

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 11, 2019

1:31 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Lora Reinbold, Vice Chair
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Mike Shower

COMMITTEE CALENDAR

SENATE BILL NO. 41

"An Act relating to the number of superior court judges in the third judicial district; and providing for an effective date."

HEARD AND HELD

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."

BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 41

SHORT TITLE: NUMBER OF SUPERIOR COURT JUDGES

SPONSOR(S): RULES BY REQUEST

01/30/19	(S)	READ THE FIRST TIME - REFERRALS
01/30/19	(S)	JUD, FIN
02/11/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Presented SB 41 on behalf of the Alaska Court System.

ACTION NARRATIVE

[1:31:21 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Kiehl, Reinbold, and Chair Hughes. Senator Micciche arrived as the meeting was in progress.

SB 41-NUMBER OF SUPERIOR COURT JUDGES

[1:31:57 PM](#)

CHAIR HUGHES announced that the only order of business would be SENATE BILL NO. 41, "An Act relating to the number of superior court judges in the third judicial district; and providing for an effective date."

CHAIR HUGHES stated her intention to hold SB 41 in committee.

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NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, stated that SB 41 was introduced at the request of the court system and would increase the number of superior court judges by converting two district court judges to superior court judges. She discussed the bill, but submitted a sponsor statement for SB 41, which read as follows [original punctuation provided]:

The Alaska Court System is requesting a change to AS 22.10.120 to increase the number of superior court judges in the state from 43 to 45. Specifically, the court is seeking authorization for two additional superior court seats so that the existing district court judgeships in Homer and Valdez can each be converted to superior court judgeships. Superior court judges have broader jurisdiction than district court judges; the change would allow the new judges to handle a greater variety of cases, thus ensuring that the caseload in the Third Judicial District is handled more efficiently and effectively.

Currently, Homer has one district court judge, who is planning to retire on June 28, 2019. That judge does not have the authority to handle superior court matters, such as felony cases, child-in-need-of-aid cases, and family law cases. Instead, superior court cases filed in Homer are handled by a superior court judge from Kenai who travels there for that work. That approach to the caseload is a growing strain on the Kenai judges, and is not a sustainable or efficient way to handle the cases on the Kenai Peninsula. With the current judge retiring, this is an opportune time to convert that seat to one with more expansive jurisdiction, so that the one judge in Homer can handle all the cases.

Similarly, the Valdez court currently has one district court judgeship, and that position has been covering all the trial court cases in Glennallen, Cordova, and Valdez. That Valdez district court judge has now been appointed to a judgeship in Juneau. Having a dedicated superior court judge in this slot would enable that judge to cover even more coastal communities, and would provide flexibility in handling felonies, CINA cases, and all other filings throughout the Third District.

Because the Homer and Valdez district court judge seats are vacant or soon will be, this bill is timely; if passed, the solicitation for applicants to those two positions will be for a superior court rather than a district court judge.

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MS. MEADE further explained the bill. She said this change would replace two district court judges with superior court judges, which would give the ACS more flexibility since superior court judges can preside over any trial or proceeding, including felony, divorce, child-in-need-of-aid (CINA) and probate cases, but district court judges have limited jurisdiction. The district court judges handle misdemeanor, domestic violence petitions and cases with less than \$100,000 in controversy, she said. The timing for the conversion is ideal since the Valdez district court judge position is vacant and the district court judge in Homer recently retired.

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MS. MEADE explained the current superior court judge coverage in Homer and Kenai. She said having a superior court judge preside over Homer cases has been problematic for many years. Kenai superior court judges have handled Homer cases, which average over 300 per year. This has not been the most efficient use of resources, she said. In the past two years, a Kenai judge has traveled to Homer more than 35 times to handle superior court cases that arose. Typically, Kenai judges schedule Homer cases one week per month, but the court schedule does change to accommodate cases, such as an emergency CINA case, divorce case, or guardianship case that arise in Homer. Covering Homer cases also impacts Kenai cases since it takes time away from the bench for the Kenai judge, she said. Further, three superior court judges in Kenai retired in the past year, so Kenai has three relatively new superior court judges. This provides a great opportunity to address coverage in Homer, although if SB 41 does not pass the court would continue to operate by having the district court judge cover the district court cases.

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MS. MEADE said the current Valdez district court judge, who has substantial experience, has often been appointed by the Alaska Supreme Court (ASC) to handle superior court cases in Glennallen, Cordova, and Valdez, or sometimes the Palmer judges. That Valdez district court judge was recently appointed to serve as a superior court judge in Juneau. The incoming district court judge in Valdez may not have the experience, ability, and willingness to travel to cover superior court cases so the ACS would like the changes [in SB 41], she said.

She related that the court considered alternatives, including encouraging or requiring videoconferences in cases. For example, the Kenai superior court judge has a video link to the Homer courtroom to handle some matters. However, not all matters can be handled by videoconferences, since the judge may need to be present for some proceedings, such as cases that will terminate parental rights, which have witnesses appear before the court. Although videoconferences have helped alleviate the problem, it has not wholly relieved it. The ACS has also considered other options, including adding new superior court judges, but the ACS determined it would be costly due to capital costs needed to fund a new courtroom and office. Under the bill, the superior court judges will use the same office equipment, courtroom and resources as the district court judge offices currently use.

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CHAIR HUGHES asked for further clarification that these two district court judges were the last holdouts of single judge locations. She asked whether the ASC has gradually been working to replace district court judges with superior court judges who can handle all cases.

MS. MEADE said Valdez and Homer have been the sole courts without a superior court judge; however, some locations have a sole superior court judge, including Nome, Kotzebue, Sitka, and Dillingham.

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SENATOR KIEHL asked for further clarification on the number of superior court cases in Valdez.

MS. MEADE answered that Valdez has about 200 superior court cases. Although this would be a fairly-low caseload, the proposed superior court judge would also handle all district court filings in Valdez, Glennallen and Cordova. This would provide the ASC additional coverage and flexibility since Anchorage judges currently handle cases in rural areas such as Sand Point and Unalaska, which the Valdez position could help cover. Further, the superior court judge in Valdez could alleviate some pressure on the Palmer court, she said.

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SENATOR KIEHL related his understanding that some court locations have a magistrate. He asked for the effectiveness of adding a magistrate to cover low-level cases and to continue with a district court judge.

MS. MEADE said the higher-level cases are the ones that need attention, including felonies and CINA cases. The ACS has had adequate coverage for minor offenses and lower-level cases in the district court. She reiterated the problem is with the higher-level matters.

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SENATOR REINBOLD recalled that this bill topic was heard last year, and she is supportive. She asked whether a magistrate could fill in.

MS. MEADE answered that the magistrate judges, including one in Cordova, handle minor offenses, such as fishing violations. She reported that a half-time traveling magistrate in Valdez spends the remaining half-time in Glennallen, due to traffic cases and hunting violations. She reported that the magistrate judges

typically handle minor offenses, such as tickets, and in some instances the magistrate can handle misdemeanors, which can alleviate pressure on the lower-end cases.

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SENATOR REINBOLD recalled crime increases in Anchorage. She asked whether the proposed superior court judge would be able to handle criminal cases.

MS. MEADE answered that the proposed two superior court judges can handle all felony and misdemeanor cases.

CHAIR HUGHES asked for further clarification on whether district court judges are limited and cannot handle felonies.

MS. MEADE said that is correct.

[1:46:49 PM](#)

CHAIR HUGHES referred to the fiscal note. She asked for the salary and benefit cost comparison between district court and superior court judges.

MS. MEADE answered that that the difference in salary and benefits is about \$35.5 thousand for one position or \$71,000 for both. The ACS would net back the average travel cost for a total fiscal note of \$62,000.

CHAIR HUGHES asked for further clarification on the base salary for a district court judge and a superior court judge. She assumed that benefit packages would be similar for both positions.

MS. MEADE answered that a district court judge base salary is \$160,848 and a superior court judge salary is \$189,720. In further response to Chair Hughes, she stated the benefit calculation is one-third of the salary or \$41,000.

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CHAIR HUGHES related her understanding that the administration would like to increase videoconferences. She asked for further clarification on when it is necessary for a judge to be present during proceedings.

MS. MEADE stated that some court rules designate when a witness must participate or when the witness can opt not to be in the room, depending on some constitutional and due process issues. Generally, in criminal matters a criminal defendant has

constitutional rights to be present whenever evidence is presented against them, which would apply to trials and some hearings with witnesses present or when evidence is presented against the defendant.

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SENATOR MICCICHE joined the meeting.

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MS. MEADE explained that a judge has judicial discretion in determining the level of witness assessment and courtroom demeanor necessary. She suggested that judges would likely want to be present for CINA cases and for some child custody cases, to be respectful to the parties. She noted that in those cases numerous parties are involved so the courtroom is often crowded. She said that being present gives the judge a better sense of what is occurring in the courtroom. Judges are likely not to feel the need to be physically present at some routine hearings, including trial-setting conferences.

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CHAIR HUGHES recapped that the judge would have discretion over cases, especially civil cases, but the judge would be required to be present in criminal cases where evidence is being presented or witnesses are part of the proceedings.

MS. MEADE said she was unsure of precisely when a judge needed to be present. She offered to research the criminal rules that require videoconferencing but responded that generally her recap is correct.

[1:52:07 PM](#)

SENATOR KIEHL asked whether the same number of staff will be needed for the superior court judges.

MS. MEADE said the ACS tried to keep the fiscal note small. Currently Valdez has a one-half time clerk who fills in as an in-court clerk. If additional in-court clerk resources were needed, the court would move staff from other locations. Currently, Homer has 2.5 or 3 positions who act as in-court clerks. She added that district court judges do not have law clerks, but superior court judges typically do. She acknowledged that the ACS was not seeking law clerks but hopes to use other positions to fill in for that and to use e-mail whenever possible. The ACS has been trying to be flexible and change its tradition of providing a law clerk for each judge due to budget constraints.

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SENATOR KIEHL asked for further clarification on whether the clerks would be from Anchorage or Kenai.

MS. MEADE explained that initially the ACS would likely use the Kenai law clerks for the Homer superior court judge. In Valdez, the current district court judge has primarily performed without a law clerk, but when needed called upon a law clerk, usually from Palmer. She said that it would depend on the circumstances, that it may need be figured out informally and flexibly, but everyone thinks it should be able to work.

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CHAIR HUGHES appreciated that the ACS has taken the lead and has been innovative in terms of the budget resources.

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SENATOR MICCICHE, referring to the fiscal note, related his understanding that the difference in personal services would likely be \$35.5 thousand per superior court judge for a total of \$71,000. He related the offset of \$9,000 resulting in a net savings and a total fiscal note of \$62,000. He asked whether other efficiencies that have not been identified could further reduce the cost of these positions.

MS. MEADE answered that the ACS estimated hard travel costs but subtracted \$9,000 for travel costs and an estimate of accurate savings, including anticipating that more videoconferences will be held.

SENATOR MICCICHE asked for any efficiencies or benefits due to those sitting in pretrial status for less time since it would reduce the caseload.

MS. MEADE said she did not want to say these changes in SB 41 would make any difference in the speed in which cases are processed. She did not wish to leave the impression that cases would be handled faster but rather to change the way in which the ACS provides a judicial resource to handle those cases.

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MS. MEADE recapped SB 41. This bill has two sections. The first section changes the statute that sets the number of superior court judges from 43 to 45 judges and the seats will be filled with superior court judges. These judicial seats are currently vacant, so the timing is excellent. The bill will give the ACS

the opportunity to increase the way the court system processes cases in the third judicial district by having this more flexible way to cover cases.

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CHAIR HUGHES clarified that the superior court judges can handle felonies.

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CHAIR HUGHES opened public testimony on SB 41 and after first determining no one wished to testify, closed public testimony on SB 41.

[SB 41 was held in committee.]

[2:00:20 PM](#)

CHAIR HUGHES reviewed upcoming committee meetings.

[2:00:35 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2:00 p.m.