

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 28, 2003

1:20 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 52(JUD)

"An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."

MOVED SCS CSHB 52(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 2(JUD)(title am)

"An Act relating to the statute of limitations for certain civil actions relating to acts constituting sexual offenses; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 85

"An Act relating to sentencing and to the earning of good time deductions for certain sexual offenses."

HEARD AND HELD

SENATE BILL NO. 97

"An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure."

MOVED SB 97 OUT OF COMMITTEE

SENATE BILL NO. 22

"An Act limiting the factors that may be considered in making a crime victims' compensation award in cases of sexual assault or sexual abuse of a minor."

SCHEDULED BUT NOT HEARD

NON-AGENDA ITEMS

SENATE CONCURRENT RESOLUTION NO. 9
Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning House Bill No. 52, relating to the forfeiture of certain property used in certain crimes.

MOVED SCR 9 OUT OF COMMITTEE

PREVIOUS ACTION

HB 52 - See State Affairs minutes dated 4/8/03.
HB 2 - See State Affairs minutes dated 4/10/03.
SB 85 - See State Affairs minutes dated 4/10/03.
SB 97 - See Resources minutes dated 3/28/03, 4/7/03 and
Judiciary minutes dated 4/23/03.

WITNESS REGISTER

Representative Lisel McGuire
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 52.

Ms. Suzanne Cunningham
Staff to Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 2.

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 2.

Ms. Linda Wilson, Deputy Public Defender
Alaska Public Defender Agency
POSITION STATEMENT: Supported SB 85.

Ms. Laurie Huginin
Alaska Network on Domestic Violence and Sexual Assault
Juneau AK

POSITION STATEMENT: Supported SB 85.

Ms. Annie Carpeneti
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supported SB 85.

Ms. Portia Parker, Assistant Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801

POSITION STATEMENT: Commented on SB 85.

ACTION NARRATIVE

TAPE 03-32, SIDE A

HB 52-SEX CRIME AND PORNOGRAPHY OFFENSES

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:20 p.m. Present were SENATORS OGAN and FRENCH. He announced HB 52 to be up for consideration.

REPRESENTATIVE LISEL MCGUIRE, sponsor, explained that the new CS adds a punitive sentencing option for judges to use in the cases of child pornography, indecent photography, etc. under AS 11.61.123 - AS 11.61.127. The goal is to provide law enforcement with the tools that would come, for example, out of a computer to allow them to see where a perpetrator has been. She said it has become a better bill with the addition of Senator Dyson's language that adds a new section (d) to AS 11.61.125, which expands the definition of distribution of child pornography to include providing billing collection or other ancillary services or otherwise supporting activities.

She explained that across the United States some people are setting up server farms to provide billing services to serve pornography sites and others. Those people are looking at Alaska because of our colder temperatures and access to natural gas. We are, therefore, anticipating a boom of server farmers and want to make it absolutely clear that they are legitimate and cannot prey upon our children.

SENATOR THERRIAULT arrived at 1:22 p.m.

SENATOR FRENCH said he has had personal experience with prosecuting highly sophisticated pornography computer perpetrators.

SENATOR OGAN added that children are getting jaded with some of the filth that comes over the Internet. A GCI tech rep told him that one third of the sites on the Internet are pornographic and that's what is actually funding the rest of the Internet.

REPRESENTATIVE MCGUIRE said that it is an all-pervasive problem, but if they can start at the federal level and make laws for all states to be off limits, that would be a good place to start. She also felt there would be more of a shift in the future in the area of child pornography and First Amendment rights as it's use on the Internet is compared to the real and significant harm that it brings to a child and our society.

SENATOR OGAN moved to pass SCS HB 52(STA), version \H, from committee with individual recommendations. There were no objections and it was so ordered.

SENATOR THERRIAULT moved to pass the two zero fiscal notes attached to HB 52 from committee and asked for unanimous consent. There were no objections and it was so ordered.

SCR 9-SUSPEND UNIFORM RULES FOR HB 52

SENATOR THERRIAULT motioned to pass SCR 9 from committee with individual recommendations. There was no objection and it was so ordered.

HB 2-CIVIL STATUTE OF LIMITATIONS/SEX OFFENSES

CHAIR SEEKINS announced HB 2 to be up for consideration.

MS. SUZANNE CUNNINGHAM, staff to Representative Kevin Meyer, said that HB 2 is a clean up bill to HB 210, which passed in the 2001 session. It clarifies which misdemeanors and which felonies involving sexual assault and sexual abuse of a minor have a three-year statute of limitations and which have no statute of limitation. She told members:

In the original bill, HB 210, the criminal statute of limitation for felony sexual assault and sexual abuse or a minor was removed and that was the original intent. However, when HB 210 came to the House floor, an amendment was adopted that eliminated the civil

statute of limitation for felony sexual abuse of a minor and felony sexual assaults. The one thing the amendment did not do is reference the particular crimes in the criminal code. So, it was uncertain which felonies were intended to have no civil statute of limitation and which ones would have a three year or two year civil statute of limitation. It also didn't make a special provision for misdemeanor sexual abuse and sexual assaults. So, indirectly the civil statute of limitations for those misdemeanors dropped back to two years for torts, in general.

The crimes that were inadvertently changed by the floor amendment were misdemeanor sexual assaults, misdemeanor sexual abuse of a minor, incest, felony indecent exposure and unlawful exploitation of a minor. Prior to the floor amendment, the statute of limitations for these crimes was set at three years. So, under HB 2, which is before the committee, unlawful exploitation of a minor, which is a class B felony, is added to the list of felony sexual assault crimes with no civil statute of limitation. Misdemeanor sexual assaults, misdemeanor sexual abuse of a minor, incest, and felony indecent exposure are reestablished at three years for the civil statute of limitation.

She said that HB 2 has a retroactive clause because the 22nd Legislature did not intend the indirect change that occurred with the floor amendment. She said the title was amended to clarify that the civil actions are limited to the civil actions for acts constituting sexual offenses.

SENATOR OGAN said he is struggling with the retroactive provision. He thought that would make this bill ripe for litigation and asked, "Why don't we just say from now forward?"

SENATOR ELLIS arrived at 1:35 p.m.

MS. CUNNINGHAM replied that while working with the revisor of statutes on this legislation, they discussed the retroactive clause and it was clearly not the intent of the legislature to change the statute of limitations. They feared that there might be people who would not have the opportunity to seek civil recourse pertaining to the crimes.

SENATOR OGAN said again that he thought this language was inviting litigation.

CHAIR SEEKINS said he was confused about the statute of limitations that was to start on October 1, 2001; anything beyond that date is outside the statute of limitations and anything within that date is within the statutes of limitations that are created by this law.

REPRESENTATIVE MEYER explained that he did not want the amendment to adversely impact anyone that fell in the gap of ambiguity. Basically, this is a cleanup bill of what was not captured in the amendment made by the minority leader on the House floor.

SENATOR FRENCH said he wanted a couple of days to look into the statute of limitations issue and bring the bill up at the next reasonable time frame.

CHAIR SEEKINS announced that there were no objections to holding the bill and it would be brought up on another day.

SB 85-REPEAT SERIOUS SEX OFFENSES/VICTIM COMP.

CHAIR SEEKINS announced SB 85, version\U, to be up for consideration.

SENATOR FRENCH, sponsor of SB 85, explained the impetus behind this bill is to increase the penalties for repeat sex offenders, the true repeaters. The law today doesn't distinguish between the first felony conviction and he feels if your first felony is a vehicle theft and the second is a sex crime, that's okay; but if you've been convicted of a sex crime and you commit another one, that's another thing altogether and you've shown that you didn't get the message. He is asking for a lot more jail time for the second go-around.

Attachment A shows the current sentencing law. Presumptive sentencing is applied if you've been convicted of a felony in the past and you come to the court on a second go-around. Unclassified felonies are the most serious crimes of penetration. A first felony offense carries eight years; if you have a prior felony and you commit a sex assault in the first degree, you get 15 years. This law does not distinguish as to whether or not that first crime was another rape.

The other portion of the bill is that it takes away good time. Folks get a one-third good time deduction for basically minding their Ps and Qs in prison, which means a 15-year sentence can be served in 10 years. However, the federal system does not have good time. Our system uses good time to encourage folks to behave well in prison but the repeat offenders have used up their good time.

SENATOR FRENCH said that Alaska has led the nation for the last 25 years in per capita reported rapes and, "We owe it to the folks we represent to tell them that we are going to take this seriously and that people who repeat are going to go away for a long time."

He used the example of a man in Fairbanks who recently was convicted of fondling his wife's 15-year old sister and her friend after giving them alcohol. Maybe that is the only time he'll go wrong in his life, buy maybe not; maybe when he does his prison time, he'll do it again and at that point, this guy "can't fix himself." The law is designed to treat repeat offenders, a small hard-core class differently; it also protects women and children.

SENATOR THERRIAULT asked him to explain the age difference in statute for sexual assault.

SENATOR FRENCH replied that there has to be a three-year age difference. If the girl is 14, 15, or 16 and a male is three years older than she is, he can't have a relationship with her. So, a 14-year old can have a relationship with a 16 or 17-year old, but not with an 18 year old. Those are the areas that are prosecuted the least, prosecuted with the most care, prosecuted typically with a schoolteacher situation.

SENATOR ELLIS pointed out as a side note that there are public service announcements issued by the Department of Health that make the point about different ages and inappropriate relationships.

MS. LINDA WILSON, Deputy Public Defender, praised Senator French for addressing the high per capita rate of rape in Alaska, and in Anchorage in particular.

The concerns of the agency are the harshness and extremity of the solution he has proposed. The increase in the maximum sentences and presumptive sentences are very severe, increasing by 10 years the maximum sentence for class A and class B

felonies for a sex offense. It also doubles the sentence for a class C felony. The concern is with the disparate treatment and equal protection. Treating sex offenders differently by pulling them out of the classification system they are in raises the risk that there will be a challenge of unequal protection. She explained:

Another section on page 3, lines 17 - 18, shows what the current law is, if you are convicted of a first felony offense (unclassified), if you possessed a fire arm or dangerous instrument or caused serious physical injury, you would get 10 years. If you were convicted under the second provision of that, it's unclassified for a sex assault in the first degree and you get a presumptive 10 years. If you're convicted of a class A felony for an attempted sex assault, on page 4, line 7 - if it's a first felony conviction, you possess a firearm or dangerous instrument or cause serious physical injury, it's the same 10 years. So, a presumptive for a class A and an unclassified are identical. Whereas in another offense you wouldn't have that jumping up so high.

MS. WILSON said the other problem is when you have a specific law that deals with second felony sex offenders, in Title 12.55.155 (c)(21), there are aggravators that already address when you have a prior offense or a similar one.

She explained that Section 6 eliminates the 10-year look back for prior convictions. So, no matter what the prior conviction was, it doesn't have to be a prior sexual offense, there would be no 10-year look back limitation anymore.

She stated that totally eliminating good time seems to be extreme and raises concerns about the ability to supervise these people. She told members:

It seems you would want to ease them back into the community and have the ability to supervise them in a community on mandatory parole, which you're not going to be able to do. They're going to have to do their entire sentence. If there's no treatment available in the institution, they're going to get out and not have any of the benefits of treatment or the supervision you would have normally for people who are released on mandatory parole.

TAPE 03-32, SIDE B

MS. WILSON pointed out that another part of the statute lumps these people with two other categories of offenders that don't get any good time. However, those people fall under Title 12.55.125(j) after they have served half of their sentence so they get an opportunity to go back before the court for a modification of their sentence. It is the same for people convicted under Section L that get a mandatory 40 to 99 year sentence. People convicted under this bill would not have the opportunity to go back before the court for a modification. They would have no opportunity for good behavior in the institution assessed for purposes of pleading for some sort of modification or reduction.

She did not think they would have incentives that would be helpful for the Department of Corrections. This bill will have a fiscal impact on the operations of the Public Defender Agency as there will likely be more litigation and more cases that go to trial when a person who is charged with an offense is going to receive such an increase in a sentence. There could be longer and harder trials and more appeals if a person is convicted. The longer sentences could result in more suspended time down-the-road and more increases in probation revocations.

MS. LAURI HUGANIN, Alaska Network on Domestic Violence and Sexual Assault, said she supported SB 85. During FY02, over 2,000 victims of sexual assault came to the Network's programs seeking support services. One in four girls and one in six boys will be sexually assaulted before they reach the age of 18. The Network supports both concepts in the bill of increasing sentences for repeat offenders and eliminating the good time. She continued:

It's important to realize that the first time somebody gets in front of the court isn't the first time they have committed a sexual offense. You can look at research, you can talk to inmates, you can look at people who are going through treatment and find out that they have sexually assaulted many more people than what they are coming before the court for even in their first occasion, particularly with children. You'll often find many counts of abuse there during the trial and afterwards. So, it's important to know that they are already repeat offenders the first time they come....

When you look at treatment, what you find when you're reading studies and looking at recidivism is often they'll say, 'Well, if that person received treatment, they'll last longer in the community before reoffense.' They don't say, 'They're not going to reoffend.' It's just that they're able to maintain themselves longer in community without reoffense if they go through treatment.

MS. HUGANIN stated that people who believe in treatment acknowledge that keeping offenders out of the community really is the best protection. Other states do day-for-day sentencing for sex offenders, like Arizona. Other felons are able to have their time reduced by 15%. In Tennessee a child rapist and multiple rapist is required to serve their entire sentence undiminished by any sentence reduction credit; other felons in Tennessee are able to. In Oregon, earned time is not available for a specific set of felons, which includes people convicted of sexual assault and sexual assault of a minor. In Illinois, offenders get 50% off good time for almost every offense except sexual assault and abuse. Those offenders are not able to get more than 4.5 days of good conduct credit for each month served. Iowa's sentencing for repeat sex offenders differs from sentencing for repeat offenders of other felonies. A person convicted a second time for a predatory offense, which is a felony, has to serve twice the maximum period of incarceration.

SENATOR ELLIS asked if Alaskan statistics justify that this legislation pass this year rather than next year.

MS. HUGANIN replied yes.

MS. ANNIE CARPENETI, Criminal Division, Department of Law, supported SB 85 for the reasons stated.

SENATOR THERRIAULT asked her if the department would be submitting a fiscal note.

MS. CARPENETI replied that they prosecute these cases vigorously as it is. The length of the sentence wouldn't have that much impact on the department's prosecution efforts.

SENATOR THERRIAULT said the Department of Corrections' fiscal note is zero yet people would be spending more time behind bars. He asked Senator French if he spoke to the Department of Corrections about that and why it is not asterisked.

SENATOR FRENCH replied that he had the same concern and expected a hefty fiscal note. However, he had several conversations with Ms. Parker about this subject and the gist was because these folks tend to come back in the system one way or another, that it's hard to quantify how much more they will spend.

CHAIR SEEKINS said it would also be hard to forecast the chilling effect that serving more time would have on offenders.

SENATOR THERRIAULT said he really couldn't see any savings and wanted to know more about the fiscal impact beyond five years.

SENATOR FRENCH said he would get a better explanation for the Department of Corrections fiscal note.

2:22 - 2:30 p.m. - at ease

SENATOR THERRIAULT said the fiscal note indicates zero for the first five years, but he was concerned that there would be substantial costs after that and wanted the department to comment.

MS. PORTIA PARKER, Deputy Commissioner, Department of Corrections, explained that they had a difficult time trying to project the potential impact down the road, which would more likely be 15 to 30 years and certainly not within the first five years. She explained:

The reason we chose to not even attempt to estimate that is we had our research division look at the recidivism rate for sex offenders and we determined that it might actually save the criminal justice, as a whole, money, because of the high rate of recidivism for sex offenders. I'll give you some statistics. Currently, in custody on a sex offense, we have 727 offenders. In previous and released at some point, were 581, so, about 80%. The average number of times admitted, for all the sex offenders in our system, was 6.24 times - arrested, charged. The percent admitted to DOC 10 or more of that group of sex offenders was 52%. So, with the cost of offenders coming back in, booking, law enforcement, court costs, prosecutors, defenders and then into the Department of Corrections and back out again was so high that we weren't even sure it would be an increased cost in the long term to just leave them in prison.

It might be a slight increased cost to DOC, but we couldn't even really determine that. If there were a higher cost, maybe for the Department of Corrections, there may be a savings or at least cost containment down the road.... That is why we did not project out the cost. It was indeterminate. We could not determine whether it would actually be an increase.

CHAIR SEEKINS asked if she had any statistics on how long the repeaters are out on the street before they are back in.

MS. PARKER replied that she didn't ask for that information.

SENATOR OGAN said the difference is there are fewer victims out there.

SENATOR ELLIS said her figures put this issue in perspective and asked if she was in favor of passing the legislation. The statistics she mentioned are people who are either unwilling or unable to stop their bad behavior and they keep victimizing again and again.

SENATOR THERRIAULT asked the department to write up this discussion and attach it to the fiscal note.

SENATOR OGAN said he wanted to know how many victims knew the perpetrator.

SENATOR FRENCH responded that far more know their perpetrator than he would guess. The classic rapist who drags a stranger off in the bushes is rare. Typically, sex offenders present well and behave in prison, but they'll get out, go out and do their grooming behavior. They'll plan a long time before they commit the crime.

CHAIR SEEKINS said they would hold the bill for the work on the fiscal note.

SB 97-ATTY FEES: PUBLIC INTEREST LITIGANTS

CHAIR SEEKINS announced SB 97 to be up for consideration. This bill primarily provides that in a civil action contesting a decision of the Department of Environmental Conservation, attorney's fees may not be awarded to or against a public interest litigant as provided in Rule 82(g) in the Alaska Rules of Civil Procedure. This would be, in effect, on the floor a vote for a direct court rule amendment.

SENATOR FRENCH said he noticed the small amount of money involved. He came up with \$718,000 over the course of a decade for public interest litigants in the natural resources area and that's about enough to pay one person \$70,000 per year to be the one member of the public who challenges the government on their public resources front. Another point is in the final paragraph of the fiscal note. The idea to somehow provide legal fees to these folks drives litigation and makes people file cases they wouldn't otherwise file. None of the cases have been found to be frivolous, which may not be the best measure. However, the fiscal note says they have not been able to find objective data to indicate whether or not the public interest exception is a primary motivation for parties to litigate public interest issues.

CHAIR SEEKINS responded that the \$70,000 is only one facet of what they are considering, because Senator French is looking only at the amounts that were awarded to public interest litigants, not the amount of money the state had to spend that the public interest litigants may have had to pay the state. Subjective data indicated and a number of people in the Department of Law felt that cases were being brought by public interest litigants to harass and delay, which cost the state a tremendous amount of money. Testimony from the companies that were delayed also indicated that they incurred millions of dollars in losses in terms of appreciation on equipment and additional time necessary to bring worthwhile and permitted projects to the extraction phases.

SENATOR OGAN noted the cost to the treasury, as well, that comes from companies being discouraged to even do business here.

CHAIR SEEKINS commented that Alaska is the only state with a Rule 82 type of provision, which causes higher insurance rates and he thought providing an exemption to the state in this category was reasonable.

2:50 p.m.

SENATOR OGAN moved to pass SB 97 from committee with individual recommendations and the attached fiscal notes. SENATOR ELLIS objected. Senators Therriault, Ogan and Seekins voted yea; Senators Ellis and French voted nay; and SB 97 moved from committee.

CHAIR SEEKINS adjourned the meeting at 2:52 p.m.