drug crime within 9 years.

Senator Bishop queried the cause of the repeat offenses.

Mr. Skidmore replied that the study did not describe the causes.

1:50:05 PM

Mr. Skidmore highlighted slide 10, "Alaska Recidivism and Reentry February 5, 2019." The slide showed a presentation from the House Finance Committee earlier in the year by DOC.

Mr. Skidmore looked at slide 11, "Recidivism":

An offender who is Mr. Earl-incarcerated within three years of release as a result of:

Parole or probation violations.
New felony crime.
New misdemeanor crime.

Mr. Skidmore addressed slide 12, "Alaska Recidivism Rates":

After consistently being in the mid to upper 60th percentile. Alaska has begun to see a steady decline in recidivism.

Mr. Skidmore highlighted slide 13, "Recidivism By Offense":

58 percent of those who return to custody within six months, return because of technical violations.

46 percent of those who return to custody within three years, return because of technical probation violations.

Senator Wilson wondered when DOC began their impatient treatment programs in the prison system.

Mr. Skidmore deferred to DOC.

Co-Chair von Imhof queried the definition of technical violations.

Mr. Skidmore replied that it meant that the probation violation resulted in a return to prison, and the violation was something other than committing a new crime.

Co-Chair von Imhof queried the number of people who returned to custody from a technical violation, and wondered whether any bill had addressed that issue.

Mr. Skidmore replied that SB 32 did not address probation and parole, but SB 24 addressed that issue. That bill would be in committee soon.

Mr. Skidmore looked at slide 14, "Recidivism New Crimes":

The recidivism rate for new crimes is 32 percent.

Mr. Skidmore highlighted slide 15, "Alaska's Recidivism Before SB 91":

6 percent decline in Alaska 2011-2015

7 percent Below the National Average from 2005

Mr. Skidmore looked at slide 16. He shared that the states that had used justice reinvestment strategies were Georgia, Mississippi, North Carolina, Oregon, South Dakota, Texas, and Utah, among many others. They had implemented reforms to protect public safety and control corrections cost. He stated that in 2007 Georgia was faced with a substantial problem with the cost of their prisons.

Mr. Skidmore addressed slide 17, "Comparison of PEW Reform States."

[2:00:38 PM](#)

Co-Chair von Imhof felt that the committee wanted to address crime, and did not feel that they needed to be convinced of the problems. She appreciated the historical context, but wanted to understand what was in the bill. She wanted to understand what was being recommended and the pros and cons.

Mr. Skidmore shared that his presentation was also for those that may be an audience for the meeting.

Co-Chair von Imhof stressed that this was the third committee of referral, and wondered whether this presentation had been made in other committees.

Mr. Skidmore replied in the negative.

Co-Chair von Imhof wondered whether this was his first presentation on the bill.

Mr. Skidmore replied in the affirmative.

Senator Bishop requested a solution besides putting more people in jail or prison.

Mr. Skidmore agreed.

Mr. Skidmore discussed slide 18, "Violent v. Non-violent Offenses":

Violent = AS 11.41.

- Homicide
- Assault
- Stalking
- Kidnapping
- Human Trafficking
- Sexual Assault
- Sexual Abuse of a Minor

Non-Violent = everything else

- Theft
- Criminal Mischief (property Damage)
- Forgery
- Bribery
- Gambling
- Hindering prosecution
- Impersonate a Public Servant

Mr. Skidmore addressed slide 19, "But Also 'non-violent'...":

Misconduct Involving Weapons
Drug Trafficking
Arson
Burglary
Promoting Contraband
Terroristic Threatening
Riot
Sending Explicit Image Of A Minor
Misconduct Involving A Corpse
Cruelty To Animals
Sex Trafficking

Mr. Skidmore looked at slide 20.

Mr. Skidmore highlighted slide 21, "Why did Crime Rise Before SB 91?"

[2:04:52 PM](#)

Mr. Skidmore discussed the Sectional Analysis (copy on file):

Summary: This bill returns a number of statutes to where they were prior to July 2016. It reenacts a class A felony level drug distribution statute and focuses on the type of drug being distributed instead of the amount. The 30-day grace period allowed before a person could be charged with a crime for failing to appear for a court hearing is eliminated. Presumptive sentencing ranges for felonies are increased by approximately 2 years. Misdemeanor sentencing ranges are also increased to up to 1 year for a class A misdemeanor and up to 90 days for a class B misdemeanor. The bill also requires the Alaska Court System to transmit information regarding individuals who have been involuntarily committed since October 1, 1981 to the Department of Public Safety. Finally, the bill allows a person's rap sheet to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 1 Clean up language. Aligns murder in the second degree when a person dies during the course of a drug deal with the changes made to the drug statutes later in the bill.

Section 2 Clean up language. Same change that is made in sec. 1 is made in sec. 2 for murder of an unborn child in the second degree.

Section 3 - 10 Removes inflation adjustment from property crime statutes.

Section 11 Defines "prior convictions" when evaluating the existence of prior convictions in the recidivist theft statutes.

Section 12 - 18 Removes inflation adjustment from property crime statutes.

Section 19 Adds to the crime of escape in the second degree persons who are under the jurisdiction of the Commissioner of Health and Social Services for a felony and restricted to the residence then leave their residence without permission.

Section 20 Makes it a class C felony to remove an electronic monitoring device or leave a person's residence while under official detention for a misdemeanor regardless if under the jurisdiction of the Department of Corrections or the Department of Health and Social Services. Also makes it a class C felony if the person is on conditions of release before trial and ordered to electronic monitoring or house arrest by the court and the person removes the electronic monitoring device or leaves one's residence without permission.

Section 21 Clean up amendment for change that occurs in section 22, making failure to appear a crime.

Section 22 Removes 30 day grace period for defendants during which it was not a crime to fail to show up for a hearing. Under current law, it is not a crime to fail to appear for a court hearing unless the person goes 30 days or longer without making contact with the court or fails to appear with the intent to avoid prosecution. This section removes both of those limitations.

Section 23 Amends the crime of violating conditions of release which relates to conditions imposed by the court on persons on pretrial release. This section makes it a class A misdemeanor for a person to violate their conditions of release if they are on release for a felony and a class B misdemeanor if they violate while on conditions for a misdemeanor.

[2:09:33 PM](#)

Co-Chair von Imhof wondered whether the bill changed to before SB 91, or were there some additions.

Mr. Skidmore replied that it returned to SB 91 law.

Co-Chair von Imhof wondered whether it was sufficient to address the stated issues.

Mr. Skidmore replied in the affirmative.

Co-Chair von Imhof wondered whether the wife would answer the same way.

Mr. Skidmore replied that she was an uncooperative witness.

Mr. Skidmore continued with the Sectional Analysis:

Section 24 Enacts a generalized threat statute to cover when an individual threatens to commit a serious crime, which reasonably places another person in fear. Covers real threats of violence, and not simply false threats.

Co-Chair von Imhof asked whether the focus was on people over 18-years-old. She recalled when several high schools in Anchorage experienced evacuations.

Mr. Skidmore replied that the law applies to all citizens, and those over 18 would be tried in the adult criminal justice system, and anyone under 18 would be in the juvenile criminal justice system.

Mr. Skidmore continued with the Sectional Analysis:

Section 25 Makes the crime of disorderly conduct a class B misdemeanor punishable by not more than 10 days.

Section 26 Reenacts class A felony level crime for the distribution of schedule IA controlled substances (heroin) and making methamphetamine.

Section 27 Amends AS 11.71.030, misconduct involving a controlled substance in the third degree to include manufacturing or distribution of any amount of a schedule IIA or IIIA controlled substance. Also repeals section of law regarding the delivery of 1g or more of a schedule IA or 2.5 grams or more of a schedule IIA or IIIA controlled substance as the amendments in the bill focus on the type of drug being distributed and not necessarily the amount.

Section 28 Conforming amendment to the changes made in section 27.

[2:16:10 PM](#)

Senator Micciche queried the importance of returning possession to being a Class C felony.

Mr. Skidmore replied by continuing with the Sectional Analysis:

Section 29 Makes the possession of any amount of a schedule IA (heroin) or IIA (methamphetamine, cocaine, PCP, etc.) controlled substance and various amounts of IIIA, IVA, and VIA controlled substances a felony.

Section 30 Conforming amendment to the changes made in section 29.

[2:20:57 PM](#)

Co-Chair von Imhof understood that the stories and examples were helpful in making determinations, but stressed that she wanted to work to get through all the sections.

Senator Wilson felt that some of the behavioral health issues were related to grant and funding cuts. He also noted the economic issues in the state.

Mr. Skidmore agreed. He furthered that he was offering an option to combat the drug crisis.

Senator Wielechowski queried the percentage of drug possession defendants were given a suspended entry of judgment.

Mr. Skidmore replied that he did not know the number, but imagined that the number was extremely low.

Senator Wielechowski queried the anticipation of how many suspended entries of judgment would occur under the legislation.

Mr. Skidmore did not know the number, but believed that the estimates were approximately a rise of 700 cases.

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Co-Chair von Imhof queried the definition of "SEJ."

Mr. Skidmore replied that it was "suspended entry of judgment", which was created in SB 91. It was different than a suspended imposition of sentence.

Mr. Skidmore continued with the Sectional Analysis:

Section 31 Removes possession of most dangerous controlled substances from the crime of misconduct involving a controlled substance in the fifth degree, as those possessory crimes would be a class C felony under the bill.

Section 32 Renames AS 11.71.060 "misconduct involving a controlled substance in the sixth degree" to conform with the changes made to the drug offense statutes.

Senator Micciche wondered why someone arrested of possession turn state's evidence, if there was a violation.

Mr. Skidmore replied that it would be used as a tool of cooperation with law enforcement.

Senator Wielechowski looked at Section 29, page 19, which talked about 25 or more plants of genus cannabis, and wondered who that would apply.

Mr. Skidmore replied with page 18, which showed the exception authorized in AS 03.05, AS 17.30, and AS 17.38.

[2:30:28 PM](#)

Senator Wielechowski looked at the recriminalization of the drug possession, and queried the number of additional people it would put in jail.

Mr. Skidmore replied that he did not know that number.

Senator Wielechowski queried the research on the effectiveness of putting people in jail for possession of drugs nationwide.

Mr. Skidmore replied that if someone was just placed in jail as the only option, he did not believe that the research showed that to be effective. He noted the effort to incentivize them toward treatment. He stated that those

who refused to get treatment remained a danger to the public.

[2:33:39 PM](#)

Mr. Skidmore continued with the Sectional Analysis:

Section 33 Conforming amendment to statute prohibiting prosecution of individuals who seek medical or law enforcement assistance for a person who is overdosing.

Section 34 Increases the maximum period of probation for felony sex offenses from 15 years to 25. Also increases the maximum period of probation for any other offense to 10 years.

Section 35 - 37 Enhanced sentences for making methamphetamine around children or engaging children in the sale of methamphetamine are reenacted. Also increases the presumptive sentencing ranges for class A, B, and C felonies:

Felony Level
Current Law
SB 32
Class A
First Felony: 3-6 (20 max)
Second Felony: 8-12 (20 max)
Third Felony: 13-20 (20 max)
First Felony: 5-8 (20 max)
Second Felony: 10-14 (20 max)
Third Felony: 15-20 (20 max)
Class B
First Felony: 0-2 (10 max)
Second Felony: 2-5 (10 max)
Third Felony: 4-10 (10 max)
First Felony: 1-3 (10 max)
Second Felony: 4-7 (10 max)
Third Felony: 6-10 (10 max)
Class C
First Felony: 0-2 (5 max)
Second Felony: 1-4 (5 max)
Third Felony: 2-5 (5 max)
First Felony: 0-2 (5 max)
Second Felony: 2-4 (5 max)
Third Felony: 3-5 (5 max)

Section 38 Prohibits the suspension or reduction of the period of mandatory probation outlined in statute for sex offenders.

Section 39 Returns sentencing range for class A misdemeanors to 0-1 year.

Section 40 Returns sentencing range for class B misdemeanors to 0-90 days.

Section 41-42 Recriminalizes driving with license canceled, suspended, or revoked. This offense will be punishable by a minimum of 10 days with 10 days suspended upon the first offense and a minimum of 10 days upon the second offense.

Section 43 Repeals requirement that a person serve their sentence for a first DUI on electronic monitoring or house arrest. Returns discretion to the commissioner of corrections to place the person on electronic monitoring at a private residence or at a community residential center.

Section 44 The same changes in section 43 are made in section 44 to the statute governing refusal to submit to a chemical test.

Section 45 Conforming amendment due to the enactment of the class A felony level offense for drug distribution. Adds that conduct to the definition of "illegal activity involving a controlled substance" in the landlord tenant statutes.

Section 46 Conforming amendment. Adds all felony level drug distribution to the list of crimes involving a minor which the Department of Health and Social Services will disclose information to the public.

Section 47 Allows a person's rap sheet to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 48 Repealer section.

Section 49 Uncodified law section. Requires the Alaska Court System to transmit information regarding

involuntary commitments that have occurred since October 1, 1981 to the Department of Public Safety.

Section 50 Applicability section.

Section 51 Conditional effect section for court rule change.

Section 52 Immediate effective date for section 49.

Section 53 July 1, 2019 effective date for all other sections.

Co-Chair von Imhof noted that there were four total criminal justice bill, and SB 32 was the most complex of the bills.

[2:40:25 PM](#)

Senator Wielechowski wondered whether the limitation to drive with glasses would result in a misdemeanor if one did not wear glasses.

Mr. Skidmore replied that the limitation, for example, referred to only driving to and from work due to a DUI.

Co-Chair von Imhof discussed the following day's agenda.

Senator Micciche requested that the Department of Law update their charts, and include SB 35.

Mr. Skidmore stated that SB 35 did not have a similar history of follow through. He remarked that there was another

Senator Wilson queried the referenced chart.

Mr. Skidmore agreed to provide that information.

Co-Chair von Imhof asked that it be distributed to the committee.

Co-Chair Stedman stated that Senate Finance Committee worked quickly, and encouraged response as quickly as possible.

Mr. Skidmore agreed to do that work.

Senator Bishop wondered whether there was a plan to have Department of Public Safety (DPS) at the table. He stated that he had a question.

Co-Chair von Imhof stated that DPS was available for questions.

[2:45:47 PM](#)

MICHAEL DUXBURY, DEPUTY COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, introduced himself.

Senator Bishop wondered whether the bill would allow for work, and avoid constituents stating that DPS could not do their job.

Mr. Duxbury replied that it was a difficult way to answer, because there was no way to predict comments from constituents. He stated that the bill allowed for accountability, tools, and discretion to make the impact that were both strategic and provide a better quality of life.

Senator Wilson queried the package of referenced bills.

Mr. Duxbury replied that the entire package put forth by the governor's office could be used to help the people of the state.

Senator Wielechowski remarked that at the passage of SB 91, the Attorney General, the commissioner of DPS, and the commissioner of DOC testified that it would keep the state safe with uniform support. He remarked that it was later discovered that there were people "in the trenches" who did not support the bill. He wondered whether there was support in DPS who were working in the field.

Mr. Duxbury replied that there were people who saw the bills as a solution to be not seen as a failure of law enforcement. He stressed that there should be a return to the possession and distribution limits, because they were driving property and violent crimes.

Senator Micciche wondered whether there was frustration at the inability to intervene, because of the drug-related

laws were insufficient in stopping repeat offenders. He wondered whether the legislation would help with that issue.

Mr. Duxbury replied in the affirmative.

[2:50:18 PM](#)

Senator Micciche asked whether DPS was frustrated with the pre-trial risk assessment, resulting in multiple arrests.

Mr. Duxbury replied that there was an institutional inertia in many aspects of SB 91, that could not allow DPS to prevent the revictimization of people. He looked forward to using the tools and discretion to help other people.

Senator Micciche contended that recriminalizing possession was a lifesaver.

Co-Chair Stedman requested information about the high intensity drug area, and whether it was more expansive than other states. He also requested insight into the Mexican drug cartels that were appearing in Southeast Alaska.

Mr. Duxbury replied that the high intensity drug area (HIDA) showed that bestowed that designation on an independent area. He stated that it was shown by providing the gathered data to show that the state was in need, therefore providing federal funds.

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Co-Chair Stedman wondered whether HIDA referred to the entire state.

Mr. Duxbury replied that the HIDA trafficking areas would incorporate three judicial districts. He stated that it did not incorporate the North Slope Borough.

Co-Chair Stedman wanted to know more support, and found little HIDA support in his district.

Co-Chair von Imhof discussed the following day's meeting agenda.

SB 32 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

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The meeting was adjourned at 2:58 p.m.