

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

May 2, 2001
5:17 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault

MEMBERS ABSENT

Senator Dave Donley, Vice Chair
Senator Johnny Ellis

COMMITTEE CALENDAR

HOUSE BILL NO. 187

"An Act relating to the destruction, desecration, and vandalism of cemeteries and graves."

MOVED SCS HB 187(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 106(L&C) am

"An Act relating to the authorizations for certain state financial institutions of certain powers and limitations; relating to confidential records of depositors and customers of certain financial institutions; relating to the examination of certain institutions subject to AS 06; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; amending Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."

MOVED SCS CSHB 106(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 214(L&C)

"An Act relating to a civil action against a person under 21 years of age who enters premises where alcohol is sold or consumed."

MOVED CSHB 214 (L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 210(JUD) am

"An Act relating to sexual assault and sexual abuse of a minor."

MOVED CSHB 210(JUD) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 102(JUD)

"An Act relating to the theft of propelled vehicles."

MOVED CSHB 102(JUD) am OUT OF COMMITTEE

SENATE BILL NO. 210

"An Act relating to the constitutional right to privacy."

MOVED CSSB 210(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

No previous action

WITNESS REGISTER

Ms. Lori Backes
Staff to Representative Whitaker
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 187

Mr. Terry Elder, Director
Division of Banking, Securities & Corporations
Department of Community & Economic Development
PO Box 110807
Juneau, AK 99811-0807
POSITION STATEMENT: Testified on HB 106

Ms. Marjorie Vandor, Assistant Attorney General
Civil Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on HB 106

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 214

Mr. O.C. Madden
Brown Jug
No address furnished
POSITION STATEMENT:

Mr. Gerald Luckhaupt, Attorney
Legislative Legal & Research Services
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on HB 210

Mr. Blair McCune

Alaska Public Defender
No address furnished
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 210

Ms. Trisha Gentle, Executive Director
Council on Domestic Violence & Sexual Assault
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Supported HB 210

Representative Pete Kott
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 102

Senator Pete Kelly
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 210

ACTION NARRATIVE

TAPE 01-28, SIDE A

Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 5:17 p.m. Chairman Taylor announced the first order of business would be HB 187.

#HB187

HB 187-VANDALISM OF CEMETERIES & GRAVES

Lori Backes, staff to Representative Whittaker, testified that there are no statutes relating to vandalism or desecration of modern cemeteries and memorials. Although acts of vandalism are punishable under criminal mischief statutes, the degree of crime centers around the monetary value of the damage and doesn't address the personal insult and emotional damage such acts inflict on individuals, families, communities or tribes. HB 187 clearly states that if a person damages, defaces or desecrates a cemetery, tomb, grave, memorial or its contents it is a crime of criminal mischief in the second degree. This is regardless of whether or not the tomb grave or memorial is in a cemetery or appears to be abandoned lost or neglected. It would also be a crime of criminal mischief in the second degree if an individual removes human remains or associated

items from a cemetery, tomb, grave or memorial.

SENATOR COWDERY recalled the vandalism that occurred when he was in charge of the downtown Anchorage cemetery. He wondered how the dollar amount of such vandalism would be determined.

MS. BACKES responded that the amendment classifies such vandalism as a class C felony and does not set a dollar amount on the damage. In many cases, it is not possible to establish a monetary value on damage done but emotional damage can be recognized.

Number 376

CHAIRMAN TAYLOR said there are a growing number of instances of "digging". This is where individuals locate and collect artifacts from ancestral graves and then sell them. This legislation will prohibit this type of activity.

MS. BACKES responded that she was aware of such activity and any persons who do not have a state or federal permit or legal authorization to disturb a grave or memorial would be prohibited from doing so under this legislation. Under federal law, there are exceptions if the disturbance is inadvertent but there are specific reporting requirements for such disturbances. Digging without a permit will increase fines to \$50,000 and up to five years incarceration.

CHAIRMAN TAYLOR asked where a dollar amount appears.

MS. BACKES said it is not referred to in the bill but in chapter 12 of crimes of criminal mischief.

Number 675

SENATOR THERRIAULT asked for clarification on the current statute governing burial sites.

MS. BACKES explained that current statute that protects cemeteries is under the Alaska Historic Preservation Act. Under that act, destruction is a class A misdemeanor. Although penalties are not routinely imposed because it's difficult to catch individuals in the act of desecrating a grave, there may be other charges levied that do not relate to the desecration of a grave.

It is hoped that raising grave desecration to a class C felony would in itself be a deterrent.

CHAIRMAN TAYLOR called for additional testimony and received no

response. He asked for the pleasure of the committee.

SENATOR THERRIAULT moved SCS HB 187(JUD) from committee with individual recommendations. There being no objection, SCS HB 187(JUD) moved from committee.

#

#HB106

HB 106-FINANCIAL INSTITUTIONS

CHAIRMAN TAYLOR announced that HB 106 is a companion to SB 66, which was amended to include credit cards and to reflect a compromise between banking institutions and the state examiner. HB 106 is now blended into SB 66. He called for a motion to adopt the committee substitute.

SENATOR COWDERY moved to adopt Bannister 5/2/01 committee substitute as the working document. There was no objection.

MR. TERRY ELDER, Director, Division of Banking, Securities & Corporations testified that he had reviewed the committee substitute and it appeared to include all the changes made in SB 66.

SENATOR COWDERY moved SCS HB 106(JUD) from committee with individual recommendations.

SENATOR THERRIAULT objected for the purpose of asking a question. He asked whether or not an amendment in his file had been incorporated in the committee substitute.

SENATOR COWDERY withdrew his motion.

MS. MARGIE VANDOR, Assistant Attorney General, Civil Division, Department of Law, testified that the reason for the amendment is that the bill changes status quo of current law regarding when a bank is reimbursed for costs to comply to an order. The amendment makes it clear that unless it is an administrative order separate from another requirement, the bank will not be reimbursed for those costs.

SENATOR THERRIAULT questioned the clarity of the wording on page 3, line 10 and further whether Banking and Securities had been involved in the changes.

MR. ELDER repeated that his department had reviewed the document and had no objections.

SENATOR THERRIAULT moved conceptual amendment one for the purpose of allowing the drafter to reexamine the wording on page 3, line 10. There being no objection, the motion passed.

CHAIRMAN TAYLOR called for additional testimony and received no response. He asked for a motion.

SENATOR COWDERY moved SCS CSHB 106(JUD) with conceptual amendment and fiscal notes from committee with individual recommendations.

There being no objection, the bill moved from committee.

#

#HB214

HB 214-CIVIL ACTION AGAINST MINORS IN BARS

REPRESENTATIVE KEVIN MEYER, bill sponsor, testified that the bill allows any alcohol licensee to bring a civil suit against a minor using a fake identification in order to purchase alcoholic beverages. Although this is a class A misdemeanor, minors frequently are not prosecuted while the business owner faces sever penalties.

Businesses must post a sign informing the public that any minor attempting to enter the premises is in violation of the law and could be liable for damages up to \$1,000.00 which can come from the minor's permanent fund dividend if there is a judgment against that minor. In Anchorage, several establishments split the \$1,000.00 civil fine imposed between the business and the employee as an incentive to employees to catch minors with fake identifications.

HB 214 sends a powerful message to minors that both the state and businesses are serious in their effort to curtail underage drinking. He then referenced several letters of support in the committee packets and noted that there has been an ordinance in effect in Anchorage for three years that mirrors this legislation.

SENATOR COWDERY asked who would get the money from the fine if this becomes a state statute.

REPRESENTATIVE MEYER responded that the civil fine would be between the licensee and the minor. If there is criminal prosecution, then the fine imposed would go to either the city or the state depending on which one prosecutes.

SENATOR THERRIAULT asked whether the licensee could prosecute if the police discover the use of fake identification not the licensee or their employee.

Number 1592

CHAIRMAN TAYLOR asked whether a small claims action had to be filed to get the money.

REPRESENTATIVE MEYER said that was correct. In addition, the parents would be involved which is not the case for criminal action.

SENATOR THERRIAULT asked whether there had to be an incident report filing taken to small claims court to get the \$1,000.00.

MR. O.C. MADDEN, representative from Brown Jug in Anchorage, explained that they have been using the ordinance to deal with underage drinking issues for the last three years. When employees seize fake identification, a demand for payment order is sent to the minors residence of record which immediately involves the parents. Sometimes a small claims action is necessary and it is their policy to split the fine with the employee.

SENATOR THERRIAULT pointed out that although the local ordinance may give authority to demand payment without filing a small claims action, the statute does not. Small claims action must be taken before there is a right to make the demand.

MR. MADDEN responded that the Anchorage ordinance requires a demand letter be sent 15 days prior to initiating a civil action.

CHAIRMAN TAYLOR explained that Anchorage has set up a notification time line and a structure in which to do this. There is no requirement of notification, however. A small claims action could be filed immediately.

He called for additional testimony and received no response. He then asked for the pleasure of the committee.

SENATOR COWDERY moved CSHB 214(L&C) from committee with individual recommendations.

There being no objection, CSHB 214(L&C) moved from committee with individual recommendations.

#

Number 1876

#HB210

HB 210-STAT. OF LIMITATIONS:SEXUAL ASSAULT/ABUSE

REPRESENTATIVE KEVIN MEYER, bill sponsor, testified that HB 210 removes the statute of limitations on felony sexual assault involving penetration. Currently, only sexual abuse of a minor and murder have no statute of limitations and HB 210 adds sexual assault to the list of extreme crimes. New technology and DNA testing make it possible to use evidence many years after the crime has been committed and state law should protect the victim's right to justice. The amendment made on the House floor includes civil penalties as well.

The legislation will become effective on the date it becomes law and as long as the 10 year limitation has not expired by the time HB 210 becomes law, the crime has no limitations for when it can be prosecuted.

CHAIRMAN TAYLOR read from page 1, line 9 through page 2, line 6 and asked whether there was already a 10 year statute of limitations in effect.

REPRESENTATIVE MEYER said there was. He then added that the wording was confusing to him but the drafter was present to answer questions. The intent of the bill centers on page 1, line 13, which states that prosecution of class A, or class B felony sexual assault or violation of AS 11.41.425(a)(2) or (3) may commence at any time. Although there are other felony sexual assaults, they deal with contact while this deals with penetration.

He announced he would have no objection if the committee wanted to drop the amendment that was added on the House floor which drops the statute of limitations for civil penalties. Because his focus was on criminal penalties, he wasn't committed one way or the other to the statute of limitations being extended to include civil penalties as well.

He thought the drafter might better explain the bill arrangement if there were questions.

SENATOR COWDERY asked whether Representative Meyer had an amendment ready.

REPRESENTATIVE MEYER responded that section 1 could be deleted and the sections renumbered.

The reasoning behind the amendment was that if it was possible to prove that a suspect was criminally liable for a 20 year old crime then why shouldn't the victim be able to bring civil charges as well.

Number 2100

CHAIRMAN TAYLOR asked the drafter to explain the confusion over 10 years.

MR. GERALD LUCKHAUPT, an attorney with Legislative Legal & Research Services, Legislative Affairs Agency explained that Section 2(a) says there is no criminal statute of limitations for the listed offences. Subsection (b) maintains the current 10 year statute of limitations for class C felony sexual assault that involves contact and sexual abuse of a minor.

CHAIRMAN TAYLOR asked why page 2, line 3 was included.

MR LUCKHAUPT replied that unless there is another applicable statute that specifies a different statute of limitations or if it is a crime listed in (a) then these are the statutes of limitations that generally apply in Alaska.

CHAIRMAN TAYLOR said, then "it's part of the exception. Except as otherwise provided by law or except as in section (a)."

MR LUCKHAUPT agreed.

CHAIRMAN TAYLOR asked how this affects outstanding cases. For instance, if a case was 12 to 15 years old before the police got proof, current state law would not allow prosecution. Would passage of HB 210 allow prosecution of that case?

MR. LUCKHAUPT responded that if the statute of limitations on an outstanding offense has not yet run, the statute of limitations could be extended.

CHAIRMAN TAYLOR asked about a situation in which no indictment or complaint was brought. Wouldn't it be a waste of time to go forward if there is a statute of limitations that would prevent this? "Does the look back caused by this legislation go beyond the previous 10 years?" For instance, consider that a crime was committed 15 to 20 years ago and the investigation occurred 10 or more years after the crime was committed and there was a 10 year statute of limitations in effect. Would the passage of this legislation allow the prosecutor to prosecute the perpetrator?

MR. LUCKHAUPT replied that once the statute of limitations on an

offense has run, that offense may not be resurrected for criminal prosecution.

CHAIRMAN TAYLOR said he understood that this legislation would only affect offenses that have occurred ten years prior to the effective date of the act.

MR. LUCKHAUPT said that is basically correct but there is a provision that deals with an offense committed against a minor or an individual who was not aware that the offense had occurred so there could be instances in which the look back would extend farther than ten years.

CHAIRMAN TAYLOR thanked Mr. Luckhaupt for the explanation and asked whether there were additional witnesses who wanted to testify.

MR. BLAIR McCUNE, Deputy Director, Alaska Public Defender Agency, testified that the primary concern addressed by the bill is the physical evidence left from a sexual assault in which there is no suspect that can be DNA tested. If the DNA patterns are kept in a data bank, a suspect may be identified for a crime that was committed more than ten years ago.

Side B

Although he can't argue against DNA patterning being used on that category of case, he is concerned about sexual assaults in which there is some kind of recovered memory issue and there is no DNA evidence. A prosecution that is undertaken 10 or 15 years after the fact would put the defense at a decided disadvantage. The reason for statutes of limitation is to provide some protection against older cases in which there is an alibi but it can no longer be established.

With this in mind, he would like to explore the possibility of restricting the extended look back to DNA cases or those involving scientific evidence.

SENATOR THERRIAULT remarked that the occurrence of a resurrected memory case is remote and both the defense and the prosecution could be at a disadvantage in terms of corroborating witnesses or alibis.

MR. McCUNE agreed that the occurrence of such cases is remote but, in such instances, he felt the defense would be at a greater disadvantage than the prosecution by the passage of time.

Number 2281

MS TRISHA GENTLE, Executive Director, Council on Domestic Violence & Sexual Assault, testified in support of the bill. It's important

to recognize that this allows victims the time to heal emotionally and physically before coming forward to prosecute.

She also spoke in favor of the amendment to include civil penalties. Although she thought there would be few instances in which a victim chose that avenue but it would provide a victim another opportunity to feel whole once again.

CHAIRMAN TAYLOR called for questions and there were none. He asked for the pleasure of the committee.

SENATOR COWDERY moved CSHB 210(JUD) forward with individual recommendations.

There being no objection, CSHB (210) and attached fiscal note moved from committee with individual recommendations.

#

#HB102

HB 102-THEFT OF PROPELLED VEHICLES

Number 2214

REPRESENTATIVE PETE KOTT, bill sponsor, introduced the bill as legislation that focuses on the crime of vehicle theft and equal penalties associated with the taking of propelled vehicles without the owners' permission. Stealing watercraft such as skidoos and jet skis would be excluded from the felony prosecution category and would instead be prosecuted at the misdemeanor level.

CHAIRMAN TAYLOR asked whether any of the safety or registration requirements for a boat of that size had been changed.

REPRESENTATIVE KOTT said they had not been changed.

SENATOR THERRIAULT observed that three and four wheel all terrain vehicles were added.

REPRESENTATIVE KOTT responded that he would explain that in the Section 2 discussion. Section 1 deals with watercraft and removes skidoo and jet ski theft from automatic prosecution as a class C felony.

SENATOR THERRIAULT asked if the reason that these watercraft were removed from the automatic felony prosecution category was because they are primarily used for recreational purposes instead of being used as modes of transportation for employment.

REPRESENTATIVE KOTT agreed and added that they are not licensed by the State either.

Additionally, if damage amounts are \$1,000.00 or more or the owner of record incurs reasonable expenses of \$1,000.00 or more or the owner is deprived of the use of the vehicle for seven days or more then the crime will be prosecuted as a class C felony.

CHAIRMAN TAYLOR called for additional testimony and observed that with zero fiscal notes from both the Alaska Court System and the Department of Corrections it was unlikely that there would be many prosecutions.

He asked for the pleasure of the committee.

SENATOR COWDERY moved CSHB 210(JUD) from committee with individual recommendations.

There being no objection, CSHB 102(JUD) and accompanying fiscal notes moved from committee with individual recommendations.

#

CHAIRMAN TAYLOR called a recess at 6:18 p.m. The meeting was called back to order at 7:38 p.m. Chairman Taylor and Senators Therriault and Cowdery were present.

#SB210

SB 210-LIMITS ON RIGHT TO PRIVACY

SENATOR PETE KELLY, bill sponsor, testified that the legislation gives the court direction in addressing issues in areas of privacy.

CHAIRMAN TAYLOR asked whether Senator Kelly had reviewed the amendment Senator Therriault had prepared.

SENATOR KELLY acknowledged he had and he supported the amendment.

SENATOR THERRIAULT moved draft A.1 of amendment 1 for SB 210 for the committee consideration.

CHAIRMAN TAYLOR explained that Section 1 provides for the implementation of the right to privacy within Alaska Statute 01.10. In the beginning of the statute books there is a general provisions section that provides guidance to the three branches on those generic items such as how to repeal or affect an amendment. These general provisions have an effect on all the laws the legislature passes as well as the interpretation of those laws by the executive and judicial branches. Therefore, if the legislature is amending the statutes to provide for the implementation of the right to privacy, then it is appropriate to provide for the same implementation language in the generic section of statutes that

provide guidance to the executive and judicial branches.

He thanked Senator Kelly for bringing the legislation before the committee and Senator Therriault for offering the amendment.

He asked for further discussion. There was no response and amendment 1 passed.

He then offered the following as amendment 2: On page 1, lines 4-5 strike the words "to benefits for unmarried partners." On line 6 strike "extend to" and insert "create". Strike the last word on line 6 and all of lines 7 and 8. On line 6, after the word "receive" insert "public money, a public benefit, or a public service. On lines 13-14, strike "to state funding for abortions." On line 15, strike the words "extend to" and insert "create". After the word "receive" strike "state funding" and insert "public money, a public benefit, or a public service." On page 2, line 1 strike "for abortion."

SENATOR KELLY said he understood the amendment. He added that, in light of the Duke Law Review finding the Alaska Courts the most liberal in the United States, there is no way to anticipate what the courts will do when it comes to implementing social change that he finds unacceptable.

The language inserted in amendment 2 is less specific but it anticipates "further outrages by the court."

CHAIRMAN TAYLOR called for additional discussion or objection to amendment 2 and received no response.

There being no objection, amendment 2 passed.

There being no additional testimony, he asked for a motion.

SENATOR COWDERY moved SB 210, as amended, from committee with individual recommendations.

There being no objection, CSSB 210(JUD) moved from committee with individual recommendations.

#

There being no further business before the committee, the meeting was adjourned at 7:47 p.m.