

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON EDUCATION**

April 15, 2004

12:25 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Paul Seaton, Vice Chair
Representative Dan Ogg
Representative Kelly Wolf
Representative Les Gara

MEMBERS ABSENT

Representative Peggy Wilson
Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE BILL NO. 551

"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

- MOVED HB 551 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 551

SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER

SPONSOR(S): JUDICIARY

04/05/04	(H)	READ THE FIRST TIME - REFERRALS
04/05/04	(H)	EDU, JUD
04/13/04	(H)	EDU AT 11:00 AM CAPITOL 124
04/13/04	(H)	Scheduled But Not Heard
04/15/04	(H)	EDU AT 11:00 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE LESIL McGUIRE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as Chair of the House Judiciary Standing Committee which sponsored HB 551, and answered questions from the members.

RYAN MAKINSTER, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 551 and answered questions from the members.

ACTION NARRATIVE

TAPE 04-20, SIDE A

Number 0001

CHAIR CARL GATTO called the House Special Committee on Education meeting to order at 12:25 p.m. Representatives Gatto, Seaton, Ogg, and Wolf were present at the call to order. Representative Gara arrived as the meeting was in progress.

HB 551-DRUG FELONY DISQUALIFIES TEACHER

Number 0050

CHAIR GATTO announced that the only order of business would be HOUSE BILL NO. 551, "An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

Number 0077

REPRESENTATIVE OGG moved to adopt HB 551, Version A, 23-LS1889\A, Craver, 3/29/04, as the working document. There being no objection, Version A was before the House Special Committee on Education.

REPRESENTATIVE OGG moved to report HB 551 out of committee with individual recommendations and the accompanying fiscal notes.

Number 0089

REPRESENTATIVE SEATON objected for purposes of discussion.

REPRESENTATIVE OGG told the members that he is speaking on behalf of the Chair of the House Judiciary Standing Committee in presenting this bill. He explained that this bill came about because of an incident that occurred recently in Anchorage where a teacher had been arrested on felony drug charges and was still allowed to teach. This caused great concern in the community. As a result of this incident, it was discovered that there is a loophole in Alaska statutes which allows someone convicted of misconduct involving a controlled substance to continue to teach in Alaska's schools. He clarified that in the incident which spurred this interest, the teacher had not been convicted. The House Judiciary Standing Committee believes that this law should be changed to address this loophole and ensure that individuals convicted of this charge would not be allowed to continue to teach.

CHAIR GATTO commented that legally a person charged with misconduct involving a controlled substance would be allowed to continue to teach because the laws of this country say an individual is innocent until proven guilty. He asked how this would be handled. Chair Gatto commented that if the person is convicted he/she would be in jail so presence in the classroom at that point is not an issue.

Number 0307

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, testified as Chair of the House Judiciary Standing Committee, which sponsored HB 551 and answered questions from the members.

CHAIR GATTO referred to page 1, lines 1 through 4, which reads as follows:

"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

CHAIR GATTO commented that he is concerned with the term "convicted" on line 2. He said in this case if a teacher is not yet convicted, but caught with a smoking gun, he/she would still have the privilege of remaining in the classroom.

REPRESENTATIVE McGUIRE replied that is correct. The law says that a person is innocent until proven guilty. It is important

when considering penalties such as removing someone from the work place or not allowing an individual to participate that it is handled in the right way. She clarified that if an individual had been charged with a crime, but not yet convicted, then this bill would not apply to that individual.

Number 0402

REPRESENTATIVE SEATON said he believes this bill only covers the revocation of the teaching certificate, but the school district could take whatever administrative action it wished during the interim [while charges are pending].

Number 0416

CHAIR GATTO agreed with Representative Seaton. The typical action that is taken in a circumstance such as this is to place the individual on administrative leave. That gets the individual out of the classroom, out of the building, and off the property. He added that he knows that this is done in the fire department or police department. Normally, this does not imply that the person is guilty, he said. The public is very protective of their students and would not want that person in the classroom. Chair Gatto summarized that he believes the expectation is higher based upon the field in which an individual works, such as teachers.

CHAIR GATTO announced for the record that Representative Gara has joined the meeting.

Number 0605

REPRESENTATIVE GARA said he understood there would be amendments considered by the sponsor of the bill and asked if they had been provided to the members yet.

REPRESENTATIVE MCGUIRE responded that there was a discussion about whether the amendments would be presented in the House Special Committee on Education or the House Judiciary Standing Committee. It was decided to present the amendments in House Judiciary Standing Committee, she said.

CHAIR GATTO asked if Representative McGuire could briefly go over the amendments that will be presented.

Number 0675

RYAN MAKINSTER, Staff to Representative Lesil McGuire, Alaska State Legislature, testified on HB 551 and answered questions from the members. He explained that after speaking with school board members and other education officials a situation was brought to Representative McGuire's attention where a teacher who was guilty of a class three or class four felony early in life could have his/her ability to teach taken away. In a case where an individual made a mistake as a youth, then overcame his/her problems, and was rehabilitated, it would be unfortunate to deny him/her the ability to teach. The thought is that class three and class four felonies would be removed from the bill and all that would remain in the bill is class one and two felonies, he said. These are basically serious felonies which would include manufacturing controlled substances or selling controlled substances at a criminal enterprise level, he added.

Number 0731

CHAIR GATTO asked if this would include manufacturing controlled substances but with no connection to students or minors.

MR. MAKINSTER stated that a second degree felony includes manufacturing without minors involved. That offense would still be contained in the bill.

Number 0784

REPRESENTATIVE SEATON commented that he does not see any reference to an offense involving a minor in the bill.

MR. MAKINSTER responded that the way the bill is written now it does not specifically address offenses involving a minor, with the exception that in a first-degree felony definition it refers to a controlled substance felony where a person is delivering to a person under 19 years of age.

REPRESENTATIVE SEATON commented that is not the only offense under a class one felony. He asked for a review of felony classes.

Number 0879

REPRESENTATIVE MCGUIRE responded as follows:

On page 1 of the bill, lines 9 and 10, Representative Seaton is correct. We are talking about misconduct involving a controlled substance and then what we do

is refer the series of statutes going all the way up to just prior to a fifth level offense. So 11.71.010 starts with misconduct involving a controlled substance in the first degree and goes all the way to 11.71.040, which comes up to misconduct involving a controlled substance in the fourth degree. Within each of the degrees you have a series of things that are laid out. Within that, Ryan is correct. It can be delivering an amount of lower scheduled drugs, 2A or 3A, to a person who is at least 19, if you are 19, to a person who is at least three years younger than the person. And that is contained within each one of these levels.

Number 0980

So one of the things that I want to point out to the committee that I will be curious to explore in judiciary is whether or not if we eliminate the fourth and third degree felonies, we might want to keep in those elements of that degree that involved distribution to someone who is a minor. And that is something that I want to consider and have not explored yet. So...Ryan is accurate that the school district and school board were concerned that when you are talking about misconduct involving a controlled substance in the third degree and fourth degree, it could be something like marijuana and lets say you had large quantities of it, not huge amounts like you would have in first degree and second degree, but large enough quantities. Lets say you were 19 years old and made a mistake. That could be on your record and bar you from teaching forever. So that is the concern they have raised and I think that there is some merit to what they are saying. That said, the part about the third degree and fourth degree crimes that I might want to consider retaining would be the part that talks about delivering, for example, in misconduct involving a controlled substance in the third degree. It still includes delivery of any amount of a schedule IVA, VA, VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance. That crime concerns me in particular because these are folks that are going to be in the classroom around young people. So that is something to think about.

Number 1118

I can make this available to you, Representative Seaton. It's fairly exhaustive area of the law that kind of goes through a bunch of different subsections for things that you can be doing. It is clear, in my opinion, that first degree and second degree ought to be in, but when you start to get to the third and fourth degree, I'd be interested to have the debate.

Number 1123

REPRESENTATIVE GARA commented that he generally agrees with Representative McGuire. He said that the categories that he would be comfortable saying an individual should not teach are the ones where the individual has sold or dealt [controlled substances] in a school zone. Representative Gara went on to say that he sees it less important to include a younger person who has [been convicted of] possessing or using drugs, but then rehabilitates himself/herself. There is middle ground of those who manufacture controlled substances. He admitted that he does not know enough about drugs to know what that is. Representative Gara said he is not sure if there are some drugs that would be manufactured for a person personal use. If there are, he said he believes that is very much like possession of drugs. Representative Gara told the members that the selling and distribution of controlled substances is the conduct that is most disturbing to him. It is what makes an individual a risk to children, he added.

Number 1237

CHAIR GATTO asked if the "look back" issue is addressed in the bill. For example, if an individual who is 17 years old, snorted cocaine, got caught, and is now 34, has a teaching certificate, a family, and gets discovered, will that person have their teaching certificate revoked.

REPRESENTATIVE MCGUIRE replied that is a great question. The way the bill stands right now that is not addressed. She said that with the exception of the area of drunk driving she is not aware of any look backs in the criminal code. Representative McGuire told the members that if an individual is convicted of a crime as an adult it will count against the person as an offense. If an individual is convicted of a crime as minor, it depends on the circumstances. For example, if it is a sex crime

there is the ability to look back to that in certain circumstances. She told the members that she is not aware of an offense being held against an individual for something that was done as a minor. An offense on an adult's record is held against an individual, she reiterated.

Number 1373

REPRESENTATIVE MCGUIRE agreed with Representative Gara's view that the House Judiciary Standing Committee will have to go through each one of these [felony] categories between the first and fourth degree and pick out the types of behaviors that should be discouraged. She cautioned that there needs to be care when the defense says that a lot of the drugs were being produced for self-consumption. Unless an individual is caught in the transaction, it is fairly difficult to prove that the drugs were being produced for sale. Sometimes the criminal code will look at the amount of drugs because it is not plausible that a person could be consuming the amount of drugs being produced. In summary, she said that she believes most of the things in the first and second degree [felony] will stay in and probably only the things in the third degree that stand out as distribution to a minor.

CHAIR GATTO commented that he believes any distribution of drugs ultimately gets to minors.

REPRESENTATIVE SEATON agreed with Representative Gara's earlier comments. He expressed concern that a person's personal conduct with respect to a controlled substance, such as alcohol, would be taken to a higher level. Representative Seaton said he would like the focus to stay on detrimental behaviors that put kids at risk through distribution or encouraging bad behavior.

Number 1551

REPRESENTATIVE MCGUIRE assured Representative Seaton that she is on the same philosophical tract. It is not her intent in introducing this bill to penalize purely personal conduct that may or may not be offensive to some people in their own home and in a way that is not harming others. She emphasized that the purpose of this bill is to get at the higher-level crimes where there is manufacturing and distributing of drugs in a way that jeopardizes the teacher's role in the classroom.

REPRESENTATIVE MCGUIRE commented that there was an opinion that came down in November, the Noy opinion, that reaffirms the fact

that because of a right to privacy in our constitution an individual has the right to grow marijuana, smoke it at home, whether or not the legislature says it can't be done.

CHAIR GATTO agreed that if the legislature passes legislation that interferes with the right to privacy, it will go to court and be [over turned]. The goal of this bill is to protect minors from teachers who could have a detrimental effect on students.

Number 1669

REPRESENTATIVE GARA commented that if the bill is less inclusive in the charges that a certificate will be denied under this bill, the individual will still have to go through an interview process with the school district where the details of the criminal charge may be discussed. He reiterated that individuals still have to be fingerprinted and undergo a background check to obtain a teaching certificate.

CHAIR GATTO agreed with Representative Gara that teachers would be caught in the interview process. He told the members that in his district the human resources departments does a very thorough check on teacher applicants. In fact, there has never been an instance in eight years where a fingerprint or background check came back that would indicate anything was missed in the interview process, he said.

CHAIR GATTO pointed out that Representative Gara had Alaska Statute 11.71.010 related to controlled substances copied and provided to the members.

REPRESENTATIVE McGUIRE directed the members to look at Sec. 11.71.020, and read the following:

Misconduct involving a controlled substance in the second degree. (1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

REPRESENTATIVE McGUIRE went on to say the Mr. Makinster pointed out that the manufacturing part of this statute refers only to methamphetamines. She said that is probably because of the serious nature of methamphetamines which would rise to a different level.

CHAIR GATTO commented that House Special Committee on Education is really interested in this legislation in terms of policy. He said he believes it is more appropriate to have the House Judiciary Standing Committee scrutinize the legal aspects of the bill.

Number 1955

REPRESENTATIVE SEATON told the members that he is comfortable with the assurances of the chair of the House Judiciary Standing Committee that the bill will be refined. He removed his objection.

Number 2001

CHAIR GATTO said there being no further objection, HB 551 was reported out of the House Special Committee on Education.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Education meeting was adjourned at 12:55 p.m.