

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 17, 2003

1:35 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

Senator Scott Ogan, Vice Chair

COMMITTEE CALENDAR

Confirmation Hearing:

Violent Crimes Compensation Board - LeRoy Barker
CONFIRMATION ADVANCED

SENATE BILL NO. 2

"An Act relating to recovery of civil damages from the parents or legal guardian of a minor; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 49

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 68

"An Act relating to the office of victims' rights."

MOVED CSHB 68(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

Confirmation Hearing: Violent Crimes Compensation Board

See Senate Judiciary minutes dated 3/5/03.

SB 2 - See Health Education and Social Services minutes dated 2/24/03.

SB 49 - See State Affairs minutes dated 2/20/03.

HB 68 - See Community and Regional Affairs minutes dated
2/26/03.

WITNESS REGISTER

Mr. LeRoy J. Barker
1400 W. Benson Boulevard, Suite 315
Anchorage, AK 99503

POSITION STATEMENT: Conferee, Violent Crimes Compensation Board

Mr. Wes Keller
Staff for Senator Fred Dyson
Room 121, State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 2

Ms. Joanne Gibbens
Program Administrator,
Division of Family and Youth Services
P.O. Box 110630
Juneau, AK 99811-0630

POSITION STATEMENT: Answered questions on SB 2.

Mr. Tim Steele
Vice President and Legislative Chair,
Anchorage School Board
P.O. Box 196650
Anchorage, AK 99519

POSITION STATEMENT: Supports SB 2

Ms. Pam Findley
Revisor of Statutes,
Legislative Legal and Research Services,
State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 49

Representative Ralph Samuels
Room 412, State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor HB 68

ACTION NARRATIVE

TAPE 03-8, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present were Senators French, Therriault and Chair Seekins. Senator Ellis arrived at 1:42 p.m.

The first order of business to come before the committee was SB 2.

SB 2-PARENT LIABILITY FOR DAMAGE BY CHILD

CHAIR SEEKINS invited Mr. Wes Keller to introduce SB 2. He explained that a blank committee substitute (CS) was in members' packets. There was no objection stated and work draft SB 2 version \I was before the committee as the working document.

MR. KELLER, staff for Senator Fred Dyson, testified that the core purpose of SB 2 is to remove the \$10 thousand limit on the amount that can be recovered from parents when a minor child intentionally destroys property or commits vandalism. The Alaska Association of School Boards and the Anchorage School District support SB 2. The legislation was introduced as a result of damage that occurred in Anchorage that was less than \$1 million, but considerably more than \$10 thousand.

During hearings on the House version of this bill, and during the previous Senate hearing, there was discussion that raised the question of whether it was more appropriate to raise the limit rather than eliminate it. The sponsor wants to remove the limit completely so when damage occurs the minor can be held liable for the actual cost of the damage. If the state removes responsibility from the parents, and then if the state does not take the responsibility for the damage, the cost gets passed to the victim. That is not appropriate nor is it appropriate for the state to assume that kind of parental responsibility.

MR. KELLER assured the committee that this does not mean that if there is \$1 million in damage done that \$1 million has to be collected. The judge may consider mitigating circumstances and the situation could be worked out in court. There are laws involving bankruptcy protection so a parent wouldn't be ruined because of a child's actions.

MR. KELLER explained the CS before the committee came about due to an inconsistency in the law. Section 13.26.070 states the guardian of a minor is not liable for the action of the child. Yet, legal guardians are held responsible for the actions of a minor in Section 34.50.020. The intent of the CS is to remove

the legal guardian language to make the two laws consistent. This is consistent with how the Division of Family and Youth Services (DFYS) is doing business and page 25 of the Alaska Foster Parent Handbook explains that the state carries liability insurance to cover foster parents if a foster child causes damage.

MR. KELLER said an additional amendment is being suggested because several Senators noted that the child is left harmless. They asked about recovery from the child's permanent fund or other assets. The Department of Law determined that if damage is done, there is no protection of the child's assets. Typically, going after a child's assets isn't done because the revenue per year is small compared to legal costs. Amendment \I.1 would require the victim to get a judgment on the child before seeking the assets of the parent.

SENATOR FRENCH asked how much liability insurance the state carries for foster parents.

MS. JOANNE GIBBENS, Division of Family and Youth Services, program administrator didn't know, but offered to get the information. She said she did know that the state indemnifies foster parents against any physical harm a child might do to another individual.

SENATOR FRENCH said, "But you don't know the amount, it could be \$5 thousand it could be \$1 million."

MS. GIBBENS agreed.

SENATOR FRENCH said he wanted to be crystal clear on the amendment because there were markings on it. He pointed out that the CS before the committee is \I version and not \I.1 version. He referred to Section 34.50.020 where subsection (d) contained handwriting. He asked if this exempts legal guardians or adoptive parents from liability.

MR. KELLER explained the un-amended Section 3 is meant to address adoptive parents that are receiving a state subsidy for adopting a hard to place child. The goal is to hold adoptive parents harmless when an older child is adopted.

The amendment adds a new Section 2, and allows recovery of damages only after the person bringing a civil action has first obtained a judgment against the child's assets.

CHAIR SEEKINS asked if there was a motion on the amendment.

SENATOR FRENCH asked if the amendment was \I.1.

CHAIR SEEKINS said that was correct.

SENATOR THERRIAULT asked if the prime sponsor of the bill brought the amendment to the committee.

MR. KELLER said that was correct.

SENATOR THERRIAULT asked if it clarifies that people can't go after the assets of the legal guardians until a judgment on the child is attained.

MR. KELLER clarified it is actually the assets of the parents. The intent of the amendment is to put the child's assets on the line first.

SENATOR FRENCH asked if the original bill and the CS exempt legal guardians.

MR. KELLER said the original language that exists in law exempts legal guardians.

SENATOR FRENCH asked whether the CS maintains that exemption.

MR. KELLER said yes. The terminology on legal guardians is being removed because it is confusing in both laws before the committee.

SENATOR FRENCH asked him to explain it from the beginning.

MR. KELLER referred to the handout containing Sec. 13.26.070 and Sec. 34.50.020. He said Sec. 13.26.070 says the guardian is not liable to third persons, by reason of the parental relationship, for the acts of the ward or the acts of the child. Current Sec 34.50.020 language allows recovery of damages from the legal guardian. The CS goes way beyond the purpose of the bill, which is to get rid of the cap on the liability. The CS fixes this section of law to reflect both what the department is doing and what is reflected in other parts of the law.

SENATOR FRENCH asked if the reform is to keep foster parents liable or not liable.

MR. KELLER answered not liable.

SENATOR FRENCH reiterated that foster parents are not liable for the damage of their charges.

MR. KELLER said that is correct.

CHAIR SEEKINS read from page 2, line 19, (B). "The adoptive parents of an unemancipated minor if the adoptive parents are receiving financial assistance from the state as a result of that adoption." He asked if children suffering from fetal alcohol syndrome (FAS) are normally adopted under this provision.

MS. GIBBENS answered yes. There are federal guidelines for what constitutes a special needs child for the purposes of adoption and being eligible for an adoption subsidy. Because fetal alcohol syndrome children have a lot of complicated medical and or behavioral issues, they would qualify as a child that would be eligible for a subsidy.

SENATOR THERRIAULT said this bill is an attempt to get these two sections of statutes to jive. He said he worked on the legislation when the cap was raised from \$2 thousand to \$10 thousand and was trying to refresh his memory on the things that were brought up at that time.

He asked whether he would be exempt if his sister was incapacitated or had died and he was acting in the capacity of legal guardian for his nephew, but hadn't gone through the adoption process and wasn't paid by the state.

MR. KELLER replied, as he understood it, Senator Therriault would be exempt if he has the legal position of being guardian of the child. The legal guardian of the child, guardian ad litem or foster parent would be held harmless.

CHAIR SEEKINS added Sec. 13.26.070 exempts Senator Therriault as a legal guardian. This section is kind of a Revisor's bill and would remove blame from a legal guardian. A legal guardian would not be responsible, only the blood parent would be responsible.

SENATOR THERRIAULT asked if Sec. 13.26.070 is applicable in all guardianship relationships or was that a specific section of statute that dealt with state foster parent situations.

MR. KELLER said it is a clumsily placed section of law under children and adults with disabilities. The pure straight language of the bill looks like there is an obvious conflict. The Department of Health and Social Services (HESS) referred them to the section and they presumed that foster parents and legal guardians were not liable. He checked a court rule that found guardians ad litem are not held responsible. He said that was not a very good answer. He didn't think that section of law, Sec. 13.26.070, would be a problem in court. As far as DFYS knew, it had not been tested

CHAIR SEEKINS told Senator Therriault they could request an opinion from the Department of Law and hold another hearing.

SENATOR THERRIAULT said he was trying to figure out the policy call. The state has children in foster homes and wants to place them in a good setting. The state wants loving adults to take those children and doesn't want those adults to have the risk of taking in a troubled teen that might break out the neighbor's window and place the adult's assets at risk.

SENATOR THERRIAULT then posed a scenario in which he took his nephew under guardianship for most of his life and let him completely run amuck. He was acting as a parent in every sense of the word and asked if he should be completely exempt because he is not the parent. Some discussions on that type of scenario occurred when this legislation was dealt with in the past. He said he was trying to figure out the sensible policy call.

1:55 pm

SENATOR FRENCH understood there is an insurance policy that covers foster parents. If an individual takes in this troubled youth and he or she goes next door and breaks out the neighbor's windows then the individual's assets are not at risk because of the insurance policy. He asked if the insurance policy no longer applies if the individual subsequently adopts that foster child.

MR. KELLER said, as he understands this legislation, the answer is yes. If a child is adopted, the parental responsibility is taken over completely. The adoptive parent assumes the liability for the actions of the adopted child unless it is a subsidized adoption, which would be an adoption of somebody that is hard to place.

SENATOR FRENCH asked if that is addressed in the proposed legislation or is that the way the current law reads. He read that Sec. 34.50.020 subsection (a), does not authorize recovery of damages from the adoptive parents of an unemancipated minor if the adoptive parents are receiving financial assistance from the state as a result of the adoption. He asked if that was the section.

MR. KELLER said yes, that is the section; it is a new subsection and that is our wording.

SENATOR FRENCH asked if this would cover any adoption where the parents are getting public funds. For example, food stamps or ATAP (Alaska Temporary Assistance Program) or anything else like that.

MR. KELLER answered that was not the intent.

SENATOR FRENCH noted the intent is to hold harmless only those people who adopted and are getting financial assistance as a result of the adoption. He questioned why that is a special category.

MR. KELLER said it is a special category because they do not want to discourage loving adults from taking on difficult to place children. The intent is to hold those adults harmless.

CHAIR SEEKINS said it is not uncommon for an FAS child to reach puberty and to develop aberrant behavior. It might be very difficult for the child to tell right from wrong. Someone might be discouraged from trying to help that child if they had to assume that kind of liability. He said he could understand why that provision might be there.

SENATOR THERRIAULT questioned whether this bill provides access to a state insurance policy for a state placement legal guardianship where the child does damage.

MR. KELLER said he did not know. He thought the policy might be directed just at foster parents. He said it is addressed in the foster parent handbook, but he did not know how broad that policy is.

CHAIR SEEKINS asked Ms. Gibbens if she knew the answer.

MS. GIBBENS said she understands there is access to a state insurance policy, but she would verify that. Sec. 34.50.020 (b)

currently holds foster parents harmless for any damage a child causes. The indemnification that the state provides for foster parents is for any personal injury that a foster child might do to another individual. It might not cover any potential property damage. However, according to regulation, the department does pay foster parents up to \$5 thousand for any damage that a child may cause.

CHAIR SEEKINS asked if that would be paid to the foster parents or to anyone.

MS. GIBBENS gave an example where the child went next door and broke a window. The division would give funds to that foster parent to help pay for the window repair. She said she did not believe there was any relationship there in terms of legal guardian. She thought it was just for foster parents but would get that clarified from risk management.

CHAIR SEEKINS referred to the case Senator Therriault talked about where he took over as the legal guardian of his nephew. If the nephew was a rascal, Senator Therriault might not be so inclined to be the guardian. Unless there was some exemption on Senator Therriault's behalf, the nephew might end up in the state foster care program. He said he could see why the state might try to keep that child in the family rather than make the child a ward of the state.

SENATOR THERRIAULT said he could understand that, but you don't really care if you are the person whose house was burned down, car was stolen or cat was killed.

2:02 pm

CHAIR SEEKINS said that is a concern that probably should be addressed as they look to see where the risk and reward is. An individual could say the child is not his child and exercise no restraint on the activities of the minor, which is not good for society either.

SENATOR ELLIS asked the Chair for his plan for the bill.

CHAIR SEEKINS said the committee would hear the bill a second time after receiving some clarification from DFYS.

MR. TIM STEELE, Vice President and Legislative Chair of the Anchorage School Board, testified in support of SB 2. He didn't

believe the board would have any problems with the proposed amendment, but he would take it back for them to review.

Damage recovery is one of the Anchorage School Board's priorities. The school district is in need of financial help due to vandalism and they support this legislation as a deterrent. The Anchorage School Board is self-insured after the first \$1 million and they typically budget about \$250 thousand annually to clean up, replace and repair damage.

MR. STEELE explained the Anchorage School District suffered from a number of high profile cases in a little over a year. They went over the \$1 million limit and have been unable to collect. The parents and children assumed the liability in one case at Chugiak Elementary School where there was significant damage. They performed community service and accepted responsibility. On the other side of the coin, there was significant damage at the maintenance yard south of town. Vandals got into the yard, took a tractor and ran it into machinery and buildings. The tractor was destroyed and there was significant damage to buildings. They also broke all the windows out of all of the vehicles.

MR. STEELE reported 64 buses in Eagle River had their brake lines cut today. That liability is not the Anchorage School District's because they are contractor buses. There might have been some very significant liability had the brake lines not been completely severed. As it was, the brake failures occurred while in the yard rather than on the road. There was no bus transportation in the Eagle River area this morning and parents had to get their children to school as best they could.

MR. STEELE concluded there is a lot of ancillary cost with vandalism. The Anchorage School Board feels SB 2 would help them seek restitution and would also provide a deterrent. There is a lot of cost for the Anchorage Municipality and for police enforcement. There is a lot of cost for parents in this bus case where they had to take extra effort and time to get their kids to school. The Anchorage School Board does not want to see the good kids of Anchorage have to subsidize those very few that don't accept responsibility. They are in favor of the legislation and hope the Judiciary Committee moves the bill.

CHAIR SEEKINS asked Mr. Keller to have the proposed amendment incorporated into the \I version CS and the committee would address it at a future meeting.

SB 2 was held in committee.

SB 49-2003 REVISOR'S BILL

MS. PAM FINDLEY, Revisor of Statutes with the Legislative Legal and Research Services, informed committee members SB 49 is a clean up bill where the policies were determined by earlier Legislatures, but the wording was not right for one reason or another or where names of boards changed. She noted this bill should not affect policy and a sectional analysis was provided.

SENATOR ELLIS said he appreciated her good work, professionalism and attention to detail in keeping the Legislature out of trouble. He said if Senator Halford and others were here, they would ask if there is anything even bordering on policy or substantive impact.

MS. FINDLEY answered no. She directed everyone's attention to Section 27, page 10 where the explanation goes on for several pages. Two amendments happened the same year to the same section. This involved loans and there is a limit on these loans. The amendments were put together in the same statute and they don't work together very well. SB 49 attempts to keep the two acts separate. She was told what is in the Revisor's bill is the way the department has been executing the law so there should not be any change on the ground. This is the most substantive because it does involve two amendments. She feels comfortable the policy choice was made because in one of those subsections it is clear that another one is being accepted. The whole explanation must be read to understand it because it is complicated. That is the only section she wrestled with and came to the conclusion the Legislature's policy was clear enough for her to put that in this bill.

SENATOR THERRIAULT read the bottom of page 5 on the sectional analysis. This section amends to make it clear that the two \$300,000 caps operate separately. If the Legislature disagrees with my interpretation, this section could be removed. He asked if Chair Seekins intended to move the bill at this time.

CHAIR SEEKINS replied he wanted the bill introduced and then allow time to go through it in more detail, work out any questions and bring the bill back at a second hearing to finalize it.

SENATOR THERRIAULT noted he would like to get a complete understanding before it is moved from committee.

MS. FINDLEY confirmed it is complicated.

CHAIR SEEKINS announced that the Judiciary Committee is not going to move legislation out in the first hearing unless it is something relatively minor.

SB 49 was held in committee.

CSHB 68(JUD)-OFFICE OF VICTIMS' RIGHTS: INCLUDE MUNIS

SENATOR THERRIAULT made a motion to adopt CSHB 68 (JUD) as the working document. There being no objection, the motion carried.

REPRESENTATIVE RALPH SAMUELS, bill sponsor, explained CSHB 68(JUD) is a clarification of the language of the 22nd Legislature in the creation of the Office of Victims' Rights (OVR). The OVR was created in an effort to give victims of crime an independent voice in the criminal justice system. Essentially the OVR is an ombudsman; they have the power to collect data and issue reports to the appropriate body.

A situation arose because of the tragic shooting of former Commissioner Glenn Godfrey and his wife Patti in Anchorage. A war of words and attorneys ensued over whether or not the OVR had jurisdiction within a municipality. The municipality said the OVR had no jurisdiction because the word municipality was not specifically in the statute. That was despite the fact that 55 percent of the people live in the municipality and therefore 55 percent of the crime victims are in the municipality. The OVR office is located within the Municipality of Anchorage. This bill merely adds the word municipality. The Anchorage Assembly has passed an ordinance that agrees with this legislation and the Mayor of Anchorage has also agreed. "Everybody has kissed and made up now and the bill is moving forward."

SENATOR ELLIS asked if Mr. Branchflower requested the legislation.

REPRESENTATIVE SAMUELS replied Mayor Wuerch requested it and it was his city attorney who made the ruling that created the conflict.

2:15 pm

SENATOR THERRIAULT asked if there was anything at the time of the original act that talked about OVR being specifically for the state entities or just the opposite.

REPRESENTATIVE SAMUELS said there was no specific discussion for state entities. He said when he read through the minutes of the various hearings and talked to Senator Halford, the sponsor, it was obvious the intent was to include municipalities. Without the Anchorage Police Department (APD) and the Fairbanks Police Department being included, up to 80 percent of the victims of crime are excluded. According to the sponsor, it was an oversight.

SENATOR FRENCH added this would also clear up a potential conflict if APD investigated a case and forwarded it to the State District Attorneys' Office where APD is then an arm of the state agency. Those little disputes are frequent. If the municipal prosecutor handles the case APD is a municipal organization. One investigation would be in the hands of OVR and one would not. He said this is a good idea.

REPRESENTATIVE SAMUELS said that's true; particularly with the municipal prosecutor's office rather than APD, but this would include both cases.

SENATOR THERRIAULT asked about the difference between the original bill and the CS. He asked if it was just the change in the title.

REPRESENTATIVE SAMUELS answered yes.

SENATOR ELLIS said it was always clear to him and the people who worked on this legislation, supported Senator Halford and voted for it that the intent was to cover everyone. He disagreed with the Anchorage Municipal Attorney, Mr. Greene, on many occasions and this opinion was laughable. He added he was pleased this was being corrected.

CHAIR SEEKINS observed this is a fairly simple thing to accomplish the intent of the original legislation.

SENATOR THERRIAULT moved CSHB 68(JUD) from committee with individual recommendations and attached fiscal note. There being no objection, the motion carried.

CONFIRMATION HEARING

CHAIR SEEKINS asked if Mr. Barker was on line. He informed committee members the Governor appointed Mr. Barker to the Violent Crimes Compensation Board and his personal record was available to committee members. He asked Mr. Barker to share why he would like to take this appointment.

MR. LEROY BARKER testified he spent several years as a prosecutor and was interested in the criminal justice field. This is one way to serve those people he served as a prosecutor.

SENATOR THERRIAULT moved that Mr. LeRoy Barker's name be advanced to the full Senate for consideration. There being no objection the motion carried.

SENATOR ELLIS asked if Chair Seekins had made any progress on bringing Ms. Shirley McCoy back before the committee.

CHAIR SEEKINS responded they checked with the House to see if there was a time when they could have a joint meeting and determined she would be called in individually.

MR. BRIAN HOVE, staff to the Judiciary Committee, predicted she would come before the committee within the next 30 days.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 2:23 pm.