

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

February 24, 2020

1:32 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 55

"An Act relating to judges of the court of appeals; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 55

SHORT TITLE: TEMP. APPOINTMENTS TO COURT OF APPEALS

SPONSOR(S): SENATOR(S) WILSON

02/13/19	(S)	READ THE FIRST TIME - REFERRALS
02/13/19	(S)	JUD
03/11/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/11/19	(S)	Heard & Held
03/11/19	(S)	MINUTE(JUD)
03/15/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/15/19	(S)	Moved CSSB 55(JUD) Out of Committee
03/15/19	(S)	MINUTE(JUD)
03/18/19	(S)	JUD RPT CS 1DP 2NR 1AM SAME TITLE
03/18/19	(S)	DP: HUGHES
03/18/19	(S)	NR: MICCICHE, SHOWER
03/18/19	(S)	AM: KIEHL
03/18/19	(S)	FIN REFERRAL ADDED AFTER JUD
03/27/19	(S)	FIN AT 9:00 AM SENATE FINANCE 532

03/27/19	(S)	Heard & Held
03/27/19	(S)	MINUTE(FIN)
04/04/19	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/04/19	(S)	Moved CSSB 55(FIN) Out of Committee
04/04/19	(S)	MINUTE(FIN)
04/05/19	(S)	FIN RPT CS 3DP 4NR SAME TITLE
04/05/19	(S)	DP: VON IMHOF, HOFFMAN, WILSON
04/05/19	(S)	NR: STEDMAN, MICCICHE, SHOWER, OLSON
02/19/20	(S)	RETURNED TO JUD COMMITTEE UC
02/24/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR DAVID WILSON  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Speaking as prime sponsor, presented the sectional analysis for SB 55, version S.

NANCY MEADE  
 General Counsel  
 Office of the Administrative Director  
 Alaska Court System  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 55.

**ACTION NARRATIVE**

[1:32:12 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at call to order were Senators Kiehl, Reinbold, Hughes, Micciche and Chair Coghill.

**SB 55-TEMP. APPOINTMENTS TO COURT OF APPEALS**

[1:32:52 PM](#)

CHAIR COGHILL announced the consideration of SENATE BILL NO. 55, "An Act relating to judges of the court of appeals; and providing for an effective date."

He explained that SB 55 was returned to this committee from the Senate Rules Standing Committee for modification.

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SENATOR MICCICHE moved to adopt the committee substitute (CS) for SB 55, work order 31-LS0485\S, Fisher, 2/20/20 as the working document.

CHAIR COGHILL objected for an explanation.

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SENATOR DAVID WILSON, Alaska State Legislature, Juneau, Alaska, speaking as prime sponsor of SB 55, said this bill would provide a solution to the backlog of cases at the court of appeals. He reviewed the sectional analysis of the committee substitute (CS) for SB 55, version U to S. He said:

Section 1 would add a permanent fourth judge to the Court of Appeals. This position would be filled by the normal process as described in [AS 22.07.010].

Section 2 will change the effective date [to July 1, 2020.]

He said the previous version U would have established a temporary two year appointment to the court of appeals. After discussing this with the agency, and hearing Chief Justice Bolger's and the Department of Law's comments about the number of anticipated new cases, he felt this was a more appropriate approach. The fourth judge will provide additional resources if judges recuse themselves when conflicts of interest occur and to hear cases and write opinions to help address the court's backlog.

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SENATOR REINBOLD said changing the status of the fourth judge from temporary to permanent raises a red flag to her. This bill would also add four positions at a time of fiscal crisis. Employees are often added to agencies to address work backlogs, but these positions are never removed, so it grows government. She expressed frustration.

CHAIR COGHILL recalled that the legislature anticipated increased costs when it increased the penalties with passage of [HB 49].

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SENATOR HUGHES observed that cases in the appellate court currently experience delays. She said we know that settling cases timely is much better for the victims but she wonders how this would affect the delays going forward.

SENATOR WILSON deferred to the representative from the Alaska Court System.

[1:37:45 PM](#)

SENATOR REINBOLD expressed concern about the cost and impacts to citizens and businesses [with passage of Senate Bill 91]. It adversely impacted the public and businesses and the court was in the same situation then. She supported the repeal of that bill because public safety is the state's most important mandate. Passage of HB 49 reverts to pre-Senate Bill 91. She said the court of appeals did not need a judge then so why does the court need one now.

CHAIR COGHILL said the committee could review the fiscal note. He said public testimony was previously closed, but he scheduled public testimony for today.

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NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, said she understood the question to be how much more quickly will cases be processed with the additional judge. She said it currently takes three years from the time an appeal is filed until the final disposition and that timeframe is not really acceptable to the public. However, the delays are often attributable to factors outside of the court's control. For example, delays happen when the attorneys have not fully prepared the cases. She said she cannot estimate how much faster it will be, but if half of the delay is due to the court, adding a judge could cut it by a quarter. With passage of SB 55, version S, each of the four judges will handle 75 percent of the cases filed instead of three judges handling all the cases. She anticipated that the court will be able to speed up the process.

SENATOR HUGHES asked what the delay was pre-Senate Bill 91 and if the delay has picked up.

MS. MEADE confirmed that the delay in final disposition of cases has grown steadily since 2011. That was pre-Senate Bill 91 and prior to passage of other criminal law changes but the exact reason for the increase was difficult to pin down. She reported that in 2011, the number of cases issued per judge per year was 50 and that increased to 90 decisions in 2018. Adding additional law enforcement, higher case filings, and more difficult decisions due to substantial changes in criminal law has exacerbated the caseload. At the same time, several new judges

were appointed to the court of appeals, some from the public defender's office. The court had a new judge appointed in 2012, in 2013, and in 2018 or 2019. This means that these judges often have conflicts of interest because they previously worked on the cases appealed to the court. One appointed judge previously worked in the Department of Law appellate division for criminal cases, so that individual could not preside over some cases. She acknowledged that the gap has grown since then.

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SENATOR REINBOLD expressed concern about the three year timeframe for disposition of cases because it doesn't seem to meet the constitutional standard for a speedy trial. She asked why the cases take so long and if it is because the public defenders are asking for delays. She recalled that some court of appeals judges come from the public defender's office and questioned why these judges are not being selected from prosecutors. She expressed concern about supporting the bill if empowers more public defense.

MS. MEADE responded that the basic reason for the three year lag time was because everyone in the system is overworked, including the prosecutors and public defenders who prepare the briefs. She advised that the speedy trial rule applies to the district court and superior court trials, but not to the court of appeals or the Alaska Supreme Court. She reiterated that three years is not a satisfactory timeframe for anyone, including the judges. However, given their caseload, the judges cannot do the deep analysis and consideration of cases any faster. Second, the public defender and prosecutors cannot brief cases faster. She said she does not have a breakout of who asks for additional time, but it is often a stipulation between the two parties. In any event, the attorneys need adequate time to fully brief their cases. She said the decisions at the appellate level are much more legally intense and require substantial analysis, so the delays are issues for the whole criminal justice system. Third, she said she did not mean to imply that most court of appeals judges come from public defenders, but those who apply at the court of appeals are attorneys interested in and have experience in criminal law. The court of appeals only deals with criminal cases. These judges can come from anywhere in the criminal justice system. Generally, those with experience and background come from prosecutors or public defenders.

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SENATOR KIEHL asked about caseloads for each of the three judges serving on the court of appeals. He recalled earlier testimony

that each judge writes 50 opinions per year, which would total 150 opinions. He suggested that adding a fourth judge would probably not get them to 50 cases per year, but probably closer to 67 or 68 cases per year. He asked whether this was a manageable caseload.

MS. MEADE answered that the court has requested funding for an additional staff attorney to serve the court of appeals. Currently, the court system has cobbled together funding for a staff attorney and pro tem assistance for the court. Further, the court system has asked for additional funding, but will drop the request if this bill passes. They will maintain the request for a staff attorney to handle the more routine petitions for review or prepare cases for the judges' consideration. Finally, the court anticipates that adding one judge would make its caseload more manageable.

SENATOR KIEHL asked if adding the fourth judge is to keep up or to catch up.

MS. MEADE responded both. Initially, the court will struggle, she said. These three judges work six or seven days a week and rarely take any vacations to avoid further delays in decisions. By adding the fourth judge, the court hopes to meet its backlog within three years. At that point these judges would have a manageable workload.

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SENATOR REINBOLD wondered if the court needs odd numbers to serve to avoid split decisions.

MS. MEADE responded that the court would handle its cases the way most appellate courts in the country operate. She explained that these judges would serve on three judge panels. For example, judges A,B, and C would handle January cases, judges B,C, and D would handle February cases, and judges C,D, A would handle March cases. Each judge would sit in on 75 percent of the cases, thereby affording them more time to work on cases.

SENATOR REINBOLD asked where the court of appeals members reside.

MS. MEADE answered that the court of appeals consists of Judges Allard, Wollenberg, and Harbison. Judge Harbison resides in Fairbanks and Judges Wollenberg and Allard live and sit in Anchorage. These judges conduct much of their business by video conference, she said. Judge Harbison's background is as a

superior court judge, and perhaps as a district court judge. She did not recall her service prior to serving as a superior court judge. She has served for a substantial amount of time in Fairbanks. Judge Wollenberg was appointed in 2017 and she came from public defender agency. In 2012, Governor Parnell appointed Chief Judge Allard, and prior to her appointment, she served as a staff attorney at the court of appeals.

[1:52:43 PM](#)

SENATOR MICCICHE said he supported the original bill but was struggling [with the committee substitute]. Originally, SB 55 was for a temporary judge without staff. Version S would add \$300,000 plus for the judge and three additional staff positions. He asked whether the department thought about trying to limit this to one staff. He expressed concern with three additional staff to serve the judge.

MS. MEADE explained that each judge serving on the court of appeals has two law clerks and one judicial assistant. The new judge would require the same support. The fiscal note for the two year temporary judge was estimated at \$275,000. The House Finance subcommittee for the court system added \$233,000 for the court of appeals. This bill represents an increase of \$60,000 above the pending funding. The additional funding would allow the fourth judge to operate at the same level as the other judges and avoid being handicapped by not having a law clerk to do the legal research.

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SENATOR MICCICHE said he thought the increase is the same, whether the funding is included in the budget or the bill. If the legislature does not support either funding, the agency will not receive an increase. He said he understood her concerns, but things are tight.

MS. MEADE explained the court system's rationale for a longer term permanent judge. As Chief Justice Bolger mentioned, the trial courts have received a record number of felony cases, perhaps 1,000 more cases. The more cases filed at the trial level, the larger the pool of cases that can come before the appellate courts. Similarly, the trial rate for felony cases also increased last year, which adds to the potential number of cases for appeal. Many cases could be dismissed or plea bargained, but several factors lead to more appellate cases. First, the trial rate has led to a larger number of cases for the court. Second, the district attorneys have received more oppositions in the last several years. Third, more law

enforcement activity also leads to more arrests and filings. She provided a snapshot of currently pending superior court felony cases from July 1, 2016 to July 1, 2020, which showed a 42 percent increase. She said the court system anticipates the court of appeals' caseload will continue to grow. Anytime laws change, the courts experience more novel issues, and more unsettled areas of law. The transition between different laws also leads to questions about which version of the law applies to each case under consideration. She concluded that this problem is not diminishing.

[1:58:20 PM](#)

SENATOR MICCICHE related his understanding that the court of appeals only handles cases in which defendants were convicted. He asked for the impacts for delays at the court of appeals.

MS. MEADE replied the court primarily considers the impact on the public. When cases are reversed or remanded by the court of appeals, it is problematic for prosecutors because they may need to retry the cases and locating witnesses is problematic. Victims are informed when their perpetrator has an ongoing appeal and they cannot obtain closure until the case is finished. This is the impetus for the court to work as quickly as possible on its cases.

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SENATOR HUGHES asked if the court system requested additional funds in the fiscal note it submitted for HB 49. She also asked for the staffing levels when the court of appeals judges were handling 50 cases per judge per year.

MS. MEADE answered that in 2011, the staffing levels were the same as today with a caseload of 90 cases per judge per year. She said she was almost certain the court did not ask for additional resources in its fiscal note for HB 49.

[2:00:57 PM](#)

SENATOR REINBOLD asked what types of cases the court of appeals handles. She related a scenario in which an eight year old was strangled by a 50 year old man. The perpetrator received an 18 month sentence with 18 months suspended. She asked whether that is the type of case that is appealed to the court of appeals.

MS. MEADE replied she was not familiar with that specific case. She explained that the court of appeals hears cases related to all criminal matters. These cases are either merit appeals, such that the defendants were found guilty but say they were not; or

sentence appeals, in which defendants believe the penalties imposed were excessive. The court also accepts other criminal matters, including juvenile delinquency, appeals about bail, petitions to revoke probation, and post-conviction relief. She said the judges must sentence someone within the parameters set by statute. Further, penalties depend on the type of crime, so criminally negligent homicide would be considered at a different level of crime than manslaughter or murder. She highlighted that if the defendant was convicted of criminally negligent homicide, the sentence would be lower than one might expect. Further, the penalties imposed would also depend on whether the case went to trial or if it was a plea bargain, because judges are limited in what can be changed in plea bargains since the parties have agreed to the terms.

[2:04:13 PM](#)

SENATOR REINBOLD asked what percentage of court of appeals cases are appealed by the victims and what percentage are appealed by the defendants.

MS. MEADE answered that in the vast majority of cases the defendant is dissatisfied with what happened at the trial courts. She said the victim is involved through the Department of Law, who always enforces the criminal laws.

CHAIR COGHILL added that the defendant would be the person appealing because that person receives the sentence.

SENATOR REINBOLD said the more she hears about this bill, the less she likes it. She remarked that she is tired of the defendant having all these constitutional rights. The victims might be dead, so their constitutional rights are gone. The defendant has continual rights to appeal. She said she is inclined to step back if this bill will empower or embolden defendants to appeal.

[2:05:51 PM](#)

CHAIR COGHILL agreed that victims struggle. He said quite often victims do not get a remedy. However, the system allows people constitutional rights, including the right to an appeal. He said sometimes the courts or jury may get it wrong. He explained that the constitutional duties are to protect the victims and protect the rights of the accused and have a system that provides due process.

[2:06:33 PM](#)

SENATOR HUGHES asked if victims have any recourse if they think the sentence was too lenient or if prosecutors ever request a harder sentence.

MS. MEADE replied the U.S. Constitution contains a double jeopardy clause that prevents the defendant from being retried for the same crime, which is why defendants initiate the vast majority of appeals. She reminded the committee that most cases are resolved through plea bargains and that the legislature passed a bill last year that requires prosecutors to make a reasonable effort to contact, notify, and consider victims' views for any plea bargains. This process gives victims a voice, she said.

[2:07:51 PM](#)

CHAIR COGHILL said satisfaction is hard to achieve because the criminal justice system handles very difficult issues. He emphasized the importance of having a system that is balanced in law so the appellate process is important. Fortunately, it is a good system and unfortunately it is an overworked system. He offered his support for SB 55, version S. He summarized that it will provide a fourth judge for the court of appeals with three supporting staff consisting of two law clerks and a judicial officer.

[2:08:52 PM](#)

SENATOR MICCICHE commented a lot of cases are coming back due to DNA issues. He asked if the court of appeals would hear the case of someone who was serving time, but DNA evidence surfaces that could clear the person. He further asked if the court would hear the case if it was 20 years after the original case.

MS. MEADE explained that the time to appeal trial court decisions is limited by rule. She suggested that the appeal timeframe was 30 or 60 days, but not years. She suggested that the remedy would be a motion for post-conviction relief. That goes to the trial courts but the defendant could appeal the trial court decision to the court of appeals, she said. Those cases are related to an underlying felony or misdemeanor offense.

CHAIR COGHILL commented that DNA affords relief to some victims on cold cases.

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CHAIR COGHILL opened public testimony and after first determining no one wished to testify, closed public testimony on SB 55.

[2:11:02 PM](#)

SENATOR MICCICHE moved to report the committee substitute for SB 55, work order 31-LS0485\S, version S, from committee with individual recommendations and the attached fiscal note(s).

[2:11:19 PM](#)

SENATOR REINBOLD objected to state that she would not support SB 55.

CHAIR COGHILL asked if she maintained her objection.

SENATOR REINBOLD answered yes.

[2:11:25 PM](#)

SENATOR HUGHES said she was uncomfortable moving the bill so quickly. She expressed interest in hearing if the judicial system had any provision in the fiscal note for HB 49. She asked if it was necessary to move the bill today.

CHAIR COGHILL answered no. He said the bill will be returned to the Senate Rules Committee. He further said he did not think the fiscal note would change any provisions in this bill. He acknowledged that it would be good to review the fiscal note prior to the bill coming to the Senate floor for a vote.

SENATOR KIEHL advised members that he reviewed the fiscal notes for HB 49, which passed the legislature last session. None of the judicial branch fiscal notes added any resources to the appellate courts, he said. Rather, the funding for HB 49 was allocated to the trial courts. In response to Chair Coghill, he identified the judicial branch fiscal note for HB 49 as number 38 [dated 5/17/19].

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SENATOR HUGHES asked the sponsor to speak to the administration's support for the bill.

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At-ease.

[2:16:52 PM](#)

CHAIR COGHILL reconvened the meeting.

[2:17:03 PM](#)

MS. MEADE advised members that prosecutors can appeal a sentence imposed after a trial and the court of appeals can disprove the sentence as being too lenient. She said she may have misspoken by stating that 100 percent of the cases are appealed by the defense. That is not the case.

[2:17:35 PM](#)

SENATOR REINBOLD recalled she said defendants make the vast majority of appeals to the court of appeals. She asked if that was true.

MS. MEADE answered that she was unsure of the exact numbers, but the majority of appeals are made by defendants.

SENATOR REINBOLD repeated the answer and asked if the vast majority of the cases are settled by plea bargains. If they are, those cases would not go to the court of appeals. She said she struggles with the need for this bill and cannot support it during a time of fiscal crises and when Alaska has the highest rates crime in the nation or in the world. She said she can't continue to ignore the victims. She wants Alaska to invest in victim-centered policies.

MS. MEADE said from the Court's perspective, the victims suffer as long as the cases are not resolved. She explained that adding a judge to the court of appeals will assist victims and help assuage the problem by reducing the time period for appeals. She said that is the main impetus for the Alaska Court System's support of this bill.

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SENATOR REINBOLD offered her view that if the Court is getting more work done, it actually empowers the defendants. She said she could see this from multiple angles. However, she will be a no vote.

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CHAIR COGHILL said he would hold SB 55 in committee.

CHAIR COGHILL reviewed the upcoming committee announcements. He commented that it had been his intention to move the bill, but several questions still need to be addressed.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:20 p.m.