

**ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE**

March 5, 2003
1:30 p.m.

TAPE(S) 03-8

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Gary Wilken
Senator Bettye Davis

MEMBERS ABSENT

Senator Gretchen Guess

COMMITTEE CALENDAR

SENATE BILL NO. 8
"An Act relating to tampering with public records."
HEARD AND HELD

SENATE BILL NO. 55
"An Act relating to tampering with public records."
HEARD AND HELD

SENATE BILL NO. 17
"An Act relating to an optional group of persons eligible for medical assistance who require treatment for breast or cervical cancer; and providing for an effective date."
SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

SB 8 - No previous action to record.
SB 17 - No previous action to record.
SB 55 - No previous action to record.

WITNESS REGISTER

Richard Benavides
Staff to Senator Bettye Davis
Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of SB 8

Joanne Gibbens
Program Administrator
Division of Family & Youth Services
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: DHSS supports the concept of both SB 8 and SB 55

Anne Carpeneti
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions about SB 8 and SB 55

ACTION NARRATIVE

TAPE 03-8, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:32 p.m. Senators Davis, Wilken, Green and Dyson were present. Senator Guess was excused. Chair Dyson told members that the committee would not hear SB 17, as a very similar piece of legislation passed the Senate earlier that day and the sponsor agreed there is no need to advance it. He asked for the permission of committee members to take testimony on SB 8 and SB 55 concurrently. No one objected.

^#SB 8

^#SB 55

SB 8-TAMPERING WITH PUBLIC RECORDS
SB 55-TAMPERING WITH PUBLIC RECORDS

MR. RICHARD BENAVIDES, staff to Senator Bettye Davis, sponsor of SB 8, read the following sponsor statement:

The tampering of public records at any time is illegal and can create problems and set in motion a series of unintended consequences. However, when the tampering involves the records of a child under the age of 18 in

the care and custody of the state, those consequences can be grave. While I've not personally discovered through my work the instances of this occurring here in Alaska, throughout the country caseworkers that falsify records and fail to check on children are not new concerns. These issues took on new meaning in light of five-year old Lila Wilson, a Miami girl who disappeared while in the care of the State of Florida. In that case, the department is still struggling to explain why it failed to check on her properly for more than a year.

Accurate and honest record keeping are of paramount importance to the state in decisions that need to be made for our most vulnerable children. The mere fact that these children are already in the care or custody of the state suggests that they must be handled with extra care. We must take that extra step to ensure that all records dealing with their care are maintained to the highest standards of integrity. SB 8 is designed as a disincentive to those who would falsify these records.

CHAIR FRED DYSON told members that, as the sponsor of SB 55, he was motivated by the public and media attention to the Florida case to file a similar bill, not knowing that Senator Davis had already filed one. After filing SB 55, he realized it was not specific to public records of children and gave some thought to limiting the bill's scope to only those records. He decided that no public records should be altered because there are two more categories of people he is concerned about. He has been told that Alaska does a better job than most states regarding protection of adults in the prison system. Alaska has very few cases of prisoner rape and few cases of prisoner assault. However, he has heard anecdotally that Alaska's reputation may not be as good as the official record indicates.

CHAIR DYSON said he is also concerned about disabled adults who reside in senior centers, particularly community based programs. He pointed out that every legislator has probably heard a constituent complain that a relative was maltreated. He does not want a service provider's record of maltreatment of a disabled adult to be covered up. For those reasons, he chose not to limit SB 55 to children only.

SENATOR DAVIS asked Chair Dyson if he investigated whether the affected statute applies to the records of people who are not in state custody.

CHAIR DYSON responded that it is his understanding that altering any public record, whether a person is in custody or not, would be a crime.

SENATOR BETTYE DAVIS asked whether he was referring to a different part of the statute because SB 8 applies to a provision in statute that refers to children in state custody or state care.

MR. BENAVIDES said he spoke to Ms. Carpeneti in the Department of Law who said there was no problem with SB 8.

SENATOR DAVIS said she agrees it is important to consider adults in custody but she focused on children because she knows of cases, "even here where we don't always know where our children are."

SENATOR DYSON said he sat with the former commissioner of the Department of Health and Social Services (DHSS) and looked at autopsy pictures of children who had died while in state custody. Although he saw no evidence of records being changed, had the Division of Family and Youth Services (DFYS) responded earlier to reports of suspicion of harm, lives could have been saved.

SENATOR DAVIS said she does not believe the problem of tampering with records is systemic in Alaska as it might be elsewhere. However, she does believe that SB 8 will provide protection in the future when there may be a shortage of workers to carry the load and records might be altered to cover problems. She said that she would agree to add the public records of adults to her bill if doing so does not present a legal issue.

MS. JOANNE GIBBENS, program administrator for DFYS, told members that the department agrees with the concept of both SB 8 and SB 55. DHSS agrees that any individual who knowingly falsifies or tampers with the public record of any individual in the care or custody of the state should be subject to criminal charges. She noted that records regarding the cases of children in the custody of DHSS are critical to document the actions taken by department staff, especially social workers and probation officers. The courts rely on those records to determine whether the actions taken are in the best interest of the children and

families served. Records are often subpoenaed by the legal system and they hold social workers and juvenile probation officers accountable. She deferred to the Department of Law to answer any legal questions.

SENATOR DAVIS pointed out that SB 8 has a Senate Judiciary Committee referral, which is where the legal question could be addressed.

CHAIR DYSON asked Senator Davis if, aside from the inclusion of adults in SB 55, whether anything else should be changed.

SENATOR DAVIS said the bills are essentially the same except for the inclusion of adults.

CHAIR DYSON asked Senator Davis if it is her intention to have the bill apply to the records of people who are not in state custody, as well as those who are.

SENATOR DAVIS said she does not have any problem with including them if [there are no legal complications].

CHAIR DYSON announced a brief at-ease to wait for a representative from the Department of Law.

Upon reconvening the meeting, CHAIR DYSON asked Ms. Carpeneti if she could provide the committee with a statutory definition of the word "care" and whether it applies to anyone receiving a state benefit.

MS. ANNE CARPENETI, Assistant Attorney General, Department of Law (DOL), told members she would have to research that question and could not provide an answer at this time.

CHAIR DYSON said he was thinking about the records of people who are not only incarcerated or in the custody of DFYS, but also about the records of incapacitated adults in treatment centers or adults who are mentally impaired.

MS. CARPENETI said she could provide the committee with an answer by Monday.

SENATOR LYDA GREEN asked if a public record is kept on file.

MS. CARPENETI said that "public record" is defined in statute and that she would provide the committee with a definition.

CHAIR DYSON asked Ms. Carpeneti to comment on the appropriateness of making tampering with records a class C felony as opposed to a high-level misdemeanor.

MS. CARPENETI said she thought the crime of tampering with public records is already a class A misdemeanor. SB 8 will raise the crime to a class C felony. She said she did not know if DOL has taken a position on whether the punishment should be increased.

CHAIR DYSON clarified that he would like Ms. Carpeneti to answer the question of whether the existing language in either SB 8 or SB 55 deals with a person who is receiving a state benefit but may not be in state custody. He announced SB 8 and SB 55 would be heard again on Monday.

There being no further business to come before the committee, CHAIR DYSON adjourned the meeting at 1:55 p.m.

#