

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

February 28, 2001
1:45 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator John Cowdery

COMMITTEE CALENDAR

SENATE BILL NO. 99

"An Act relating to the DNA identification registration system."

MOVED SB 99 OUT OF COMMITTEE

SENATE BILL NO. 105

"An Act relating to victims' rights; relating to establishing an office of victims' rights; relating to compensation of victims of violent crimes; relating to eligibility for a permanent fund dividend for persons convicted of and incarcerated for certain offenses; relating to notice of appropriations concerning victims' rights; amending Rule 16, Alaska Rules of Criminal Procedure, Rule 9, Alaska Delinquency Rules, and Rule 501, Alaska Rules of Evidence; and providing for an effective date."

MOVED CSSB 105 (JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

No previous action.

WITNESS REGISTER

Senator Rick Halford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 99

Ms. Laurie Hugonin
Alaska Network On Domestic Violence &
Sexual Assault

130 Seward, Room 209
Juneau, AK 99801

POSITION STATEMENT: Testified on SB 99 and SB 105

Mr. Del Smith
Deputy Commissioner
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Supports SB 99

Ms. Leanne Strickland
Scientific Crime Detection Laboratory
Department of Public Safety
5500 East Tudor Road
Anchorage, AK 99507-1221

POSITION STATEMENT: Testified on SB 99

Mr. Robert Buttane
Legislative & Administrative Liaison
Division of Juvenile Justice
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Testified on SB 99 and SB 105

Ms. Julie Lucky
Staff to Senator Halford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Testified on SB 99 and SB 105

Mr. Dean Guaneli
Chief Assistant Attorney General
Legal Services Section
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified on SB 105

Ms. Charlotte Phelps
Victims for Justice
921 West 6th Avenue
Anchorage, AK

POSITION STATEMENT: Testified on SB 105

Ms. Candace Brower
Program Coordinator
Department of Corrections
240 Main Street, Suite 700

Juneau, Alaska 99801

POSITION STATEMENT: Testified on SB 105

ACTION NARRATIVE

TAPE 01-6, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:45 p.m. Chairman Taylor announced the first order of business would be SB 99.

#SB 99

SB 99-DNA REGISTRATION OF BURGLARS

SENATOR RICK HALFORD, sponsor of SB 99, said SB 99 adds burglary to the list of crimes from which DNA samples are taken for later comparison to samples in the DNA databank. In states where samples are taken, DNA evidence has proven to be very effective.

SENATOR DONLEY said he supports SB 99, but he is concerned that some juvenile criminals have to commit four or five crimes before they are ever adjudicated as a delinquent. He wondered about the people working in juvenile justice as far as their reluctance to adjudicate any one as a delinquent.

Number 259

MS. Laurie Hugonin, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), said ANDVSA supports SB 99. She said it is important that this group of criminals be captured because often times burglars are associated with sexual assaults. SB 99 is another step to providing evidence for crime solving.

MR. DEL SMITH, Deputy Commissioner, Department of Public Safety (DPS), said DPS supports SB 99. Mr. Smith said SB 99 addresses part of a DNA bill from last year that failed to make it through the system. Burglary did not survive that legislation but the use of an oral swab did. Virginia and Florida do include burglary for DNA testing, and the statistics show that people move from burglary to more violent crimes. Some segments of law enforcement want to collect DNA samples from all individuals that are convicted, New York collects DNA for every arrest, but there are concerns because of the discrimination ability of DNA.

MR. SMITH said DPS believes the expansion of burglary to the

database makes sense, and Alaska's crime lab has received federal funding to send convicted offender samples to the system.

Number 572

SENATOR ELLIS asked for the definition of "felony attempt to commit burglary."

MR. SMITH said this means a person has taken substantial steps toward committing a crime, such as trying to force the entry into a residence, but the police arrived in time to stop the completion of the crime.

SENATOR ELLIS asked about the limitations, safeguards, restrictions for improper use, and disposal of a sample.

MR. SMITH said the original statute specifically indicated the sample could only be used for identification and registration. The samples that are collected and maintained are not useful in tests to discern a disease. The statute specifically states the sample can only be used for the purposes of comparison and for criminal prosecution. Doing anything else with the sample would be subject for prosecution. The sample is stored within the crime lab, a secure facility, and has a bar code for identification so if it were to get out of the lab no one would know the identify of the offender.

SENATOR ELLIS asked if DPS would advocate for legislation to expand the use of DNA sampling.

MR SMITH said he, personally, would not advocate beyond burglary.

Number 929

SENATOR THERRIAULT asked if the cotton swabs are discarded after the test results have been run.

MS. LEANNE STRICKLAND said she works at the state crime lab as supervisor and technical leader of the DNA section. She said when an oral swab or known blood sample have been processed and a DNA profile is obtained, that sample is stored at the laboratory in a secured refrigerated area.

Number 1188

SENATOR DONLEY asked if there is data showing how many times a juvenile offends before being put into a delinquency proceeding concerning burglaries, violence, first degree arson, or crimes

against a person.

MR. ROBERT BUTTCANE, Division of Juvenile Justice, Department of Health and Social Services (DHSS), commented he would be able to query the DHSS database for this information.

SENATOR DONLEY moved SB 99 with accompanying fiscal note from committee with individual recommendations.

SENATOR Ellis objected. The role was taken with Senator Donley, Senator Therriault, and Chairman Taylor voting yea. Senator Ellis voted nay, and SB 99 moved from committee.

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#SB 105
Number 1330

SB 105-VICTIMS' RIGHTS/ PRISONER'S PFD

SENATOR HALFORD said this bill went through both the house and senate last year. SB 105 puts the victims' advocate in the legislative branch and is the implementation of the constitutional amendment. An attorney represents the State of Alaska and the accused but the victim usually does not have representation. SB 105 tries to provide help for the victim in a professional way so he or she can maintain and defend their rights.

MS. JULIE LUCKY, staff to Senator Halford, said there had been a question on partially exempt service versus exempt service. On page 4 of SB 105 the victims' advocate is put into exempt service. Section 6, which is the listing of all jobs under the partially exempt service, was not changed to conform to exempt service. The office was listed as exempt on page 4 and partially exempt in Section 6. In order to make the two conform, an amendment was needed for Section 6. The drafter preferred that the committee pass a conceptual amendment because at that time he was not sure what the line number would be. The conceptual amendment on page 10, line 13 will read: Sec. 6. AS 39.25.110, and the line numbers will change accordingly.

SENATOR DONLEY moved to accept the conceptual amendment. There being no objection, conceptual amendment #1 passed.

Number 1412

MS. LAURIE HUGONIN, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), said ANDVA appreciates the victims' office being put back into the legislative branch. ANDVA would like to have

resources put toward the beginning of interaction instead of toward the complaint side at the end. This way it could be seen that there were enough victim witness coordinators, enough information so people would know their rights as a victim, and enough advocacy groups to help victims through the process from the beginning.

MS. HUGONIN said it would be helpful to look at the statutes where victims are given the right to speak for themselves in court - possibly amending the statute to allow someone else to speak for them.

CHAIRMAN TAYLOR asked her if ANDVA supports SB 105.

MS. HUGONIN said ANDVA does not oppose the bill but it does not support the bill either. ANDVA does have concern with how the resources would be directed.

MR. DEAN GUANELI, Criminal Division, Department of Law (DOL), said prosecutors have recognized the need for treating victims well for a long time. Statistical data show that cases are sometimes won and lost because victims and witnesses do not want to cooperate. Federal funds have allowed the criminal division to create the victim witness assistance program whereby paralegals are working to provide help to victims and witnesses through the criminal justice process. In order to win cases, victims and witnesses need to help. With the help of federal funding from the Violence Against Women's Act, DOL has been able to provide training for prosecutors and paralegals every year. DOL provides a number of brochures that explain the criminal justice process and rights to crime victims. All of the brochures are translated into Yupik and Inupiat. DOL provides the victim with a form that he or she is to sign. The form tells them that if they want to exercise the rights granted under current law they should not talk to the defense attorney or the investigator. After the form is signed it is given to the defense attorney, invoking the victims' rights under current law. Defense attorneys do not like this and have challenged the statutes that now exist to protect victims from defense tactics. DOL believes there are more resources that could be brought to bear to help all criminal justice agencies provide more direct service to victims. The governor has identified a way to do this in SB 107. The efforts toward victim restitution statutes have been in how the courts go about setting restitution and what presumptions they make and who bears the burden of proof, but little attention has been given to practical problems. DOL proposes a more formal collection system within DOL so the collection unit can also collect restitution for victims. Another proposal is found in the criminal division's budget to fund a volunteer coordinator position. This position has been federally funded but the funding is going away.

The position has volunteers working in the prosecution offices making contacts with victims, issuing subpoenas, and collecting information from victims.

Number 2107

MR. ROBERT BUTTCANE, Division of Juvenile Justice, Department of Health and Social Services (DHSS), said when he started his juvenile probation career there was a philosophy that the system was offender focused. With a change in the Alaska constitution and enactment of other legislation, the restorative justice philosophy has been adopted by DHSS. With this philosophy, the concerns and needs of the victim have been elevated to be equal to any of the concerns for the offender. There are four parts of the juvenile justice system: 1) Prevent repeated criminal behavior. 2) Restore victims and communities to wholeness. 3) Protect the public. 4) Help the young person to develop competency so they can become a productive citizen. One way to implement this is to focus energy on the needs of the victim. DHSS worked to understand victims and apply the rights that were afforded them in the constitution and statutes. The biggest right, as it related to the juvenile system, was notification of delinquency proceedings, which prompted questions from victims about the juvenile offender. The restorative justice system was codified in the delinquency chapter and a number of adjustments were made to the confidentially section related to the juvenile system. One was that DHSS was authorized by law to share information with victims. As DHSS started to share this information with victims, the entire system began to shift. Offenders started to see, when the victim was in the courtroom, that the crime was no longer nebulous, it was a real person they had impacted. Because victims do not understand the judicial process, DHSS shares information with the offender and the victim. In the beginning, courts were uncomfortable with a victim attending the juvenile court proceeding, but now the court system understands that a victim has the right to be in court when the juvenile is there. It is becoming common practice for courts to let the victim speak at hearings and arraignments, having an incredible impact on the juvenile system.

TAPE 01-6, SIDE B

MR. BUTTCANE noted that it was very beneficial when victims were allowed into formal proceedings. Alaska statutes have been changed to allow for victim participation. A case may not be adjusted until deference has been given to the victim in regards to restitution satisfaction.

MR. BUTTCANE said SB 105 creates an advocate who can advocate for

victims. This concept cannot be argued with, but it is also important for a victim to tell his or her story.

MR. BUTTCANE said DHSS has committed some of its federal delinquency prevention and intervention monies in support of victim services. DHSS has helped establish victim offender mediation programs in Fairbanks, Anchorage, and Juneau. These programs are on shaky grounds because there has not been enough support in making them work. It takes a great deal of human energy and investment to keep victims' services going.

MR. BUTTCANE added that when victims are paid attention to, he or she starts to develop trust, understanding, and appreciation. Eventually many victims are willing to sit down with the offender and have a face-to-face dialogue or mediation. This has a great impact on the juvenile offender, more than any program offered. From this process, victims start to heal. DHSS advocates more opportunities for victims to be involved and participate in the rehabilitative and restorative process.

Number 2109

MS. CHARLOTTE PHELPS, Victims For Justice (VFJ), speaking via teleconference from Anchorage, noted there are some aspects of SB 105 that VFJ likes, particularly the increase in awards for violent crimes compensation. Ms. Phelps said medical costs have increased a lot in the last few years and it is gratifying that the legislature is increasing the maximum awards. This will go a long way toward helping victims put their lives back together after a violent crime.

MS. PHELPS said as long as the funding for the non-profits that provide the initial support - crisis intervention, on-going support, and education - is not impacted, having an advocate to investigate violations of victim rights seems good but she would prefer the focus to be on the front-end. VFJ would like some type of reassurance that establishing this office would not take funds away from non-profit organizations that provide the front-end service. VFJ also feels it is important for victims to tell their own story.

MS. PHELPS said VFJ does not support SB 105 completely but it is also not against the bill.

CHAIRMAN TAYLOR said SB 105 would not interfere with or detract from funds currently going to non-profit organizations. He said it might be of value to have a legislative funded position that would advocate to the legislature for the entirety of the program.

Number 1862

MS. CANDICE BROWER, Legislative Liaison for the Department of Corrections (DOC), said DOC has come a long way in terms of victim services. Prior to 1996 the main concern for DOC was victim notification. There was always a concern that when an offender was released from prison the victim may not be notified. Victims were given an opportunity to make statements through pre-sentence investigation reports as well as parole hearings. Since 1996 DOC has provided approximately 1,355 hours of training to staff on victim related issues, rights, and concerns. In 1997 DOC was given a grant through the National Institute of Justice (NIJ) and the Office of Victims of Crime for a conference where approximately 300 people attended from across the state. The agenda included Promising Practices and Strategies for Victims' Services in Corrections. In 1999 a committee was established to implement victim impact class programs and since that time, DOC has provided victim impact classes for offenders so he or she may learn the impact their crime has had on the victim, the victim's family, the offender's family, and the community. DOC has provided training for various communities and formed a statewide victim advisory committee, which includes many of the agencies involved in victim services. In 1998 SB 25 was passed and an automated victim notification system was implemented through DOC. In 1999 DOC provided training for the Keeping Kids Safe program in the Bush. This was in conjunction with juvenile justice and helped people become aware of sex offenders in their community. DOC has provided Victim Information Notification Everyday (VINE) training throughout the state since 1999. One of the most important things DOC has done is to help formulate victim advisory committees. There are active committees in Anchorage, Fairbanks, Juneau, and Bethel and DOC is working on committees in Kenai, Kodiak, and Mat-Su. In 1999 DOC hired a victim service coordinator with federal funding from the Council on Domestic Violence and Sexual Assault, and that person has hired a criminal justice technician to assist.

MS. BROWER said DOC thinks SB 105 is important. DOC also thinks it is important to reach victims on the front-end, and it is also important to help victims seek restitution.

MS. JULIE LUCKY, staff to Senator Halford, said NIJ recommended that states and the federal government create compliance enforcement programs, sometimes referred to as Victim Ombudsman Programs. There was also a study from the Office of Victims of Crime, which talked about the ombudsman offices, saying these offices can get involved on the front-end. This is why the words "advocacy" and "investigations afterwards" were used in SB 105.

Ombudsman offices have been able to work with local groups and have been also been able to get in on the front-end to take care of problems before they happen. Ms. Lucky said a stand-alone agency could be very helpful in taking care of things before a sentencing happens.

MS. LUCKY said the advocacy office in SB 105 does have the freedom to get in on the front-end. It can also be very helpful having a neutral third party for a victim and to have one office to call. SB 105 has a section that allows the victims' advocate offices to contract out with other agencies, which would be local victims' groups.

SENATOR THERRIAULT asked if there was a fiscal note for SB 105.

MS. LUCKY responded there are three fiscal notes.

CHAIRMAN TAYLOR said there was a zero fiscal note from the Department of Revenue, a zero fiscal note from the Attorney General, and \$47,000 going to \$45,000 from the Department of Corrections.

SENATOR DONLEY moved CSSB 105 from committee with the accompanying fiscal notes and with individual recommendations. There being no objection, CSSB 105 moved from committee.

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There being no further business to come before the committee, CHAIRMAN TAYLOR adjourned the meeting at 2:56.