

Alaska State Legislature

Senate Majority Leader

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Resources Committee

State Affairs Committee

Legislative Council

Rules Committee



Senator John Coghill

Session Address:
State Capitol, Room 119
Juneau, AK 99801-1182
(907) 465-3719
Fax (907) 465-3258

Interim Address:
1292 Sadler Way, Suite 340
Fairbanks, AK 99701
(907) 451-2997
Fax (907) 451-3526
877-465-3719
www.aksenate.org

August 14, 2015

Re: Indian Affairs Committee Testimony from Alaska State Senator John Coghill – Scheduled for August 20, 2015

Dear Honorable Committee Members:

Please be aware of the following efforts for positive change between the State of Alaska and Tribal entities:

1. **2015-2016** - Sponsor Substitute for Senate Bill 117 (“SS for SB 117”)
 - a. SS for SB 117 creates a tribal court diversion program. The intent is to help smaller, rural communities provide effective solutions for certain criminal problems. A sectional overview of the bill is provided below.
 - b. Section 1 – Tribal Court Diversion Program
 - i. Upon recommendation of law enforcement agency
 - ii. The department and tribal court will confer
 1. State may elect to defer prosecution of tribal member in certain criminal cases
 2. Those cases include:
 - a. Attempts or solicitation of class B misdemeanors
 - i. Including: minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency; in other words: Small thefts, disorderly conduct, criminal mischief
 - b. Assault in the fourth degree
 - c. Class B misdemeanors
 - d. Possession of alcohol in dry village
 - e. Underage possession of alcohol
 - f. Minor Operating a Vehicle After Consuming Alcohol
 - iii. The department may not consent to referral unless the consequences have been explained to the victim.
 - iv. The department may not refer unless there is written consent from the tribal member, who:
 1. Agrees to be adjudicated before the tribal court.
 2. Agrees to the tribally imposed remedy. Failure to comply results in a department initiated prosecution in state court.

3. Will not have the right to legal counsel in tribal court at the expense of the state or tribe if legal counsel is permitted.
 4. Acknowledges that the tribal court is not bound by Alaska law or procedure.
 - v. Once the department makes a referral, the tribal member consents to be adjudicated, and the trial court accepts jurisdiction, the department may withhold prosecution.
 - vi. The tribal court may incorporate culturally relevant procedures, including:
 1. Restorative justice hearings
 2. Circle sentencing
 3. Imposing fines
 4. Requiring forfeiture of property
 - vii. Tribal court can use the fines and fees on a case-by-case basis that best meets the needs of the victim, the community and tribes.
 - viii. State shall be notified if other criminal conduct involving felony or other crime “not listed.”
 - ix. Mandatory arrest for DV still applies. State may elect to refer to state court arraignment.
 - x. If tribal member does not comply with tribally imposed remedy, the department may still prosecute.
 - xi. If the tribal member does comply with tribally imposed remedy, the department may not prosecute.
- c. Section 1 – Continued – Notice Requirements
- i. If the department elects to move the case to tribal court, the tribal court shall provide notice after a remedy is ordered that includes:
 1. Name
 2. Circumstances of offense
 3. Remedy ordered by the tribal court
 4. Timeframe for compliance.
 - ii. Notice shall be given, when compliance is complete along with date. Notice shall also be given if there is no compliance by the requisite timeframe.
 - iii. New forms for new offenses
 - iv. Forms should be provided on quarterly basis
- d. Section 1 – Continued – Jurisdiction
- i. Nothing limits, alters, or diminishes jurisdiction of tribal court.
- e. Section 1 – Continued – Definitions
- i. “Department” is the Department of Law
 - ii. “Law Enforcement Agency” includes State Troopers, Village Public Safety Officers, Village Police Officers, Tribal Police Officers, or a Municipal or Borough Law Enforcement Agency
 - iii. “Tribal Court” means the justice system established by the tribe
 - iv. “Tribe” means an Indian tribe or band or Alaska Native village recognized by federal law.
- f. Section 2 – Exemption of and Levy on PFDs
- i. Tribes can levy on PFDs for tribal court ordered restitution.

2. **2015-2016** - Senate Bill 91 (“SB 91”) aims to use Alaska’s limited criminal justice dollars in the most prudent way possible, using cost-effective, evidence based reforms. To accomplish that, the corrections system should emphasize public safety, personal responsibility, work, restitution, and treatment.
 - a. SB91 uses a number of reforms to address the Department of Corrections’ biggest cost drivers: an increased length of prison sentences, non-violent offenders, probation violators, and pre-trial offenders. This can be accomplished by expanding electronic monitoring, reforming probation, and providing incentives for individuals to be productive law-abiding citizens.
 - b. SB91 is an effort to be tough on crime and criminal justice spending while holding offenders accountable and giving them a shot at redemption, restitution, personal responsibility, and productivity – a vital step towards achieving a cost-effective system that protects citizens, restores victims, and reforms wrongdoers.
 - c. Here are some specifics for SB91:
 - i. Expands pre-trial electronic monitoring and eligibility for credit for time served.
 - ii. Reforms the Community Work Service statutes.
 - iii. Increases police training surcharges.
 - iv. Gives discretion to probation officers to administer intermediate sanctions.
 - v. Alters the maximum periods of probation.
 - vi. Establishes earned credit for probation.
 - vii. Establishes earned credit for inmates completing treatment, education, and other rehabilitative programs.
 - viii. Limits periods of incarceration for technical probation violations.
 - ix. Expands a mitigating factor for individuals who have successfully completed treatment.
 - x. Syncs up administrative license revocations with court license revocations.
 - xi. Creates a restrictive limited license for felony DUI offenders.
 - xii. Gives judges increased sentencing discretion.
 - xiii. Permits early discharge from mandatory parole upon completion of treatment and good behavior.
 - xiv. Implements a re-entry program within the Department of Corrections to be initiated 90 days before the date of the prisoner’s discharge.
 - xv. Removes the prohibition of felony drug offenders from participating in the federal food stamp program.
3. **2013 – 2014** - Senate Bill 64 (“SB 64”) implemented proven-practices to reduce recidivism and cut the cost of corrections while maintaining public safety.
 - a. 24/7 Sobriety Program is an evidence-based program that is proven to reduce recidivism and keep the public safe. 24/7 Sobriety is court-ordered for certain offenders during pre-trial or probation. Hallmarks of the program include twice-a-day alcohol testing and swift and certain sanctions if alcohol is consumed. 24/7 Sobriety is modeled after programs in South Dakota, North Dakota, and Montana that have proven to reduce domestic violence and drunk driving.
 - b. Probation and Parole Accountability with Certain Enforcement (P.A.C.E.) is an intensive form of probation/parole for felons who are at high risk of violating the conditions of their

probation/parole. The program relies on swift and certain sanctions to deter a probationer or parolee from using drugs or otherwise violating their probation requirements.

- i. Offenders on P.A.C.E. are 55% less likely to be arrested for a new crime, 72% less likely to use drugs, 61% less likely to skip appointments, and ultimately 53% less likely to have their probation revoked. P.A.C.E. leads to 48% fewer days in prison. SB 64 expands the program statewide.
- c. Recidivism Reduction Fund: $\frac{2}{3}$ of offenders return to prison within 3 years. To address Alaska's high rate of recidivism, recently-released individuals must have access to a structured and sober environment, treatment, and employment opportunities. This section established funding for transitional re-entry programs (for those recently released from prison).
- d. The "Felony Theft Threshold" was established at \$500 in 1978. The threshold has never been adjusted for inflation, despite \$500 being equal to \$1800 today. SB 64 increased the threshold from \$500 to \$750.
- e. Custodial Interference: SB 64 created a criminal offense of custodial interference in the second degree when a non-relative attempted to take a child from a lawful custodian without permission. This section closes a statutory "loophole" and created a more serious criminal offense for impersonating a parent or attempted child abduction.
- f. Alaska Criminal Justice Commission was established to analyze and evaluate the effect of laws and practices within the state's criminal justice system. This would effectively restore the Alaska Sentencing Commission that existed in the early 1990s.
- g. "Credit for Time Served in Residential Treatment" - incentivizes people to seek and pay for their own treatment. A person receives credit against a sentence for time spent in a residential treatment facility (but must remain on the grounds of the facility unless given permission to leave for purposes directly related to their treatment).
- h. Assessments of Prisoners: This required the Department of Corrections to conduct a risk-needs assessment on all offenders incarcerated 30 days or longer. This helps the department better understand the offender population and link inmates to treatment within the facilities.
- i. PTSD Mitigating Factor: SB 64 created a new mitigating factor allowing a judge to take into consideration whether the offense was related to combat-related PTSD or traumatic brain injury. If a nexus is found between the mental disorder and the crime, it could result in a lesser sentence. The offender would have the burden of proving that he or she suffers from combat-related PTSD or combat-related traumatic brain injury. This mitigator is not available for crimes of serious injury such as assault or sexual crimes.
- j. Electronic Monitoring is an effective and inexpensive approach to offender supervision. This gave the Department of Corrections the ability to place first-time DUI offenders on electronic monitoring for the 72-hour mandatory minimum. E.M. costs \$21/day, compared to \$158/day for a hard prison bed.

Sincerely,

A handwritten signature in blue ink that reads "John Coghill". The signature is written in a cursive style with a large, looping initial "J".

Alaska State Senator John Coghill