

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 15, 2023

1:30 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION: DEPARTMENT OF LAW CRIMINAL DIVISION OVERVIEW

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

John Skidmore, Deputy Attorney General
Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: provided a presentation for the Department of Law Criminal Division

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Kiehl, Kaufman, Giessel, Tobin and Chair Claman.

PRESENTATION: Department of Law Criminal Division Overview

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CHAIR CLAMAN announced the consideration of the Department of Law Criminal Division Overview.

JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law, Anchorage, Alaska cited a report from the Department of Law titled "Sex Offence Cases Referred to the State of Alaska, Department of Law Between July 1, 2020, and June 30, 2021." He shared his professional history working as a prosecutor with the Department of Law for the past 25 years. He held the role of Deputy Attorney General for the last 3 years. He explained to the committee that the report was prepared pursuant to AS 44.23.040. The new requirement was added to the statute four years ago.

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MR. SKIDMORE moved to slide 2 of the overview, "Sex Offense Report FY 2021." He remarked that sex offenses take approximately two years to process.

Scope

Cases referred between July 1, 2020, and June 30, 2021.

- Offense date
- Referral date
- Filing/screening date
- Conviction date
- Sentencing/judgement date

"Sex offense" refers to a registerable sex offense under AS 12.63.100(7).

"Sex offense" definition has been amended several times since first codified in 1994.

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MR. SKIDMORE continued with slide 3, found in appendix A of the report, titled "Sex offences: registerable criminal offense under Alaska Statute 12.63.100(7) (Registration of Sex Offenders)." The table includes sexual assault crimes, the accompanying statute and the original effective date. He provided an example of a crime in the state labeled "misconduct involving a corpse," with one subsection addressing sexual penetration of a corpse. The crime is not defined as a sex

offense under the statute. He offered the example to encourage specificity when referring to registered sex offenses in Alaska.

CHAIR CLAMAN asked if Mr. Skidmore prosecuted a "sex with a corpse" crime recently.

MR. SKIDMORE replied that he prosecuted a crime involving sex with a corpse many years ago.

CHAIR CLAMAN asked if Mr. Skidmore processed a crime involving sex with a corpse in the last five years or longer.

MR. SKIDMORE responded that he worked in the central office for the last 12 years, which limited his case load.

CHAIR CLAMAN opined that the crime was rarely prosecuted.

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MR. SKIDMORE moved to slide 4, "Noteworthy Aspects of Report (Cont'd)."

The vast majority of these cases are still active prosecutions

Two + years of jury trial suspensions.
Sex offense take 2+ years from charging to trial even before COVID.

Report based on data from Oct 12, 2022
Still in screening
Convictions
Pleas
Etc.

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MR. SKIDMORE continued with slide 5, "Diagram of sex offence case processing, cases referred between July 1, 2020, and June 30, 2021." The graph was taken from the report. He noted that 586 referrals were made to the Department of Law for sex offenses with 48 percent (279) declined for evidentiary reasons. Sex offences involve issues with consent including the consideration of the victim and offender's age ranges. The department has a responsibility to prove something beyond a reasonable doubt. If the evidence is not available, a case is denied. He pointed out that 30 referrals were still in the screening process. The department is working to screen sex offences more quickly. He added that police officers have

authority to file criminal charges, which is called a complaint. When a prosecutor files criminal charges, it is referred to as an information or an indictment. He concluded that 261 case were still in active prosecution.

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CHAIR CLAMAN asked about the prior report. He queried the total sex offence referrals and the percentage of cases declined or prosecuted. He wondered about changes in overall data since the last report.

MR. SKIDMORE replied that the data were similar. Each year the department receives approximately 600 sex offence referrals and each year approximately half of the referrals are declined for evidentiary reasons. The vast majority of the cases remain active prosecutions at the time of the report. The reporting remained consistent over the last three years. This particular report goes to the Alaska Judicial Counsel. The previous reports can be found on the Alaska Judicial Council website.

CHAIR CLAMAN asked about the level of sex crimes reflected in referrals to prosecution. The prosecution data remain consistent.

MR. SKIDMORE replied that prosecution data remain similar, but sex offense cases require a separate analysis. The referrals remain consistent. He pointed to the uniform crime reporting done by the Alaska State Troopers with a specific report on sex offences.

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CHAIR CLAMAN recalled a change in the definition of consent. He wondered if the new definition would have an impact on the report's statistics.

MR. SKIDMORE replied yes, but the degree of the impact is still unknown

CHAIR CLAMAN wondered about the lag time between the referral and the reporting process. He wondered when the department anticipates seeing effects of the legislation.

MR. SKIDMORE estimated that the 2025 report will reflect the changes happening now. The 2025 report will cover FY 23.

CHAIR CLAMAN asked if the October 2025 report will show the initial impact of the legislation.

MR. SKIDMORE replied that the report will be generated in 2025. He would offer the report to the legislature in 2026.

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CHAIR CLAMAN stressed that the legislature must hold realistic expectations for anticipated results.

MR. SKIDMORE stated that the number of sex offence referrals is obtainable. He anticipated reporting to the legislature about past legislations' impact on department resources.

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MR. SKIDMORE continued with slide 6, "The Duty of a Prosecutor." He offered these quotes:

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done.

-Canons of professional ethics: Canon 5. American Bar Association (1908).

The prosecutor may prosecute with earnestness and vigor - indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

-Justice George Southerland, *Berger v. United States*, 295 U.S. 78, 88 (1935).

MR. SKIDMORE discussed slide 7. "It is the duty and obligation of the District Attorney to ensure that every citizen's constitutional rights are safeguarded at every step of the criminal prosecution."

- Assist investigation
- Formal referral
- Screening
- Pretrial litigation
- Pretrial resolution
- Trial
- Post-Trial Litigation

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SENATOR KAUFMAN asked about changing definitions and the effect on record keeping.

MR. SKIDMORE replied that changes in the law are differentiated by the subsections of statutes allowing additional data. The department should be able to determine the data with current record keeping practices.

SENATOR KIEHL asked about available resources for additional investigation. He queried if the Department of Law has civilian investigators or are Troopers in the police department tasked with investigations.

MR. SKIDMORE replied that the Department of Law did not house investigators, except in the Medicaid fraud unit. The department lacked the benefit or privilege of an investigator on staff.

SENATOR KIEHL asked if the state has the right investigation structure.

MR. SKIDMORE replied that the Department of Law must initiate that level of change. The challenge lies in managing investigators. The department is well-versed in managing lawyers, not investigators. He noted that the Department of Law and the Department of Public Safety converse regularly about the issue.

SENATOR KIEHL responded that he represents a municipality with a relevant model for supervising investigations.

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CHAIR CLAMAN asked if a statutory change was required to alter the system related to investigations.

MR. SKIDMORE replied that the change requires a budget decision versus a statute change. The department had the ability to restructure the investigation process.

CHAIR CLAMAN asked if the United States Attorney's Office had investigators employed in their offices.

MR. SKIDMORE replied that he did not know the answer. He was unaware of investigators in the United States Attorney's Office. The federal structure is different in terms of supervision and authority.

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MR. SKIDMORE moved to slide 8, "Recruitment and Retention." He stated that the recruitment and retention of personnel presents the greatest challenge to the department. The department mission requires the appropriate quantity and quality of personnel.

Review of Criminal Division's
Recruitment and Retention
Challenges

Applicant Shortage
Nationally
Alaska specific

Turnover 22% - 37%

SENATOR TOBIN queried the cost per person to replace an employee. She asked to see the turnover broken down by district.

MR. SKIDMORE replied that he will return to the committee with the position cost. He relayed that the department requires two years to train prosecutors. He stated that with five to seven years' experience, an attorney has the skill set to tackle more serious cases. He provided an example about himself, and the legal expertise gained with experience

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MR. SKIDMORE offered to provide the information by district, but highlighted the challenge of obtaining accurate data when employees transfer to various offices or agencies throughout the state. The turnover rate shown today reflects employees who leave the department. He anticipated that the analysis would be very different from that seen on the slides today.

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SENATOR TOBIN remarked that other agencies describe similar issues. Housing and other systemic problems may respond to incentives or bonuses.

MR. SKIDMORE replied that the Department of Law has a program to address employee housing challenges in rural Alaska. He offered to engage in further conversation about such incentive programs.

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CHAIR CLAMAN asked if the turnover rate reflects the employees who leave the department.

MR. SKIDMORE responded yes. He moved to slide 9, which is a previous budget slide from 2020. The organization called NEOGOV displayed the decreases in the number of applicants. He stated that 10 thousand baby boomers retire per year and most move to jobs in the private sector.

MR. SKIDMORE reviewed slide 10, "Recruitment and Retention Applicant Shortage."

Recruitment and Retention
Applicant Shortage

-8% decrease in number of applicants looking for public sector jobs

-Average of 22% fewer applicants per job 2013-2018

- "Legal has suffered the biggest impact in applicants per job, with a 64% decline in applications. Legal jobs saw, on average, 33 fewer applicants per available job in 2018 compared to 2013." (NEOGOV Hiring Trends Report 2019)

-19 % decrease in Alaska applicants over last five years (Alaska Department of Administration)

-49 prosecutor positions recruited during 2019 with an average of less than 5 applicants per position.

Fewer applicants
Less experienced
Longer recruitment periods
Greater stress on current employees

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SENATOR KAUFMAN recalled reading about the legal profession utilizing artificial intelligence (AI) for workforce applications. He wondered about software packages that might replace some of the vacant positions.

CHAIR CLAMAN stated that he was comfortable with the suggestion.

MR. SKIDMORE replied that he had not yet heard about AI used to write legal briefs. He believed that the nuances involved in criminal law were beyond the capacity of AI.

SENATOR KAUFMAN spoke to the potential value of AI with current workforce shortages.

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MR. SKIDMORE moved to slide 11, "Guarded Optimism." He explained the graph depicting the number of applicants for prosecutor jobs in 2022 and 2023. He shared that November 1, 2022, marked the statute change impacting attorney salaries in Alaska. He thanked the legislature for the effect. He pointed to the increases in applicants seen in December 2022 and January 2023. He acknowledged that the data was too premature to establish a trend.

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MR. SKIDMORE moved to slide 12, "Positive Trend, but Still More Work to Do." He stated that the department saw stability in 2020, but in 2022 many attorneys transferred over to the civil division. He stated that the civil division offered a better work life balance. He mentioned that Alaska is the only state without a law school, yet the bar exam requirement is higher than most states with a passing score of 280. He supported a recent effort to lower the bar exam score requirement. The Alaska Supreme Court must approve the change, which will ease entry for those with licensing issues.

Retention

Prosecutors in 2018	36.5%	turned over (42 of 115)
Prosecutors in 2019	22.3%	turned over (27 of 121)
Prosecutors in 2020	15.8%	turned over (20 of 126)
Prosecutors in 2021	20.6%	turned over (27 of 131)
Prosecutors in 2022	19.0%	turned over (25 of 131)

2022

- 6 of 25 (24%) transferred to Civil Division.
- 2 of 25 (8%) transferred to Dept. of Admin.
(Public Defender/Ofc. Of Public Advocacy)
- 3 of 25 Licensing issue

2022 - hired 31 attorneys- 13 of which had experience
(including 6 former employees returning)

Improving with efforts made.

- Salary increases
- Training provided
- Revamped website
- Social media presence

Expanding posting locations
Attending job fairs

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MR. SKIDMORE stated that the department had 24 vacant prosecutor positions. He continued that the department hired 12 of the 24 positions and those newly hired 12 will begin work between now and October 2023.

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SENATOR KAUFMAN asked about formalized processes for capturing and implementing efficiency improvements.

MR. SKIDMORE replied that the department oversees 13 prosecutor offices across the state. He opined that the department was small enough to communicate and respond efficiently. He recognized that the efficiency improvements were not formalized. He spoke to an efficiency in the new case management system. Implementation of the system allowed for use of electronic files, which simplified file access for interchangeability and reporting benefits. He spoke to a legislative request for the storage and management of digital evidence.

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SENATOR TOBIN appreciated the inclusion of social media sites to advertise job vacancies. She believed that the millennials utilized sites like LinkedIn for opportunities and networking. She recalled social media inferences that the Bar exam will be abolished. She asked Mr. Skidmore's opinion about eliminating the bar exam.

MR. SKIDMORE replied that the Department of Law utilized LinkedIn to advertise vacant positions. He commented that the bar exam is the traditional requirement of the bar association. He was unaware of statistics proving that the bar exam results increase or decrease diversity among legal populations. He opined that the bar exam held value. The Board of Governors would make the ultimate decision related to bar exam use and scoring.

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CHAIR CLAMAN reflected on a past discussion with Mr. Skidmore about retention issues. He stated that effective criminal prosecution relies on a full staff.

MR. SKIDMORE agreed that the department could not perform without the necessary staff. He revisited the notion of statute changes to increase efficiencies.

2:36:22 PM

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:36 PM.