

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 2, 2003

1:53 p.m.

TAPE(S) 03-34

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

SENATE BILL NO. 30

"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

HEARD AND HELD

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."

MOVED CSHB 2(JUD)(title am) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 249(JUD) am

"An Act relating to the award of costs and attorney fees to defendants under court rule in civil actions brought under monopoly and restraint of trade statutes; and providing for an effective date."

MOVED CSHB 249(JUD) am OUT OF COMMITTEE

SENATE BILL NO. 93

"An Act relating to limitations on actions to quiet title to, eject a person from, or recover real property or the possession of it; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 49(JUD)

"An Act relating to the deoxyribonucleic acid (DNA) identification registration system and testing; 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."

MOVED CSSB 85(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 114(JUD)(title am)

"An Act relating to the issuance of a search warrant upon the sworn testimony or affidavit of a person communicated by telephone, other appropriate means, or facsimile machine."

SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

SB 30 - See HESS minutes dated 3/17/03, 3/26/03, 4/3/03, 4/9/03 and 4/14/03.

HB 2 - See State Affairs minutes dated 4/10/03 and Judiciary minutes dated 4/28/03.

HB 249 - See Judiciary minutes dated 4/30/03.

SB 93 - See Labor and Commerce minutes dated 3/11/03 and 4/1/03.
See Judiciary minutes dated 4/16/03 and 4/30/03.

HB 49 - No previous action to record.

SB 85 - See State Affairs minutes dated 4/10/03 and Judiciary minutes dated 4/28/03.

WITNESS REGISTER

Senator Dyson

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 30.

Ms. Amy Seitz

Staff to Senator Wagoner

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 93.

Mr. Jon Tillinghast, Atty.

Sealaska Corporation

One Sealaska Plaza

Juneau AK 99801

POSITION STATEMENT: Supported SB 93.

Representative Tom Anderson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 49.

Mr. Chris Beheim, Director
Scientific Crime Detection Laboratory
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200

POSITION STATEMENT: Commented on HB 49.

Ms. Debbie Joslin
PO Box 377
Delta Junction AK 99737

POSITION STATEMENT: Supported SB 30.

Ms. Linda Bowdre
PO Box 1048
Delta Junction AK 99737

POSITION STATEMENT: Supported SB 30.

Ms. Ruth Abbott
HC 60 Box 4225
Delta Junction AK 99737

POSITION STATEMENT: Supported SB 30.

Ms. Tiana Shawver
PO Box 926
Delta Junction AK 99737

POSITION STATEMENT: Supported SB 30.

Ms. Anne Harrison
Alaska State Board of Planned Parenthood
3270 Rosie Creek Rd.
Fairbanks AK 99709

POSITION STATEMENT: Opposed SB 30.

ACTION NARRATIVE

TAPE 03-34, SIDE A

SB 30-ABORTION: INFORMED CONSENT; INFORMATION

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 1:53 p.m. Present were Senators Ogan and French. He announced that SB 30 was up for consideration.

SENATOR DYSON, sponsor of SB 30, explained that since the 70s, Alaska physicians who perform abortions are required by regulation to inform their patients about the medical implications and possible emotional and physical consequences of the procedure. SB 30 puts that in statute and provides the option for a doctor to use standardized information presented by means of a pamphlet on the Internet. He said that he had no knowledge that present practitioners weren't informing their patients, but this would just make it easier for them to do that and give them some immunity from prosecution for not doing it.

Making the information available on the Internet allows the Department of Health and Social Services to update service providers and support organizations and to translate that information into other languages, including Alaska's Native languages, easily.

SENATOR OGAN moved to adopt CSSB 30(JUD), version \V. There was no objection and it was so ordered.

CHAIR SEEKINS said they would hold CSSB 30(JUD) until later.

CSHB 2(JUD)(title am)-CIVIL STATUTE OF LIMITATIONS/SEXOFFENSES

CHAIR SEEKINS announced CSHB 2(JUD) (title am) to be up for consideration.

REPRESENTATIVE KEVIN MEYER, sponsor of HB 2, said that Pam Finley, Reviser of Statutes, answered both of Senator Ogan's questions from the previous meeting.

SENATOR OGAN agreed that he was satisfied.

REPRESENTATIVE MEYERS said deleting section 4, which pertains to the retroactive provision, would be unclear to the courts and add fodder to attorneys to argue whether the statute of limitations should be what they were prior to 2001. Leaving it makes their intent perfectly clear; that they want them to go into effect when the bill is actually passed.

SENATOR OGAN moved to pass CSHB 2(JUD)(title am) with the attached fiscal notes from committee with individual recommendations. There was no objection and it was so ordered.

CSHB 249(JUD)-RESTRAINT OF TRADE: ATTY FEES AND COSTS

CHAIR SEEKINS announced HB 249 to be up for consideration.

SENATOR OGAN moved to pass CSHB 249 (JUD) am from committee with individual recommendations and the zero fiscal note. There was no objection and it was so ordered.

CSSB 85(STA)-REPEAT SERIOUS SEX OFFENSES/VICTIM COMP.

CHAIR SEEKINS announced SB 85 would be held until Senator Ogan had a little additional time to go through the bill and that it had an additional Finance referral.

SB 93-ADVERSE POSSESSION

CHAIR SEEKINS announced SB 93, version \V, to be up for consideration.

SENATOR OGAN moved to adopt CSSB 93(JUD), version \W. There was no objection and it was so ordered.

MS. AMY SEITZ, Staff to Senator Wagoner, sponsor, explained that the committee adopted two conceptual amendments and Legislative Legal made the new section 2 to address the boundary dispute issue and new section 3 exempts utilities from what SB 93 would do to the adverse possession law.

SENATOR OGAN questioned language in section 3 that said, "presume to give title to the right-of-way or other interests to the public utility". He wanted to know what other interests might be.

MR. JON TILLINGHAST, Sealaska Corporation, explained that with "other interests," the intent is to not change the ground rules with respect to utilities or the Department of Transportation from existing law.

SENATOR OGAN asked if this allows someone to gain title to not only the right-of-way, but other interests, as well.

SENATOR ELLIS arrived at 2:13 p.m.

MR. TILLINGHAST replied that if there's a chance of anybody getting a fee simple interest as a result of this section, it's because of the words "or other interest". The earlier section explains there may be circumstances where a fee simple interest is necessary in order to own or operate the facility that you're owning or operating.

SENATOR OGAN asked if it was necessary to get ownership by adverse possession and could a utility get title to his property if they had a power line going over it for 20 years as a recorded right-of-way.

MR. TILLINGHAST responded under existing law if a utility line is on his property for 15 - 20 years, they would by adverse possession have a right-of-way, because that's all that's necessary for them to maintain that utility line. This section doesn't change that. They only get the least interest that's necessary to do what they are doing.

SENATOR OGAN asked if it said that somewhere in Title 9.

MR. TILLINGHAST replied that line 17 says it.

SENATOR OGAN said he would be more comfortable in taking out the "other interests" language and just have the ability to give title to the right-of-way by adverse possession.

CHAIR SEEKINS said he also didn't want to give them any subsurface mineral rights.

SENATOR WAGONER commented that this has gone through legal a couple of times and he didn't think they would give a utility any rights other than rights-of-way.

2:22 - 2:28 p.m. - at ease

SENATOR OGAN said he talked with Jack Chenoweth, Legislative Legal, who said that utilities have easements and under this bill, they're going to get title to right-of-way and other interests and those could mean anything. They could get title to the property if they had a power line across it by asserting adverse possession.

SENATOR WAGONER said that was not his intention.

CHAIR SEEKINS said they would hold the bill until a new version could be drafted.

CSHB 49(JUD)-EXPAND DNA DATABASE

CHAIR SEEKINS announced CSHB 49(JUD) to be up for consideration.

REPRESENTATIVE TOM ANDERSON, sponsor of HB 49, said that collection and examination of DNA is the next step in technological advancement in the art and science of criminal investigations. Forensic DNA typing has made a broad and positive impact on the criminal justice system in terms of solving crimes and innocent people have been freed both before trial and after incarceration due to this. HB 49 will make police investigation more efficient and more accurate helping both law enforcement and crime victims and will expand the Alaska state database of DNA samples to include all persons with a felony conviction under Alaska law and juveniles adjudicated as a delinquent for these same offenses. There are provisions for volunteer and anonymous donations. Persons who register as sex offenders are also required to submit DNA samples into the database. It will require offenders and minors currently incarcerated or on state supervised parole for felony convictions or certain sexual misdemeanor offenses to provide a sample to the Department of Public Safety. The collection of DNA will be in line with the collection of fingerprints, which are currently collected at an arrest or, in some cases, during the process of applying for a job.

SENATOR OGAN asked if the law could collect a sample from an unknown person.

REPRESENTATIVE ANDERSON replied that wasn't the intent and the Department of Law could clarify that.

SENATOR FRENCH said it should be made clear that they are talking about a plane wreck or an arson case when a house burns down and you're not sure who's in or who's out.

SENATOR THERRIAULT asked if the bill needs a findings section.

SENATOR ANDERSON replied that he didn't think that was in the original, but was added in later.

SENATOR ELLIS said he has concerns about privacy issues because DNA is an even more powerful identifier than fingerprinting. It also identifies everybody else in the bloodline of that individual. Some time in the future they might find themselves passing laws to keep health insurance companies from not

excluding all people with a genetic predisposition for certain diseases. Significant safeguards should be in place for it to be used for good and not for other purposes.

Page 3, line 27, says "law enforcement purposes including criminal investigation prosecutions" and he thought it would be okay to just read "criminal investigations and prosecutions". "Law enforcement purposes" was a very subjective phrase and open to just anything.

Another concern he has is with keeping the sample of genetic material after everything has been processed because someday we will regret not being more careful about this subject.

REPRESENTATIVE ANDERSON responded that he understands Senator Ellis's concern and that page 2, section 4, has a new section about unlawful use of DNA samples, which addresses those concerns. Page 2, line 25, says that unlawful use of DNA samples is a Class C felony.

TAPE 03-34, SIDE B

2:48 p.m.

SENATOR FRENCH said he thinks they should hear from the crime lab folks before they decide anything. Everyone agreed that they would eventually have to protect the use of DNA for insurance and other purposes.

MR. CHRIS BEHEIM, Director, Scientific Crime Detection Laboratory, prepared a handout to explain the history of biological testing at the state crime lab. In 1987, they first started doing blood type testing and in 1992, they added DQ Alpha, the first DNA testing marker. They used it first on a homicide in Fairbanks and were able to eliminate the first suspect. They found the killer by testing blood that was found in his watchband.

In 1996, they added another DNA marker, known as the polymarker technique, which eliminated about 99.9 percent of the population. The big breakthrough came in 1999, when STR (short tandem repeat) typing became available, which involves analysis of 13 different markers on the DNA molecule. In 1997, all labs began using this one technique so they could create databases and exchange information. Prior to that time, there wasn't a consistent technology.

The mechanism that allows them to store and compare DNA profiles is known as CODIS (combined DNA index system), which is a software package the FBI provides to laboratories at no cost. CODIS has two indexes - the Convicted Offender Index and the Forensic Index, which contains crime scene evidence DNA profiles. There is no personally identifying information in the database that is uploaded into CODIS. If there is a hit on the database, they have to go to another database to find out where the sample came from.

The primary purpose of CODIS is to identify suspects and it is done by searching and comparing the convicted offender DNA database against the forensic database. Law enforcement is notified if a match occurs and they determine the significance of it.

SENATOR OGAN asked why they have to retain the DNA material.

MR. BEHEIM explained that it is primarily for quality assurance. When they achieve a match in the database, they go back and retrieve the original sample and retype it to make sure there hasn't been any sample switching. Contract labs are used, but they deal with thousands and thousands of samples. When law enforcement is notified, they want an additional sample to use in any legal proceedings.

SENATOR FRENCH said he could see his concern about future misuse of the sample and keeping a sample here, at least, guarantees that the evidence being used is from the right person.

MR. BEHEIM said currently they have about 3,200 convicted offender profiles in the database and DNA profiles from 165 unsolved crimes (17 homicides, 91 sexual assaults, 48 burglaries and 9 miscellaneous). The database has helped enormously. Since April 30, they have had 30 hits in the database; 15 hits have matched unsolved crimes to specific convicted offenders; 15 of them have linked cases together showing the same perpetrator is involved.

Currently, Alaska's DNA database law is very weak; only Connecticut's is weaker. When Oregon expanded their DNA database to collect from all felons, their hits went up 400 percent. If we can have a similar success rate, many crimes will be cleared up. We are hampered now because our law is not retroactive, but 40 other states do have retroactive DNA laws. Under Alaska law, you can't compare a sample for a crime unless it was committed after 1996.

CHAIR SEEKINS held CSHB 49(JUD) for further work.

CSSB 30(JUD)-ABORTION: INFORMED CONSENT; INFORMATION

CHAIR SEEKINS announced CSSB 30(JUD) to be back up for consideration.

MS. DEBBIE JOSLIN, Delta Junction resident, urged them to pass the bill. When she was advised to have an abortion, she was not given all the facts that should have been made available to her.

MS. LINDA BOWDRE, Delta Junction resident, supported SB 30 saying that not everyone knows about medical procedures.

MS. RUTH ABBOTT, Delta Junction resident, supported SB 30 saying that it is about empowering women and respecting their intelligence enough to give them the tools necessary to make an educated choice.

MS. TIANA SHAWVER, Delta Junction resident, said that she didn't want to have children, but that she couldn't live with the guilt and depression that would probably follow if she got pregnant and had an abortion. She supported SB 30 so that women could make informed decisions.

MS. ANNE HARRISON, State Board of Planned Parenthood, opposed SB 30, because it is unnecessary. Since the 70s, health professionals have counseled women about options, resources and ramifications regarding any pregnancy, planned or unplanned. She has counseled thousands of women. They do have a pro-choice stand, but that is not to be understood as pro-abortion. She felt the intent of SB 30 was to dissuade a woman from terminating a pregnancy. She said that there is testimony, possibly from hearsay, that many woman who have had abortions are depressed and taking medication, but many women are depressed and take medication and have never had an abortion to feel such guilt over.

3:20 p.m.

CHAIR SEEKINS asked if she was saying that all health professionals now provide the information that this bill would require.

MS. HARRISON responded that she thought this bill had a strong bias. "It is meant to shame and instill guilt. It is not meant to inform."

She thought this information was already presented by those in family planning clinics and obstetrician's offices (not general practitioners).

SENATOR THERRIAULT asked her to point to the areas in the bill that she thought were meant to shame a woman.

MS. HARRISON replied that she didn't have the bill in front of her at this time.

SENATOR THERRIAULT said he was supportive of the bill, but if she could pinpoint specific areas, he would work on language to make it better. He said the bill included information about letting a woman know that a father is liable for the support of the child if it's taken to term.

CHAIR SEEKINS thanked everyone for their comments and said he would hold the bill.

3:25 - 3:29 p.m. - at ease

CSSB 85(STA)-REPEAT SERIOUS SEX OFFENSES/VICTIM COMP.

CHAIR SEEKINS announced CSSB 85(STA) to be back up for consideration. He noted that it had picked up a referral to the Finance Committee based on the long-term cost of jail terms and the increased sentence it would impose.

SENATOR ELLIS moved to pass CSSB 85(STA) from committee with the accompanying fiscal notes with individual recommendations.

SENATOR OGAN objected saying that if they are going to have repeat offenders going to jail for a long time, that they should be going for something more than circumstantial evidence.

SENATOR THERRIAULT commented that since their last discussion, the Department of Corrections revised their indeterminate fiscal note and the Public Defender's Office submitted a fiscal note that shows an immediate indeterminate fiscal impact. The Finance Committee would have to evaluate what the potential cost would be.

SENATOR OGAN removed his objection and CSSB 85(STA) moved from committee. There being no further business to come before the committee, Chair Seekins adjourned the meeting at 3:32 p.m.