

HOUSE FINANCE COMMITTEE  
May 14, 2003  
8:50 A.M.

TAPE HFC 03 - 91, Side A  
TAPE HFC 03 - 91, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 8:50 A.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair  
Representative Bill Williams, Co-Chair  
Representative Kevin Meyer, Vice-Chair  
Representative Berkowitz  
Representative Mike Chenault  
Representative Richard Foster  
Representative Mike Hawker  
Representative Kerttula  
Representative Carl Moses  
Representative Bill Stoltze  
Representative Jim Whitaker

MEMBERS ABSENT

Representative Eric Croft  
Representative Reggie Joule

ALSO PRESENT

Representative Peggy Wilson; Diane Barrans, Executive Director, Postsecondary Education Commission, Department of Education; Camille Soleil, Alaska Nurse Association, Anchorage; Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law; Laurie Hugonin, Executive Director, Alaska Network on Domestic Violence and Sexual Assault

PRESENT VIA TELECONFERENCE

John Novak, Assistant Attorney General, Department of Law, Anchorage; Linda Wilson, Deputy Director, Alaska Public Defender Agency, Anchorage

SUMMARY

HB 211 An Act relating to a student loan repayment program for nurses, and amending the duties of the Board of Nursing that relate to this program; and providing for an effective date.

CS HB 211 (HESS) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Community & Economic Development and a new fiscal note by the Alaska Postsecondary Commission.

#HB216

HB 216 An Act relating to municipal taxation of refined fuel products.

HB 216 was SCHEDULED but not HEARD.

#

HB 244

An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date.

HB 244 was HELD in Committee for further consideration.

HB 267

An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date.

HB 267 was SCHEDULED but not HEARD.

#SB106

CS SB 106(FIN)

An Act relating to tires; and providing for an effective date.

CS SB 106 (FIN) was SCHEDULED but not HEARD.

#SB128

CS SB 128(FIN) am

An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date.

CS SB 128 (FIN) am was SCHEDULED but not HEARD.

#HB244  
HOUSE BILL NO. 244

An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated that HB 244 was legislation resulting from long-time concerns experienced by prosecutors statewide. The legislation will address procedural provisions in law. She requested that Mr. Novak address the provisions of the bill.

JOHN NOVAK, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, summarized the sectional analysis of changes made to the House Judiciary Committee version.

- Section 1. He stated that under current law, lawyers have the right to interrupt and/or stop the interview. These provisions clarify the rights of the attorney.
- Section 2. This section is a revision, complying with the current status of the law. It corrects the statute to comply with the directive of the Alaska Supreme Court.
- Sections 3, 4, 6, & 7. These sections deal with a situation involving multiple victims. Under current law, the Courts can impose the same sentence, all at the same time. Under the proposed bill, it is designed so that the Courts would have to impose some of the time consecutively. In a murder context, the Courts would have to impose a mandatory minimum sentence consecutively.
- Section 5. This section speaks to proving a prior conviction, which could trigger presumptive sentencing. The provision limits the questions to the prior conviction to two items, the right to a lawyer and to a jury trial. Under current law, the defendant could relitigate the out-of-state conviction.

The new section creates some degree of finality for not relitigating an out-of-state conviction within Alaska.

- Sections 8, 9 & 10. These sections deal with discovery and disclosure to help avoid delays. The provisions will help to avoid surprise attacks, moving the deadline from 10 to 30 days, before the trial to give notice. This action makes it more fair and the disclosure up-front in order to avoid situations that continue cases and surmounting costs.
- Section 11. This section deals with evidence and its use in the trial. The provision addresses a specific circumstance of compliance under waiver. Under current law, the prosecutor cannot use prior statements. The new provision allows that if that scenario should occur, the prosecution could use the prior statement. The State would need to prove that the prior statement was voluntary and not forced. The provision would also apply to evidence used to impeach a witness.
- Section 12. This section deals with the admissibility of conviction to impeach a witness. Certain sentences can be used from the date of conviction for five years. The prosecution could use the prior conviction. Often times, the person is not out of jail before the time lapses. The new language provides that the clock starts running from the time that they are unconditionally discharged from the offense.
- Section 13. This section deals with the context of domestic violence cases. Unless there is intervention, this type scene could escalate and someone could be killed in the head of passion. The proposed legislation is another step in an effort to affectively intervene and become involved. It allows for admission given within 24-hours of the domestic violence circumstance.

Representative Kerttula inquired about the consecutive and concurrent sentencing and what the previous statute had intended. Representative Kerttula questioned how to address "intent" in that type of case. Mr. Novak responded that in 1982, the Legislature had enacted current law. The intent of that addressed when there were multiple victims and the total of consecutive time. He commented that language had not been drafted well and when the Court interpreted it, it was most favorable for the defendants, thus giving the

Court's permission to run the time consecutively. Furthermore, the language expressed legislative preference for consecutive sentencing.

Mr. Novak noted that regarding the second concern, the language provides for the mandatory minimum sentence, which would have to be consecutive for the most serious crimes. In certain circumstances relating to multiple murders, the Court would have to impose the mandatory minimum sentence for each conviction. In the current system, the victim's families often feel that their victim "did not count". The proposed language recognizes that each of the persons included in the multiple murders has value and that the Court will inflict on the guilty party at least the mandatory minimum. All victims want the guilty person to be required to serve consecutive jail time.

Representative Kerttula inquired if that language could apply if there had been a car crash, classified as an assault of behavior. She believed that the same "guilt" could apply in that situation and would run the consecutive minimum sentencing. Mr. Novak explained that in a car crash circumstance, if all victims in the car were hurt, but not necessarily killed, the guilty party would be convicted for a crime against a person. Then the Alaska Court System would have to impose at least one day of consecutive time. The sentence would not be as dramatic as it would be on the "murder end".

Representative Kerttula acknowledged that was correct unless of course that person had a previous charge. Mr. Novak replied that the Alaska Court System could run them concurrently except for the one-day period until the highest level of offense was met. The language would not go all the way back to the Court's original intent.

Representative Kerttula commented that the person would not be under presumptive sentencing unless it had been under the more heinous type of crimes. Mr. Novak corrected that the presumptive sentencing would apply. The Court's would have to indicate that presumptive sentencing was served with a consecutive sentence of at least one day.

Representative Kerttula pointed out that it would not be presumptive for the following sentence but only on the first. Mr. Novak responded that it would be presumptive but not necessarily consecutive.

Representative Berkowitz commented that if there are multiple victims, two years would be charged for each and if there were four victims, it would total eight years. Under the proposed scheme, that sentence would be two years and three days. Mr. Novak agreed that was correct.

Representative Berkowitz referenced Section 5, which states that the defendant could challenge the validity of the prior conviction only if the defendant was denied right to counsel. He pointed out that in many cases, there is newly discovered evidence or DNA. He asked if there was any other provision in the law that would allow someone to challenge a prior conviction. Mr. Novak replied that the idea is that if there were an out-of-state conviction, the person would re-litigate that in the state that it occurred. However, for Alaska prior convictions, the person has the right to appeal.

Representative Berkowitz asked the mechanism for someone that had served a term in another state and then came to Alaska and was convicted for something else. He asked what would be the forum for them to use to challenge the prior conviction. Mr. Novak explained that they would have to challenge it in the state of origin and under the law of that jurisdiction. In Alaska, there is a provision for the post conviction relief window of two years.

Representative Berkowitz recommended that section needs a "trap door" to allow the defendant to contest or challenge the prior conviction if there is certain evidence made, which could prevent a "miscarriage of justice". Mr. Novak explained that if the Department found out that there had been a wrongful prior conviction, then the prosecutor would recognize that and undo the situation existing in Alaska. The concept is that in Alaska, a new conviction would be discussed. Deciding if everything done previously was proper would be associated with the previous case.

Representative Berkowitz stated that when in a presumptive sentencing case, there must be advantages accrued in the prosecution to raise credible challenges.

Representative Berkowitz referenced Section 8 and asked what "the defendant would be likely to rely upon for the defense" mean. Mr. Novak responded that language would relay the idea and would provide for giving notice to things that you may later choose not to do and would provide for avoiding the prospect of disclosure. The term could give incentive and notice for defenses and place the cards on the table.

Representative Berkowitz referenced Section 8, asking about the use of "timely" on Page 5, Line 20. He suggested "timely" could provide enough discretion than the fixed 30-day rule.

Mr. Novak advised that the idea was to give a clearer understanding and that giving 30-days provides certainty. He added that the Court would be able to relax the 30-day rule through Rule 53 and that in the interest of justice,

the Court could extend the rule. The idea is to provide certainty regarding what "timely" means.

Vice-Chair Meyer noted that the HB 244 would be HELD in Committee for further consideration.

#HB211  
HOUSE BILL NO. 211

An Act relating to a student loan repayment program for nurses, and amending the duties of the Board of Nursing that relate to this program and providing for an effective date.

REPRESENTATIVE PEGGY WILSON explained that Alaska and the nation are experiencing a severe shortage of nurses. HB 211 would establish the Alaska Nurse Recruitment Loan Repayment Program, which could help to change that. The program would offer up to \$2,000 per year, not to exceed \$10,000 total for nurses to repay nursing loans. Hopefully the incentive will attract new nurses to the State and encourage Alaskans to pursue nursing vocations here in Alaska.

In 2002, the Alaska Colleagues in Caring, in collaboration with the Alaska Hospital and Nursing Home Association (AHNHA), surveyed facilities in Alaska regarding nursing workforce needs. Results showed that vacancy rates for Registered Nurses (RN) had increased from 5.7% in 2000 to 11.5% in 2002, with increasing vacancy rates projected into the future. Facilities in western and northern Alaska reported a vacancy rate of over 20% and according to information from other sources, the vacancy rate in some remote areas of Alaska is as high as 35 percent.

Representative Wilson stated that to qualify for loan reimbursement, the individual must be hired as a nurse in Alaska on or after July 1, 2003, be licensed to practice as a nurse in Alaska, work as a nurse in the State throughout the loan repayment period, and have outstanding educational loans from a recognized lending institution. Additional eligibility criteria and guidelines for the loan program would be set in regulations adopted by the Board of Nursing, in consultation with the Alaska Commission on Postsecondary Education. That could include guidelines on establishing priorities for participation in the loan repayment program if funding for the program was not adequate to meet the need. The guidelines may include determinations based on areas of the State and nursing specialties affected by shortages.

Representative Wilson commented that funding for the program might be appropriated from the Student Loan Corporation dividend (the return of contributed capital authorized in AS 14.42.295(a)) or alternate State, federal, and/or other

sources. The executive director of the Alaska Commission on Postsecondary Education would administer the program.

Vice Chair Meyer noted that outside testimony had been closed on HB 211 and if there were questions, the Department could respond.

Representative Hawker understood that the legislation would provide a fund to repay qualifying educational loans for students entering the nursing program. He asked if there were any "sidebars" regarding what education loans might be paid. Representative Wilson replied that they would have to be nursing loans for classes to become a nurse. There is a criterion established. The guidelines would be determined by the Board of Nursing in consultation with the Alaska Commission on Postsecondary Education. If the funds are not available, then who receives the loans would be limited to the areas most critical need.

Representative Hawker asked if it would make any difference at what institution the nurse received their degree. Representative Wilson explained that the regulations are not yet known and that the Board of Nursing and Alaska Postsecondary would address those concerns.

DIANE BARRANS, EXECUTIVE DIRECTOR, POSTSECONDARY EDUCATION COMMISSION, DEPARTMENT OF EDUCATION, advised that there are no constraints on where the student goes, however, they would have to be pursuing education in nursing. It would be a loan to an individual to attend wherever they choose if it were an accredited institution that leads to the nursing credential.

Representative Hawker inquired if there was any incentive to achieve their education in an Alaskan facility. Ms. Barrans replied that language had not been specifically included because of the University of Alaska's ability to compete on a low cost basis with other institutions.

Representative Hawker inquired if there were an anticipated number of people applying for the benefits under the bill. Ms. Barrans responded that nurses in the program at the University of Alaska would 100% qualify as long as they remain in Alaska and practice in the State.

Representative Hawker noted the costs associated with the program. He agreed with the overriding social need and seriousness of the consideration, but questioned the fiscal reimbursement estimate for education from the University of Alaska.

**TAPE HFC 03 - 91, Side A**

Ms. Barrans replied that 25% would be an educated guess of the number of nursing professionals that the University currently has capacity for. In the current graduating year, there may be 150 nurses. That number is progressively increasing to 220 within the next three years. The numbers reflect the capacity of Alaska to produce nurses.

Representative Berkowitz pointed out that one of the critical components of the University's budget this year had to do the expansion of the nursing program. He emphasized that it is critical that the State should help subsidize the nursing crisis. The State needs more nurses.

Representative Hawker pointed out that the fiscal note indicates an escalation of costs in the future. He questioned how the escalation had been determined and how much of that would come from the University of Alaska. Ms. Barrans expected that number to remain at the 25% level. The fiscal note projects the number of new nurses entering the program to be 459 the first year and to grow at a slightly larger participation rate during the next four years. To the extent that the University can produce some portion of that, in 2004, perhaps 200 nurses would graduate from the program. The maximum capacity would be 220 per year.

Representative Berkowitz voiced appreciation for the work done on the proposed legislation.

Ms. Barrans advised that the funding for the fiscal note would come from general funds. Those funds would be earmarked on an annual basis and appropriated to that fund. Finances for FY04 have been otherwise appropriated through the Capital budget. She reiterated that for at least the first year, the fiscal note calls for general funds to capitalize the project.

Representative Hawker questioned if there would be a sunset on the program. Ms. Barrans responded that the program would continue to operate as long as the appropriations were placed into the fund.

Representative Hawker recommended a sunset clause be added in order that the Legislative Budget and Audit Committee could provide an evaluation of program performance. He inquired if the sponsor would be receptive to adding that language.

Representative Kerttula interjected that the State could always repeal the program. Placing a sunset could discourage participants from becoming a nurse; when the students see that possibly coming, they might opt out.

Representative Wilson emphasized that studies indicate that in the next seven years, the State is going to need another 4,100 nurses. She pointed out that this is a crisis situation and the legislation is conditional if the funding is there.

CAMILLE SOLEIL, (TESTIFIED VIA TELECONFERENCE), ALASKA NURSE ASSOCIATION, ANCHORAGE, offered to answer questions of the Committee.

Representative Foster MOVED to report CS HB 211 (HESS) out of Committee with individual recommendations and with the accompanying fiscal notes.

Representative Hawker OBJECTED for a comment. He noted that he would consider prior comments made by Representative Kerttula. Representative Hawker WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered.

CS HB 211 (HESS) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Community & Economic Development and a new fiscal note by the Alaska Postsecondary Commission.

#HB244

HOUSE BILL NO. 244

An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date.

LINDA WILSON, (TESTIFIED VIA TELECONFERENCE), DEPUTY DIRECTOR, ALASKA PUBLIC DEFENDER AGENCY, ANCHORAGE, provided the position of the public defender and highlighted concerns that remain in the bill.

- Section 1. This section rewrites and includes numbers regarding the prisoner's rights after they are arrested. The controversy has to do with denying the ability of the prisoner to access their lawyer unless an attorney is specially requested. Family or friends could not retain a lawyer for the prisoner. With the revision, it would allow for a relative or

family friend to retain an attorney. She supported that change.

- Section 2. This section draws from the immunity statute currently on the books. Section 2 provides a good revision and corrects the language, making it constitutional. Historically, Alaska has required transactional immunity. Unfortunately, the Alaska Statutes changed a number of years ago and only granted limited use of immunity, which was appealed and in a unanimous decision, it was agreed with the Court of Appeals that the statute was unconstitutional. The new language makes the transactional immunity and the statute reflect what the constitution requires.
- Section 3. Section 3 is a conforming section that relates to the next section, which mandates consecutive terms of imprisonment. There is a preference for consecutive sentences. There are certain circumstances where someone could commit similar types of crime and because the crimes are in different judicial districts, there have been various types of cases. In those concerns, there is a preference for continuous sentences. The Court decided from prior immunity in statute that there should be a concurrent sentence and not a mandated consecutive sentence. She commented that the preference and mandate for consecutive sentencing makes sense. There must be discretion from the judge. There could be an easy fix in that section by adding additional language, clarifying that if the prior event was committed after the prior judgment, then the second offense would be fines.
- Section 4. The Public Defender has concerns with the language contained in Section 4. Mandating consecutive sentence without giving the judge any discretion will place the State of Alaska into a bad situation.
- Section 5. She noted that Section 5 addresses concerns with challenging the prior conviction. The burden shifted to the defendant and to challenge that prior conviction, there would have to be a right to cancel or the right to a jury trial. She suggested that limitation was too narrow.
- Sections 6 & 7. These sections are conforming amendments that relate back to the sentencing section.

- Section 8. This section speaks to the notice of defenses. She stated that the State would be "treading on dangerous ground" when demanding preclusion of defense. There are constitutional rights when faced with a criminal charge, which is part of the constitutional system for someone facing criminal charges. Demanding preclusion of the defense could violate the person's rights. The defendant should not be precluded from presenting their defense. She voiced concern with the "expert witness" language. Prohibiting the defense witness from testifying is extreme. Allowing the judge to make careful consideration to the prejudices would be a much better path than requiring preclusion.
- Section 13. This section would create a new exception to the hearsay rule and would have significant constitutional problems. These cases can be full of emotion, passion and bias. Removing the constitutional right of the defendant to cross-examine a witness would be wrong and not a good idea. Creating an exception would be best.

Co-Chair Williams advised that the bill had been discussed in the House Judiciary Committee.

Representative Kerttula requested that Ms. Wilson be available to answer questions of the Committee at a later meeting. She noted that she did have many questions prepared on the issue. Co-Chair Williams stated that he planned to move the bill as soon as possible. Representative Kerttula reiterated that she had significant questions regarding the financial impact of the legislation.

LAURIE HUGONIN, EXECUTIVE DIRECTOR, ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT, advised that the Network supports Section 4 of the bill, the consecutive sentencing and Section 13, expanding the period of time to accept the domestic violence report. She added that the Network did support language from the previous version regarding prior convictions. Ms. Hugonin understood that there was an amendment pending in Committee that would add that language back into the bill.

Co-Chair Williams reiterated that HB 244 had been before the House Judiciary Committee and had addressed many of the expressed concerns.

HB 244 was HELD in Committee for further consideration.

#

ADJOURNMENT

The meeting was adjourned at 10:06 A.M.