

SENATE FINANCE COMMITTEE

May 10, 2019

1:37 p.m.

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CALL TO ORDER

Senator Bishop called the Senate Finance Committee meeting to order at 1:37 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Natasha von Imhof, Co-Chair

ALSO PRESENT

Kelly Howell, Department of Public Safety, In Room; John Skidmore, Director, Criminal Division, Department of Law, In Room; Sylvan Robb, Administrative Services Director, Department of Corrections, Office of Management and Budget, In Room; Senator Jesse Kiehl; Senator Cathy Giessel.

PRESENT VIA TELECONFERENCE

Kathryn Monfreda, Department of Public Safety, Anchorage; Beth Goldstein, Public Defender Agency, Anchorage; James Stinson, Office of Public Advocacy, Anchorage.

SUMMARY

HB 49 CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

CSHB 49(FIN) am was HEARD and HELD in committee for further consideration.

#hb49

CS FOR HOUSE BILL NO. 49(FIN) am

"An Act relating to criminal law and procedure; relating to pretrial services; establishing the crime of possession of motor vehicle theft tools; relating to electronic monitoring; relating to controlled substances; relating to probation and parole; relating to sentencing; amending the definitions of 'most serious felony,' 'sex offense,' and 'sex offender'; relating to registration of sex offenders; relating to operating under the influence; relating to refusal to submit to a chemical test; relating to the duties of the commissioner of corrections; relating to testing of sexual assault examination kits; relating to reports of involuntary commitment; amending Rules 6(r)(6) and 38.2, Alaska Rules of Criminal Procedure; and providing for an effective date."

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KELLY HOWELL, DEPARTMENT OF PUBLIC SAFETY, IN ROOM, responded to questions regarding Section 102, page 69, which would require the Court System (COURT) to the Department of Public Safety (DPS) records of involuntary commitment going back to 1981. She recalled that the question was about the purpose of the Section. She stated that it was necessary to "prevent another Virginia Tech shooting from occurring in Alaska."

Senator Micciche asked about episodes in the past and the relevance to today.

Ms. Howell stated that the law was federal and currently the AK court system does transmit records from October 2014 forward. She responded that when voluntarily committed, there was a process in law for relief from disability and information was removed from the federal system.

Senator Micciche asked about choosing a different timeline, and decided to nullify the difference.

Ms. Howell replied that the database was only as good as the records it contained. The goal was to get as many records as possible into the system.

Senator Micciche proposed an example related to a veteran with PTSD and an involuntary commitment; and wondered whether that person would be in the system.

Ms. Howell answered in the affirmative.

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Senator Wilson surmised that it would only qualify for certain dealers, but there was an easy loophole and go buy a firearm that did not require the information.

Ms. Howell responded that the bill was one effort that the state could do to minimize future problems.

Senator Olson noted inhibitions or guidelines available that might include older data.

Ms. Howell replied that stringent confidentiality rules could only be used for a specific purpose.

Senator Shower asked how many people the bill would affect. He noted that there was a concern about possibly a grandfather who may have had an issue far in the past, and then suddenly get pulled over and charged with a felony. He stressed that there were many concerns that were not yet resolved.

Ms. Howell wondered whether he was talking about someone who may not know that they were federally prohibited from possessing a firearm.

Senator Shower wondered further what would happen if someone were pulled over with a bad taillight, and suddenly have something on their record. He also wanted to know the number of people that would be effected.

Ms. Howell responded that Ms. Meade had answered the initial questions related to the number of records. She stated that a form was filled out upon purchase of a firearm, and there were specific questions with the federal prohibitors. She stated that one of the questions was about whether that person had been involuntarily committed to an institution for more than 30 days. She stated that there was a hope that the individual would fill out the form correctly

Senator Shower remarked that an individual could have a gun without filling out that paperwork, who could get pulled over. He stressed that he wanted to know what would happen to the people that had never gone through the process.

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Ms. Howell replied that the systems checked during contact with the individual. She stated that she could provide more information after talking to law enforcement. She deferred to Ms. Monfreda.

Senator Shower clarified his story. He stressed that this particular question had been addressed, and there was still no sufficient answer.

Senator Bishop asked for Ms. Monfreda.

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KATHRYN MONFREDA, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE (via teleconference), responded to the question. She noted that the database was not accessible by law enforcement, so they would not know that the person was in the system.

Senator Shower gets a ticket would they be charged with criminal possession of a firearm.

Ms. Howell responded that law enforcement would not use the database. The database was for federal firearms licensees.

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JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, IN ROOM, referred to statute. He stated that the person had not committed a felony with a driving infraction.

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Senator Bishop handed the gavel to Co-Chair Stedman.

Senator Bishop wondered whether the database was controlled by the FBI.

Ms. Howell replied in the affirmative.

Mr. Skidmore replied that he found no subsection in state statute that would make it a crime to carry a firearm in the proposed scenario.

Senator Bishop noted no rub with state statute.

Mr. Skidmore replied that the federal law stated that a person committed under these situations should not carry a firearm. He was unsure about other state's laws.

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BETH GOLDSTEIN, PUBLIC DEFENDER AGENCY, ANCHORAGE (via teleconference), reviewed the fiscal note of \$1.3 million. She stated that the increase in felony drug cases would occur because of the legislation. She pointed out that she looked to the American Bar Association guidelines, which give 150 cases per year per attorney.

Co-Chair Stedman asked about the addition of the capped positions.

Ms. Goldstein replied that capped positions were vacant for budget reasons.

Co-Chair Stedman talked about the heavy fiscal notes.

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Senator Wielechowski asked about potential concerns with the bill.

Ms. Goldstein replied that she did not have any concerns with the current bill.

Senator Wielechowski wonder about the topics removed.

Ms. Goldstein replied that that the department had a problem with the marriage defense issue. She stated that there were many situations where the spouse of someone with dementia may be their guardian. She stated that dementia was not a static disease. She understood that there was an

assertion that LAW would make determinations based on situations. She stressed that spouses with dementia may have clarity, and they may attempt to gain back what they have lost. She stressed that there was a concern about family dynamics, because there was a concern about whether the person with dementia could be receive properly care.

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Senator Wielechowski asked for a recommendation to protect those victimized.

Ms. Goldstein replied that the legislature was trying to accomplish protection for spouses who are victimized when alcohol is involved. She mentioned the possibility of specific language, without casting such a wide net.

Senator Wielechowski wondered about technical caps and discretionary parole.

Ms. Goldstein replied that the tactical violations. She discussed parole hearings and the impact on the defendant's considerations related to parole.

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Senator Wielechowski noted that the technical violations could result in reasonable punishment, so an individual could keep their employment.

Ms. Goldstein replied that a person could serve days without. She noted that probation included a great deal of effort.

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JAMES STINSON, OFFICE OF PUBLIC ADVOCACY, ANCHORAGE (via teleconference), noted the fiscal note and the positions proposed for funding. The changes to parole would also increase the workload.

Co-Chair Stedman mentioned \$694 thousand in the fiscal note. He wondered about a decrease related to SB 91.

Mr. Stinson replied that caseloads have steadily increased since 2012. He stated that the workload has increased.

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Mr. Stinson discussed the mental health registry and its effect on Alaska. He noted the federal law that references.

Senator Shower asked a question related to Mr. Stinson's job.

Mr. Stinson replied that was he was a special assistant.

Mr. Stinson continued that a person not yet in the registry might have purchased a firearm. He stated that the person might get flagged for an investigation, and there would be a determination how to proceed. He noted the attempt to confiscate firearms in their possession. He discussed a situation where someone would be federally barred from having the firearms. A distinction in the law. The federal position related to firearms should be taken broadly.

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SYLVAN ROBB, ADMINISTRATIVE SERVICES DIRECTOR, DEPARTMENT OF CORRECTIONS, OFFICE OF MANAGEMENT AND BUDGET, IN ROOM, noted the various impact to the department. She continued discussing the fiscal note. She stated that the institution office and the cost of \$4.6 million.

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Co-Chair Stedman reviewed the /.

Ms. Robb replied that the fiscal note included the full cost of care.

Ms. Robb moved to fiscal note for the appropriation management 712 component #.

Senator Wilson asked about the previous fiscal note and healthcare costs.

Ms. Robb responded that the difference from the costs from the first year to the second year //. The portion of the cost of healthcare was calculated and reflected in the increased inmates.

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Senator Wilson wondered if the costs were overlapping between notes.

Ms. Robb clarified that the cost of the new inmates was \$10.6 million. The portion that included healthcare was reflected on the healthcare note. She mentioned the Palmer note.

Ms. Robb talked further about the Palmer Correctional Center note, OMB number 712. She stated that the center required time and money for startup costs. She mentioned the commodities cost, equipment must be replaced. She pointed out the cost to run Palmer that was last open in 2015. She stated that the numbers were adjusted for inflation. She noted the additional services and commodities costs.

Ms. Robb continued that the full center cost was reflected in the fiscal note adjusted for inflation.

Senator Bishop asked about the 2020 cost, and whether the cost was for prisoners.

Ms. Robb replied that there would be 78 inmates over capacity in that first year. She noted that there was a smaller building that could be used for those individuals. She stressed that the money would be used for the ramp up period she stated that those in the department at estimated that it would take between six to nine months to set up the building.

Senator Bishop discussed fiscal assets including transport vans and he wondered if any assets could return to Palmer.

Ms. Robb replied that many of the assets have been reused in other facilities.

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Senator Wilson wondered if all prisons included a dental plan.

Ms. Robb responded that each institution had different plans.

Senator Wilson wondered if all additional medical equipment should be included.

Ms. Robb replied that the risk to public safety when transported.

Senator Wielechowski noted additional positions in 2022, yet the costs remain the same year to year. He was curious about inflation and costs.

Ms. Robb replied that the fiscal note instructions request that inflation not be accounted in the out years. She noted the increase between FY 21 from 73 positions to FY 22 at 104 positions, with an increase in cost of approximately \$4 million.

Senator Wielechowski wondered when the Palmer Correctional Facility would be full, and therefore requiring a new correctional center.

Co-Chair Stedman stressed that the issue of where those people would go would be debated at the time. He stressed that he did not want the public to misunderstand.

Ms. Robb responded that the department did not anticipate project an exceeded capacity within the fiscal note. She stated that there was a projection that the bill would be approximately 781 additional inmates by FY 25.

Co-Chair Stedman stressed that the future would show the capacity issues.

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Senator Wielechowski noted that Section 46 increased the amount of time that a person who was arrested could be kept in prison from 24 to 48 hours. He wondered where that was reflected in the fiscal notes.

Ms. Robb replied that the issue was addressed in the Institution Director's Office note, OMB 1381.

Senator Wielechowski wondered whether there was an amount.

Ms. Robb responded that the department was not able to project an amount related to the change.

Senator Wielechowski asked about section 50 page. He noted the requirement for a breathalyzer test before release. He wondered where that cost was reflected in the fiscal notes.

Ms. Robb stated that it did not have a fiscal impact on the department, because it was the current policy.

Senator Wielechowski wondered whether a breathalyzer was administered on everyone before releasing the individual.

Ms. Robb replied that she was not the best person to answer that question.

Ms. Robb moved on to the next fiscal note 2952. She noted costs in the personal services line that detailed the staff. She stated that the amount needed for the

Co-Chair Stedman asked about accounting for capital costs to get facility up and running.

Ms. Robb replied yes.

Senator Shower asked about the hepatitis testing.

Mr. Robb replied there would be no change.

Senator Shower noted increase by \$10 million for testing.

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Senator Micciche clarified that the legislature did not support of transporting inmates outside in the budget document. He stressed that needing Palmer was not related to the need for other facilities.

Ms. Robb replied that with the increased inmates, the fiscal notes reflected the department's intention to house those inmates at Palmer Correctional Center.

Senator Micciche assumed that the intent on the bill was based on all the other facilities remaining open, with additional needed capacity.

Ms. Robb answered in the affirmative.

Senator Bishop stated that there was space for 350 beds in the current system.

Ms. Robb replied in the affirmative.

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Ms. Robb discussed the next note 2976 that reflects the utilities for the Palmer Correctional Center. The utilities cost for the various years were discussed.

Ms. Robb moved to 695, a zero fiscal note related to parole.

Ms. Robb continued with 2826, another zero fiscal note. No changes made to parole.

Co-Chair Stedman asked for a total request from Department of Corrections.

Ms. Robb reviewed 698, and the 100k fiscal note.

Ms. Robb replied cost for first year \$10.7 million, \$24 million second year, \$32 million the third year.

Co-Chair Stedman surmised that there was an expectation of \$30 million in three years.

Ms. Robb replied in the affirmative.

Senator Bishop asked about the packages reflected in the fiscal notes.

Ms. Robb offered to provide further information.

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Senator Wilson asked about geriatric release. He wondered how the change made in SB 91 affected the issue.

Mr. Skidmore replied to the question regarding geriatric parole. He stated that he was not the best person to respond to the frequency of the use of geriatric parole.

Co-Chair Stedman stated that a department would respond to the committee.

Senator Shower asked if one path was better than another. He asked if enough tools were available.

Mr. Skidmore replied that HB 49 as it existed in the prior finance committee would effectively replace SB 91. He described the difference that the number of tools were more helpful than HB 49.

Co-Chair Stedman stated that the CS would be available tomorrow morning. He hoped to conclude the

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ADJOURNMENT

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The meeting was adjourned at 2:54 p.m.