ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE
February 14, 2019
3:32 p.m.

MEMBERS PRESENT

Senator Peter Micciche, Acting Chair
Senator Lora Reinbold
Senator Scott Kawasaki

MEMBERS ABSENT

Senator Mike Shower, Chair
Senator John Coghill, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 34
"An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 33
"An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 34
SHORT TITLE: PROBATION; PAROLE; SENTENCES; CREDITS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/11/19	(S)	JUD REFERRAL ADDED AFTER STA
02/12/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/12/19	(S)	Heard & Held
02/12/19	(S)	MINUTE(STA)
02/14/19	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 33
SHORT TITLE: ARREST;RELEASE;SENTENCING;PROBATION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, JUD, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/14/19	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

CHRIS EICHENLAUB, representing self
Eagle River, Alaska
POSITION STATEMENT: Testified in support of SB 34.

TERRIA VANDENHUERK, representing self
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 34.

MICHAEL MOORADIAN, representing self
Anchorage, Alaska
POSITION STATEMENT: Testified that he is generally in favor of SB 34 with a few caveats.

KARA NELSON, representing self
Juneau, Alaska
POSITION STATEMENT: Testified in strong opposition to SB 34.

ROGER BRANSON, representing self
Juneau, Alaska
POSITION STATEMENT: Testified that SB 34 creates tools to beat up on people.

JOHN SKIDMORE, Director

Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Delivered an overview of SB 33.

ACTION NARRATIVE

3:32:04 PM
ACTING CHAIR PETER MICCICHE called the Senate State Affairs Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Kawasaki, Reinbold, and Acting Chair Micciche.

SB 34-PROBATION; PAROLE; SENTENCES; CREDITS

3:33:04 PM
ACTING CHAIR MICCICHE announced the first order of business would be SENATE BILL NO. 34 "An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

He opened public testimony on SB 34.

3:33:47 PM
CHRIS EICHENLAUB, representing self, Eagle River, stated that he was generally supportive of any laws that get rid of Senate Bill 91. His three concerns are perverts, thieves, and drug addicts. They cause the majority of the problems in our communities and should be dealt with severely, he said. He reiterated support for measures that get rid of Senate Bill 91 and noted that he was pleased with the proposed chair of the probation board.

ACTING CHAIR MICCICHE asked if supports SB 34.

MR. EICHENLAUB replied, "I am in support of SB 34."

3:37:17 PM
TERRIA VANDENHUERK, representing self, Anchorage, testified that, for a few reasons, she does not support SB 34. She related that while she was incarcerated for an unclassified felony she

received treatment, and when she applied for discretionary parole it was granted. During the six years she was on discretionary parole, she did not commit one violation. In April, she will celebrate 14 years drug free. She said she opposes eliminating the opportunity for all prisoners to apply for discretionary parole and returning to the previous approach for sanctioning technical violations. She spoke about the ministry she founded that helps former gang members transition back to their communities and the difficulty she faced when a probation officer tried to have her arrested for violating the condition of no felon-to-felon contact while she was working in the ministry. She opined that peer support specialists with "lived experience" should be partnering with the probation office to help these people get their lives on track.

ACTING CHAIR MICCICHE congratulated her on 14 years of success.

SENATOR REINBOLD asked the term of her sentence for the unclassified felony and how many years she served before she was released on discretionary parole.

MS. VANDENHUERK replied she was sentenced for an unclassified drug conviction to 20 years with 8 years suspended. She served 5 of those 12 years, which was the mandatory minimum. During her time in prison, she availed herself of every opportunity for rehabilitation. The first time she applied for parole it was granted. Her son advocated for her release because he could tell that she had "turned her life around." Reuniting with family is a great benefit and the children of former inmates benefit as well, she said.

SENATOR REINBOLD offered her understanding that discretionary parole is available after serving one-quarter of the sentence.

VANDENHUERK responded that the requirements are different for other felonies but her mandatory minimum for a 20-year sentence was 5 years.

3:42:56 PM
MICHAEL MOORADIAN, representing self, Anchorage, said he was in long-term recovery and that was possible through Wellness Court. He generally favors SB 34 with a few caveats. He opined that it would be helpful to have a better definition of "technical violation" because someone may commit one without any knowledge of having done so. For example, someone may come out of an Alcoholics Anonymous (AA) meeting and talk with someone who was also at the meeting and it's a technical violation because both

are convicted felons. He said he does not support mandated time limits on early termination of probation and parole, but he believes there should be a process for those on probation and parole to petition for early release without it resting entirely on the probation officer (PO) to be the advocate. He shared that he works in the recovery field and has found that some POs do not believe that treatment works. Also regarding parole eligibility, he said he generally agrees with the recommendations in SB 34 but people with class B and C felonies for possession [of a controlled substance] should be eligible. People in possession who are addicts have a medical issue and are unlikely to get the services they need while incarcerated. He reiterated support for SB 34 with some adjustments in terminology and definitions.

3:46:23 PM
KARA NELSON, representing self, Juneau, testified in strong opposition to SB 34. She shared that she is the former director of Haven House Juneau, a faith-based recovery facility for women returning to the community after incarceration. Because she was formerly incarcerated, she has a unique perspective of probation and parole. Based on her personal experience, she believes that probation and parole is one of the most important, yet often neglected, pieces of reforming the legal system. She has seen and advocated [to change] many of the inconsistencies of supervised probation. Working with POs, she was able to be part of the transformation that occurred when Senate Bill 91 became law. She also witnessed some gross misuse of power. She shared her personal experience while on supervised probation and opined that POs generally support having options when they consider technical violations. Prior to passing Senate Bill 91, it wasn't clear how long she would remain in prison for a technical violation. She agreed with prior testimony that some POs do not support a parolee working with a peer in the recovery field if the peer is also a convicted felon. She noted that some POs had a change of attitude about sanctions once they had more tools. She pointed out that the term "technical violation" covers a vast array of behaviors. She reiterated opposition to SB 34 and stated that we were getting somewhere with the existing sanctions instead of someone's life being in the hands of a probation officer who has no tools.

ACTING CHAIR MICCICHE suggested she submit a detailed document on her concerns to senate.state.affairs@akleg.gov.

3:52:25 PM

ROGER BRANSON, representing self, Juneau, said he would like to speak to the topic of "the voice not here." He said the voice of Dan Saddler from his district is missing but he is represented. The voice of Ron Gillam from the Kenai Peninsula is missing, but he and his concerns are well represented here. He asked Senator Kawasaki if he would represent the voice of Kelsey Green. Her voice is missing and she is not well represented today. He thanked the committee for its time.

ACTING CHAIR MICCICHE asked if he had any comments on SB 34.

MR. BRANSOM replied the committee will do good work on SB 34 with all the voices represented. He added that he finds the bill problematic with the way it is written. "Specifically, we seem to be creating these tools to beat each other up with and I can't see that as being good at the end of the day." He said you speak of community condemnation and that can easily turn into a witch hunt.

3:54:58 PM
ACTING CHAIR MICCICHE stated that public testimony would remain open on SB 34 and he would hold the bill in committee.

He encouraged the public to submit written testimony to senate.state.affairs@akleg.gov.

SB 33-ARREST;RELEASE;SENTENCING;PROBATION

3:55:30 PM
ACTING CHAIR MICCICHE announced that the final order of business would be SENATE BILL NO. 33; "An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

He asked Mr. Skidmore to give a broad overview of the bill.

3:56:04 PM
JOHN SKIDMORE, Director, Criminal Division, Department of Law, Anchorage, said SB 33 looks at the pretrial issues of bail and release pending trial. He related that over the last 18 months it has become clear that the reforms [initiated by Senate Bill 91] have created problems. Some of those were addressed last year in House Bill 312, but the problems continue. What SB 33 seeks to do is return the law to what it was prior to the

criminal justice reform regarding how bail is addressed. The two areas to pay attention to are 1) how it changes our laws in determining what bail is appropriate and what conditions of release are appropriate, and 2) how we monitor the individuals released in pretrial.

MR. SKIDMORE explained that the Pretrial Enforcement Division (PED) created by Senate Bill 91 added about 60 new positions within DOC and was designed to provide the court with a risk assessment analysis for each offender that came before the court. More importantly, it intended to provide supervision of individuals released pretrial. SB 33 maintains the supervision portion, but it transfers the authority from PED to probation and parole officers. This efficiency allows DOC to better manage its resources for probation, parole, and pretrial supervision and rids the department of the unnecessary administrative costs created by the PED. The idea of providing courts with an expanded number of options when considering what to do when releasing an inmate is maintained. Releasing a person on their own recognizance (OR) is still the preferred option under SB 33. Additional options that would be available include the expanded use of third-party custodians, electronic monitoring (EM) by a private company, and release with DOC monitoring.

He summarized that the determinations of when an inmate should be released and under what conditions are the primary changes made in SB 33. It returns the law to what it was previously. Release is no longer tied to the flawed risk-assessment tool. Leaving a judge's determination attached to a flawed tool creates serious problems, he said.

4:00:50 PM
SENATOR REINBOLD questioned the wisdom of retaining the release of a prisoner on their own recognizance (OR) as the preferred option. "Maybe the criminal would like that but I'm not sure the victims would think that's the best option. I find it outlandish, personally," she said.

MR. SKIDMORE clarified that his comment was based on the constitution that says everyone is entitled to reasonable bail. The statutes prior to Senate Bill 91, under Senate Bill 91, and under SB 33 all indicate that release on OR is what should occur unless the court determines that doing so cannot assure the safety of the community or the appearance of the individual. It's that part that allows the court to place conditions on somebody so they are held in custody, he said. SB 33 returns the presumptions to what it was prior to Senate Bill 91.

SENATOR REINBOLD pointed out there are also constitutional requirements regarding protection of victims' rights and public safety. She maintained that the vast majority of Alaskans agree with her that there are not enough protections for the victim and that a lot of these people are released again and again not only because of the pretrial risk assessment tool but also because of the use of OR. She emphasized that public safety is paramount, and the system is failing Alaskans. She committed to look further into release on OR.

ACTING CHAIR MICCICHE asked Mr. Skidmore to clarify that SB 33 repeals the bail provisions under Senate Bill 91 and returns the law to what it was before that bill passed and that it repeals the pretrial enforcement and the risk assessment tool.

MR. SKIDMORE confirmed that SB 33 repeals what was in Senate Bill 91 regarding bail and, with one exception, returns it to what it was previously. The exception is that the presumption that no bail condition would be appropriate in certain cases was found unconstitutional in Williams v. State. SB 33 replaces that presumption with one that says individuals that commit certain types of offenses should be presumed dangerous and the court needs to set appropriate conditions.

ACTING CHAIR MICCICHE asked if SB 33 repeals the pretrial release risk assessment tool.

MR. SKIDMORE confirmed that SB 33 repeals and replaces AS 12.30.011 that tied the courts' determinations of release to the risk assessment tool so that tool will no longer be relied on.

ACTING CHAIR MICCICHE expressed concern about reinstating the third-party custodian system, because it seems to be laced with opportunity for further offences. He asked if there was any research that supports its return.

4:06:21 PM
MR. SKIDMORE replied there is no research or data, but his experience is that it depends on the court's ability to assess the individual, after the prosecutor and defense attorney pose questions, and make a judgement call about whether or not the person will be a good third-party. While there is no guarantee of success, the purpose behind SB 33 is to provide judges as many options as possible to determine how and whether they can release an individual while still maintaining community safety and ensuring the person shows up for court.

4:08:34 PM
ACTING CHAIR MICCICHE said that at another time he'd like a detailed discussion about how a third-party candidate is evaluated as appropriate to manage the release of an offender or alleged offender, because he has stories that are disturbing. They include individuals trolling for young females to be released to their care and supporting the young females' substance abuse while in the person's care.

4:09:30 PM
SENATOR REINBOLD highlighted victims' rights and the public's right to protection under Article I Sections 12 and 24 of the constitution. She asked for assurance that there will be balance and that victims and the public will not be forgotten.

4:11:16 PM
SENATOR KAWASAKI, noting that inability to pay was removed, asked if there was data showing that provision was problematic.

MR. SKIDMORE clarified that the inability to post bail is only removed as a basis for a second bail hearing. He directed attention to Section 7 on page 6 of the bill. It lists the factors the court is supposed to consider at the initial bail hearing, such as the person's employment status and history and the assets available to meet the monetary conditions of release. Under current law, if a person has not posted bail within 48 hours, the court is required to hold a second bail hearing and consider inability to pay a second time and potentially lower the bail just to allow the person to get out of jail. He reiterated that it's not that the inability to pay is not considered; it's that it should not form the basis for a second analysis.

4:13:36 PM
SENATOR KAWASAKI questioned whether being in jail for more than a couple of days and possibly losing one's job wouldn't impact the ability to pay.

MR. SKIDMORE agreed that the impacts of being in jail can be significant, but bail is not set to keep people from getting out. The constitution says excessive bail shall not be required but a reasonable bail is appropriate. He agreed with Senator Reinbold that when the court sets bail it is a balancing act to consider all 11 factors. The person is considered innocent until proven guilty, but the court must also consider the appropriate measures to protect the community and ensure the person will

appear for court. Monetary bail is one of the tools for the judge to ensure those things are accomplished. To Senator Reinbold's point, he said an Alaska Supreme Court case from 1966 said the right to not have unreasonable bail is not a right to release on own recognizance. He said, "I have not stated that somebody has a right to be released on their own recognizance; I've only stated that there is a right to reasonable bail and that OR is the starting point for that analysis." There are multiple ways to go about securing release and bail should not be reduced just because somebody can't pay, he said.

SENATOR REINBOLD said the right to a speedy trial is not working for the victim or defendant and she wants to discuss how to change that.

MR. SKIDMORE said the provisions that try to address the speed of getting a case to trial include limiting credit for somebody receiving treatment pretrial to 6 months and eliminating credit when a person is released pretrial on electronic monitoring. These provisions are designed to avoid situations that lead to cases being delayed. He acknowledged that those two provisions would not solve the problem entirely. He said this will take continuing work and he looks forward to working with the legislature to seek solutions.

4:20:08 PM
SENATOR REINBOLD offered her understanding that there are about 40,000 arrests in the state a year and 40 officers watch those on pretrial release. She asked how that benefits the people of Alaska and assures public safety.

MR. SKIDMORE pointed out that SB 33 is designed to give the courts multiple options, not just pretrial. Having just 40 officers monitor all the people that are released is not feasible, but it's more realistic when there are multiple options. He deferred to the DOC for specifics on how pretrial officers do their jobs.

4:22:26 PM
ACTING CHAIR MICCICHE listed the individuals available to answer questions.

MR. SKIDMORE said the foregoing were the highlights of SB 33.

ACTING CHAIR MICCICHE asked him to address video conferencing and the arraignment question.

MR. SKIDMORE said SB 33 returns the arraignments to 48 hours, but he believes that the Court System will try to have individuals arraigned within 24 hours of arrest. The 48 hours provides more flexibility to manage certain cases and resources on weekends and holidays. The second aspect is trying to increase the use of video teleconferencing. It is currently used in courtrooms across the state for arraignments and bail hearings and is recognized as something that has potential and great benefit. He noted that discussions about this provision are ongoing between the Department of Law and the Court System on how to best achieve the goals and desires of DOL as well as balancing concerns of the Court System.

ACTING CHAIR MICCICHE asked what has changed regarding video teleconferencing other than the suggestion to increase its use.

MR. SKIDMORE replied there are two aspects. The first is in the legislative intent in Section 1 that encourages greater use of video teleconferencing. The second (in the latter sections of the bill) is trying to adjust the Court Rules in terms of where video teleconferencing is authorized.

4:25:27 PM
SENATOR KAWASAKI commented that changing arraignments from 24 hours to 48 hours seems to be going in the wrong direction. He asked if a lot of arraignments aren't already done by video teleconferencing.

MR. SKIDMORE replied the criminal rule currently requires arraignments to be done by video teleconferencing when it is available so the majority are done that way. He said he believes that some areas of the state still transport prisoners when video teleconferencing is available, despite the rule, by relying on the term "shall." With regard to the question about 48 hours for arraignments going in the wrong direction, he said it's not about trying to delay an arraignment. It is to provide flexibility in particularly complex cases and for cases that come in on weekends and holidays. He noted that most states use the 48 hour standard or longer for arraignments

4:29:19 PM
ACTING CHAIR MICCICHE noted that the requirement for video conferencing existed under Court Rule and the only change in SB 33 is to change from television to contemporaneous two-way video conference. Observing that video conferencing didn't seem to be the default, he asked if stronger language such as "whenever

possible" instead of "whenever convenient" would lead to cost savings.

MR. SKIDMORE responded that the preferred description is a two-way video teleconference which is more inclusive of various technologies. The bill also expands the use of video teleconferencing for other trial court hearings such as pretrial conferences where each case is discussed for two or three minutes. The way the Court Rules are currently written allows a defendant to say they want to be transported to their court hearing. The bill says the court gets to determine if a person should be transported or if a video teleconference is appropriate for those types of hearings. He shared that part of the current discussions with the Court System involve the logistics of that and whether there are certain hearings, such as an evidentiary hearing, that a person should appear in person. He summarized that the overall intent is to expand the number of video conference hearings and make it the judge who makes that decision as opposed to the defendant.

4:32:03 PM
SENATOR REINBOLD said she believes video conferencing will save money and she agrees with Senator Kawasaki regarding 24 hours for an arraignment hearing. She also gave a shout out and thank you to prosecutors who work long, hard hours.

4:33:31 PM
ACTING CHAIR MICCICHE stated he would hold SB 33 in committee.

4:34:15 PM
There being no further business to come before the committee, Acting Chair Micciche adjourned the Senate State Affairs Standing Committee meeting at 4:34 pm.