

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 7, 2004

8:09 a.m.

TAPE(S) 04-36, 37

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. 350(STA)

"An Act adding personal injury and death from arson in the first degree to the injuries compensable by the Violent Crimes Compensation Board; and providing for an effective date."

MOVED CSHB 350(STA) OUT OF COMMITTEE

SENATE BILL NO. 246

"An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to sentencing, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; relating to a civil cause of action for certain acts involving discriminatory harassment; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 323

"An Act relating to a project owner's liability for workers' compensation and the exclusiveness of liability for workers' compensation."

HEARD AND HELD

SENATE BILL NO. 308

"An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year."

MOVED CSSB 308(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 252(STA)

"An Act relating to the terms and duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."

MOVED SCS CSHB 252(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 350

SHORT TITLE: CRIME VICTIMS' COMPENSATION FOR ARSON

SPONSOR(S): REPRESENTATIVE(S) GATTO, GRUENBERG

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	STA, JUD
01/20/04	(H)	STA AT 8:00 AM CAPITOL 102
01/20/04	(H)	<Bill Hearing Rescheduled to 1/22>
01/22/04	(H)	STA AT 8:00 AM CAPITOL 102
01/22/04	(H)	Scheduled But Not Heard
01/27/04	(H)	STA AT 8:00 AM CAPITOL 102
01/27/04	(H)	Moved CSHB 350(STA) Out of Committee
01/27/04	(H)	MINUTE(STA)
01/28/04	(H)	STA RPT CS(STA) NT 6DP
01/28/04	(H)	DP: GRUENBERG, SEATON, HOLM, LYNN,
01/28/04	(H)	BERKOWITZ, WEYHRAUCH
02/20/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/20/04	(H)	Moved CSHB 350(STA) Out of Committee
02/20/04	(H)	MINUTE(JUD)
02/23/04	(H)	JUD RPT CS(STA) NT 6DP
02/23/04	(H)	DP: GARA, SAMUELS, ANDERSON, GRUENBERG,
02/23/04	(H)	OGG, MCGUIRE
03/04/04	(H)	TRANSMITTED TO (S)
03/04/04	(H)	VERSION: CSHB 350(STA)
03/05/04	(S)	READ THE FIRST TIME - REFERRALS
03/05/04	(S)	STA, JUD
03/25/04	(S)	STA AT 3:30 PM BELTZ 211
03/25/04	(S)	Moved CSHB 350(STA) Out of Committee
03/25/04	(S)	MINUTE(STA)
03/26/04	(S)	STA RPT 4DP
03/26/04	(S)	DP: STEVENS G, COWDERY, STEDMAN, GUESS

04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 246

SHORT TITLE: HATE CRIMES/DISCRIMINATION/TOLERANCE PROG

SPONSOR(s): SENATOR(s) LINCOLN

01/12/04 (S) PREFILE RELEASED 1/2/04
01/12/04 (S) READ THE FIRST TIME - REFERRALS
01/12/04 (S) STA, JUD
03/23/04 (S) STA AT 3:30 PM BELTZ 211
03/23/04 (S) Moved SB 246 Out of Committee
03/23/04 (S) MINUTE(STA)
03/24/04 (S) STA RPT 4DP
03/24/04 (S) DP: STEVENS G, HOFFMAN, STEDMAN,
GUESS
03/24/04 (S) FIN REFERRAL ADDED AFTER JUD
04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 323

SHORT TITLE: WORKERS COMPENSATION AND CONTRACTORS

SPONSOR(s): SENATOR(s) SEEKINS

02/13/04 (S) READ THE FIRST TIME - REFERRALS
02/13/04 (S) L&C, JUD
03/04/04 (S) L&C AT 1:30 PM BELTZ 211
03/04/04 (S) Heard & Held
03/04/04 (S) MINUTE(L&C)
03/09/04 (S) L&C AT 1:30 PM BELTZ 211
03/09/04 (S) Moved SB 323 Out of Committee
03/09/04 (S) MINUTE(L&C)
03/10/04 (S) L&C RPT 2DP 2NR 1AM
03/10/04 (S) DP: BUNDE, SEEKINS; NR: DAVIS,
03/10/04 (S) STEVENS G; AM: FRENCH
03/17/04 (S) JUD AT 8:00 AM BUTROVICH 205
03/17/04 (S) Heard & Held
03/17/04 (S) MINUTE(JUD)
04/02/04 (S) JUD AT 8:00 AM BUTROVICH 205
04/02/04 (S) Heard & Held
04/02/04 (S) MINUTE(JUD)
04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: SB 308

SHORT TITLE: DOMESTIC VIOLENCE PROTECTIVE ORDERS

SPONSOR(s): SENATOR(s) FRENCH

02/09/04 (S) READ THE FIRST TIME - REFERRALS
02/09/04 (S) STA, JUD

03/11/04 (S) STA AT 3:30 PM BELTZ 211
 03/11/04 (S) Moved SB 308 Out of Committee
 03/11/04 (S) MINUTE(STA)
 03/12/04 (S) STA RPT 3DP
 03/12/04 (S) DP: STEVENS G, STEDMAN, GUESS
 03/12/04 (S) FIN REFERRAL ADDED AFTER JUD
 03/26/04 (S) JUD AT 8:00 AM BUTROVICH 205
 03/26/04 (S) Heard & Held
 03/26/04 (S) MINUTE(JUD)
 04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 252

SHORT TITLE: OCC LICENSING: TERMS OF BD & CONT. EDUC

SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

04/08/03 (H) READ THE FIRST TIME - REFERRALS
 04/08/03 (H) L&C, STA
 05/02/03 (H) L&C AT 3:15 PM CAPITOL 17
 05/02/03 (H) Moved CSHB 252(L&C) Out of Committee
 05/02/03 (H) MINUTE(L&C)
 05/05/03 (H) L&C RPT CS(L&C) NT 4DP
 05/05/03 (H) DP: LYNN, DAHLSTROM, ROKEBERG,
 ANDERSON
 05/07/03 (H) STA AT 8:00 AM CAPITOL 102
 05/07/03 (H) Moved CSHB 252(STA) Out of Committee
 05/07/03 (H) MINUTE(STA)
 05/08/03 (H) STA RPT CS(STA) NT 4DP 1NR
 05/08/03 (H) DP: DAHLSTROM, LYNN, SEATON,
 WEYHRAUCH;
 05/08/03 (H) NR: BERKOWITZ
 05/15/03 (H) TRANSMITTED TO (S)
 05/15/03 (H) VERSION: CSHB 252(STA)
 05/16/03 (S) READ THE FIRST TIME - REFERRALS
 05/16/03 (S) L&C, JUD
 05/19/03 (S) L&C RPT 2DP 1NR
 05/19/03 (S) DP: SEEKINS, STEVENS G; NR: FRENCH
 05/19/03 (S) L&C AT 8:00 AM BELTZ 211
 05/19/03 (S) Moved SCS(L&C) Out of Committee
 05/19/03 (S) MINUTE(L&C)
 02/18/04 (S) JUD AT 8:00 AM BUTROVICH 205
 02/18/04 (S) Heard & Held
 02/18/04 (S) MINUTE(JUD)
 02/25/04 (S) JUD AT 8:00 AM BUTROVICH 205
 02/25/04 (S) Scheduled But Not Heard
 03/03/04 (S) JUD AT 8:00 AM BUTROVICH 205
 03/03/04 (S) Heard & Held
 03/03/04 (S) MINUTE(JUD)

04/07/04

(S)

JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Representative Carl Gatto
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Co-sponsor of HB 350

Senator Georgianna Lincoln
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 246

Mr. Robert Jacobs
Pacific Northwest Regional Director
Anti-Defamation League

POSITION STATEMENT: Supports SB 246

Mr. Nelson Angapak, Sr.
Alaska Federation of Natives
1577 C Street, Suite 300
Anchorage, AK 99501

POSITION STATEMENT: Supports SB 246

Mr. Walt Monegan
Chief of Police
Municipality of Anchorage
4501 South Bragaw
Anchorage, Alaska 99508

POSITION STATEMENT: Supports SB 246

Ms. Thelma Buchholdt
Anchorage, AK

POSITION STATEMENT: Supports SB 246

Ms. Denise Morris, President
Alaska Native Justice Center
121 W. Fireweed Ln., Ste. 240
Anchorage, Alaska 99503

POSITION STATEMENT: Supports SB 246

Ms. Celeste Hodge, Deputy Director
Mayor's Office of Equal Opportunity
Municipality of Anchorage
4501 South Bragaw
Anchorage, Alaska 99508

POSITION STATEMENT: Supports SB 246

Mr. Nick Kokotovich
Youth Leadership Team
Yakoose - Juneau Douglas High School
Juneau, AK

POSITION STATEMENT: Supports SB 246

Ms. Alexie Olson
Juneau Douglas High School
Juneau, AK

POSITION STATEMENT: Supports SB 246

Mr. Jack Miller, Attorney
Alaska State Chamber of Commerce
217 Second Street
Juneau, Alaska 99801

POSITION STATEMENT: Suggested an amendment to SB 323

Mr. Heath Hilyard
Staff to Representative McGuire
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Addressed version S of HB 252 for the sponsor

ACTION NARRATIVE

TAPE 04-36, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:09 a.m. Senators Ogan, Ellis, French and Chair Seekins were present. Senator Therriault arrived at 8:15 a.m. The committee took up HB 350.

HB 350-CRIME VICTIMS' COMPENSATION FOR ARSON

REPRESENTATIVE CARL GATTO, co-sponsor of HB 350, informed members that HB 350 received unanimous support in the House committees and on the House floor. HB 350 addresses the question of [providing violent crimes compensation to victims of arson] by adding arson in the first degree to the short list of violent crimes. Mr. Godfrey, who administers the Violent Crimes Compensation Board, believes that the crime of arson was inadvertently omitted from that Act. Acts of arson can be violent crimes, and burn injuries are at least as severe as other injuries that result from acts of crime.

SENATOR OGAN asked Representative Gatto if he saw people harmed by arson when he was a firefighter.

REPRESENTATIVE GATTO told members, "There are quite a few arson crimes that we really can't even identify as arson. Generally speaking, at some of these instances, I usually ask the owner if they had insurance. Generally, if they had no insurance and their house burned, I was pretty certain that this was not an arson crime but, in too many cases, it does look suspicious. There was just no way to identify it. But I have seen people who have been burned fairly significantly. Personally even firemen get some burns to themselves. I've toasted my own ears and blistered them. I've seen helmets melted. There's been lots of significant things happen and I've certainly taken care of deceased people at some of these issues so these are all victims of violent crimes. And their spouses and their children are certainly victims even when they're not the deceased."

SENATOR OGAN said he sees arson as a despicable, cowardly, terrorist act.

REPRESENTATIVE GATTO agreed and recounted a case of a person who awoke at 2:00 a.m. to the smell of smoke because someone lit his house on fire. The arsonist intended to do harm in a violent manner. He then informed members that he and Representative Gruenberg worked together in a bipartisan fashion on this legislation.

REPRESENTATIVE MAX GRUENBERG thanked the Senators for working cooperatively on this issue.

CHAIR SEEKINS noted the state fire marshal was available to answer questions [but there were none].

There being no further discussion, SENATOR OGAN moved CSHB 350(STA) from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

SB 246-HATE CRIMES/DISCRIMINATION/TOLERANCE PROG

SENATOR GEORGIANNA LINCOLN, sponsor of SB 246, informed members that the media has reported stories related to hate

crimes around the state over the years, the most recent being a paintball attack on a young woman in November of 2003. However, many other hate/bias motivated crimes take place that go unreported. She pointed to a chart of hate crimes in members' packets from the Anchorage Police Department that provides just a sampling of what is going on in the state. Senator Lincoln said SB 246 was drafted after the 2001 Governor's Conference on Tolerance prepared recommendations. Between 1998 and 2002, Anchorage had 67 reported cases of hate/bias motivated incidences with only 17 arrests. She indicated the Anchorage Chief of Police was available to testify, as were Juneau Douglas High School students who are representing students who have experienced hate/bias incidences at school.

SENATOR LINCOLN explained that a hate crime is any criminal offense committed against a person or property that is motivated in whole or part by the offender's bias against race, religion, ethnic or national origin, or sexual orientation. SB 246 was modeled after national model legislation created by the Anti-Defamation League. The League's legal counsel has reviewed the legislation and will testify today. She pointed out that Alaska and Wyoming are the only two states that have not enacted a law similar to the Anti-Defamation League's model.

SENATOR LINCOLN explained that SB 246 expands the state's penalty enhancement provision in statute. The existing penalty enhancement provision only applies to defendants facing presumptive sentences, which are usually repeat felons. It does not apply to anyone found guilty of a misdemeanor or most first time felons. SB 246 includes those crimes, thereby making them eligible for penalty enhancement. For example, under SB 246, a class B misdemeanor would be elevated to a class A misdemeanor charge if the offender's actions are determined to be motivated by prejudice, bias, or hate. If the crime committed were a class B misdemeanor, it would be elevated to a class C felony. In the case of the paintball attack in 2001, one man was charged with seven counts of a class A misdemeanor, which amounted to a slap on the hands. Had that man been prosecuted under SB 246, a class C felony charge would have been added.

SENATOR LINCOLN pointed out the majority of hate crimes reported in Alaska include assault, intimidation, and harassment, and would therefore be misdemeanors. Aggravating factors only apply to felonies; and since most hate crimes are

misdemeanors, the majority of hate crimes are outside of the scope of aggravating factors in law. SB 246 also adds gender to its hate crimes legislation, which sends an important message that gender-based crimes will not be tolerated. Legislators around the country have realized the importance of distinguishing race-based and religion-based hate crimes from gender-based crimes.

SENATOR LINCOLN maintained that what sets hate crimes apart from other acts of violence is the psychological damage they do. The American Psychological Association (APA) determined that victims of hate crimes suffer the symptoms of post-traumatic stress disorder and social and economic ramifications. She urged members to read Dr. Langdon's letter concerning the psychological damages that occur. She then mentioned that an elder Yupik woman told her of an incident she recently experienced at a Fred Meyers store in Anchorage. The woman placed her basket at the side of the aisle to look at items on the shelf. After a man bumped her basket, she turned and said excuse me to him, although she was not at fault. As he passed her, he loudly said watch where you're going, slant eyes. The woman said it broke her heart but said, God bless you too, because a child was with him. The woman believes it is important to feed children words from which children grow spiritually and she did not want the child to grow up adopting that man's attitude toward another race.

SENATOR LINCOLN concluded by informing members that several people were available to testify and answer questions.

8:30 a.m.

SENATOR OGAN indicated that Senator Lincoln's story was very touching and that the Yupik woman's response was impressive. He then noted when visiting a Native village years ago, a Native man warned him that he shoots white men and dumps them in the river so [Senator Ogan] better get out of the village. He commented that unfortunately, racism is not always "a one-way street." Senator Ogan said he struggles with creating a class distinction in the crime statutes because all crime is hateful. He questioned whether the legislature will next have to add political parties to the list in case a Democrat commits a crime against a Republican or vice versa because the crime was politically motivated. He expressed concern that SB 246 starts a slippery slope of creating an unequal class of people.

SENATOR LINCOLN responded that SB 246 is not meant to apply to any one particular race; it applies to anyone. She stated:

It's the idea that if somebody is so intent, and it has to be a preponderance of evidence...it just can't be somebody saying, somebody like the lady in Fred Meyers, you have to prove - and certainly there are lawyers here sitting on your committee that know more than I on that and the Department of Law. But you would have, I would hope, so few cases that it's not simply somebody saying somebody said something wrong to me, that it was because I'm a certain party. I hope that we never get to that point. But, you look at these young men that videotaped the paintball incident that, you will recall, that said we're out looking for Natives - that particular incident - and we're not shooting anyone but Natives. That's all they were looking for and they had the videotape of that. That should not be allowed in our society and we, as lawmakers, should do everything we can to dissuade folks like that from continuing.

SENATOR OGAN agreed the [paintball incident] is a horrible example and was an insult to everyone who engages in civil behavior. He noted the outrage from the community was appropriate and believes the offenders had no idea the community reaction would be so intense. He offered that shooting a person with a paintball is not a terribly serious crime and the offenders probably would not have gotten in trouble for it had their actions not been racially motivated. He said he does not recall the outcome of that crime, but believes it got a lot more scrutiny because of the community's outrage.

SENATOR LINCOLN repeated that the offenders were charged with misdemeanors, which means their hands were slapped. She agreed that people were outraged, but the statutory punishment did not allow for more than a misdemeanor charge so they were not adequately punished.

SENATOR FRENCH reiterated two points made by Senator Lincoln, the first being that the number of cases that would be brought under SB 246 would be fairly small for two reasons. The proof requirements are stringent and, thankfully, hate crimes are fairly rare. He noted in the absence of the videotape in the

paintball incident, a prosecution would not have been sustainable.

SENATOR THERRIAULT asked if there is any compelling reason that these crimes should not be [elevated] with an aggravator.

SENATOR FRENCH pointed out that fourth degree assault crimes are misdemeanors. A paintball is not inherently dangerous so a crime using one is a misdemeanor and the aggravators in Alaska law do not apply to misdemeanors. Therefore, to take into account the motivation of the crime, the crime must be elevated to a higher level, which is what SB 246 does. He added:

And the same would go - even if it were a class C felony, a first offender on a class C felony, there's no presumptive term. You can be sentenced to zero days in jail if the judge sees fit. So it's not as if - and that sort of leaves two arguments. It's not as if the person whose charged with this crime for a fourth degree assault is suddenly going to go off to jail for a long time. The judge, you know, looks at the whole picture. The judge can still send that individual away with no time in jail. On the other hand, making it a class C felony gives the judge a lot more leeway because you can kind of go up to about two years on the first offense without really running afoul of the law.

SENATOR THERRIAULT asked if SB 246 notches all categories of crime up one degree.

SENATOR FRENCH said it does.

SENATOR THERRIAULT asked if that could not be done with aggravators instead.

SENATOR FRENCH said it cannot for misdemeanors.

SENATOR OGAN asked if the law that applies to aggravators and misdemeanors could be changed.

SENATOR FRENCH said that is what Senator Lincoln is doing with SB 246.

SENATOR LINCOLN indicated that a representative from the Department of Law (DOL) was available to answer technical,

legal questions. She then pointed to language on page 2, line 22, and said the word "knowingly" requires a higher mental element.

SENATOR FRENCH said it is very difficult to prove what a person is thinking so SB 246 places a high burden on the prosecution.

SENATOR OGAN referred to line 8 of page 3, specifically the words, "prejudice, bias, or hatred," and said he can't imagine, unless a person is insane, a violent crime being committed by someone who is not motivated by hatred or rage. He questioned what violent crime is not hateful.

SENATOR LINCOLN deferred to other testifiers to answer that question.

CHAIR SEEKINS took public testimony.

MR. ROBERT JACOBS, Pacific Northwest Regional Director of the Anti-Defamation League (ADL), informed members that Mr. Michael Lieberman, legal counsel, was unavailable because of Passover, but that Mr. Lieberman would provide written responses to any legal questions members have tomorrow. He then gave the following testimony.

Since 1913 it's been the mission of the ADL to stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike. We're dedicated to combating prejudice and bigotry of all kinds and defending democratic ideals and to promoting civil rights.

The Anti-Defamation League is proud to support SB 246, which would take an important step toward providing appropriate civil remedies and criminal penalties for hate crimes in Alaska. SB 246 would provide for additional and specific penalties for crimes committed against persons or property because of that person or the owner or owner's race, color, religion, nationality, country of origin, disability, gender, or sexual orientation [indisc.]. 46 states and the District of Columbia have passed hate crimes legislation with strong bi-partisan support; 31 of those states provide a similar remedy to the remedies provided in SB 246.

...I did want to respond to a Senator's express concern that this legislation will create a special class that needs more protection than others. Violent crimes of bigotry demand a priority response because of their special emotional and psychological impact on the victim and the victim's community. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars or cents. Hate crimes may effectively intimidate other members of that victim's community, leaving them feeling isolated, vulnerable or unprotected by the law. By making members of minority communities fearful, angry, and suspicious of other groups, and of the power structure that is supposed to protect them, these incidents can damage the fabric of our society and fragment communities.

Some people ask why a crime committed against an African-American, a gay person, or a Jew, simply because that person is African-American, gay or Jewish, is worse than a random robbery or assault or vandalism. And aren't we all terribly violated whenever we are the victims of physical attack? The answer is absolutely yes. From the victim's perspective, all crimes create a sense of violation. But there is a difference. A random crime is committed not because of a person's identity, but because of a person's misfortune. A random robbery is committed not because of who you are, but because of, for example, you might have money. In a random crime, if that property hadn't been robbed or vandalized, it would have been that of some other unfortunate victim. And so while it might feel personal, while it's happening, it shouldn't be taken personally.

But the opposite is true of a hate crime. Hate crimes are specifically personal. They're committed against somebody else because of some innate or unique personal characteristic that can't be changed, that's immutable: skin color, sexual orientation, religious background, ethnic origin. Walking a different, less dangerous route will not necessarily stop the hate crime perpetrator because he or she is looking for somebody of your kind and will find them, if not now, later. The randomness of the crime motivated by greed, or need, or drug

addiction - that kind of crime is absent, the motivation is absent from hate crime. That's the difference. The hate crime - you're not selected randomly. You're not in the wrong place at the wrong time. Victims can avoid bad neighborhoods but they cannot, and they shouldn't have to, escape from who they innately are.

Hate crimes are based on a victim's race, religion, gender, sexual orientation, and disability. They have a special psychological and emotional impact that extends well beyond that original victim and, so while bigotry cannot be outlawed, you can't do something to, say, bigotry - the thoughts themselves can't be there. Passage of this bill, which will provide Alaskans with both civil and criminal hate crime protection and remedies, demonstrates an important commitment to confront criminal activity motivated by prejudice.

In partnership with human rights groups, civic leaders and law enforcement officials can advance community relations by demonstrating commitment to be both tough on hate crime perpetrators and sensitive to the special needs of the hate crime victims. The intent of penalty hate crime laws is not only to reassure the targeted groups by imposing serious punishment on hate crime perpetrators, but also to deter those crimes by demonstrating that they will be dealt with in a serious manner. Under these laws, no one is punished merely for bigoted thought, ideology or speech but when prejudice prompts somebody to act on those beliefs and engage in criminal conduct, a prosecutor under these laws may seek a more severe sentence but must prove beyond reasonable doubt the victim was intentionally selected because of his or her personal characteristics.

The fundamental cause of bias-motivated violence is the persistence of racism, bigotry, and anti-Semitism. Unfortunately, there is not quick, complete solution to these problems. Ultimately the impact of all bias crime initiatives will be measured by the response of the civil judicial and the criminal judicial systems to the individual act of hate crimes or hate violence. Enactment of SB 246,

along with the implementation of other hate crime training, prevention, and anti-bias education initiatives is, in the words of the ADL's mandate, a step toward justice and fair treatment for all citizens alike.

So we applaud the leadership of Senator Lincoln on this measure and we urge the committee to approve this important legislation. Thank you.

CHAIR SEEKINS thanked Mr. Jacobs and asked Mr. Nelson Angapak to testify.

MR. NELSON ANGAPAK, SR., representing the Alaska Federation of Natives (AFN), stated support for SB 246. He asked that his written statement and a letter from Julie Kitka be incorporated into the committee record [located in the committee file]. Mr. Angapak stated the following:

Hate crimes know no racial boundaries. Right here in Alaska...perpetrators of hate crimes have targeted the Alaska Natives. I know somebody remarked a while ago that shooting someone with a paintball will not kill the person in and of itself and I agree. However, the psychological impact of that incident is greater and longer lasting. I saw the whole paintball videotape and I can still recall the young man saying, 'Let's go out and hunt those mukluk Eskimos.' I am an Eskimo from Kobuk. And Mr. Chairman, sometimes when I'm driving down that road and I'm walking outside, I wonder is there somebody out there looking for me to shoot me. I think, Mr. Chairman, it's more important to - rather than talk about the philosophy of whether or not a paintball law should be incorporated, I think this committee should seriously consider the passage of SB 246 because if this bill is incorporated as Alaska state statute, perhaps, and it is my hope, that it will act as a deterrent for those folks who might be contemplating [indisc.] of paintball.

Mr. Chairman, I applaud that the legislature in 2001 - that they condemned the paintball incident. I think, Mr. Chairman, what the legislature did not accomplish at that point was to pass a hate crimes statute and I would like to commend you guys for giving yourselves a second opportunity of passage of

a hate crime bill that will elevate this kind of crime from a misdemeanor to a higher level of crime.

Mr. Chairman - last point. On behalf of the Alaska Federation of Natives, we would urge you to seriously consider moving the bill out of your committee and urge your Senate colleagues to strongly support its passage. Thank you very much and if you have any questions, I will be more than delighted to answer them at this point.

There being no questions, CHAIR SEEKINS thanked Mr. Angapak and called Mr. Monegan.

MR. WALT MONEGAN, Chief of the Anchorage Police Department, stated support for SB 246. He noted he sent a letter to the committee that strongly states his opinion, but he offered to shed some light on some of the concerns he heard expressed during the hearing. He said the difference between rage and hatred, in his personal opinion, is that rage is usually directed at an individual while hatred is directed toward a group. He said that type of a situation is much more divisive and destructive to any community. He said that is not something he wants to see take root in Anchorage or any community. His second point was that personal gain or personal greed motivates most people to commit a crime. The primary motive behind a hate crime is to create fear in a group. That differs from a normal criminal act.

There being no questions, CHAIR SEEKINS called Ms. Buchholdt.

MS. THELMA BUCHHOLDT, an Anchorage attorney in private practice, said that while she is not testifying on behalf of all of the various ethnic organizations, she is a member of the Filipino Community of Anchorage, Inc., the Filipino American National Historical Society, the Filipino Arctic Folk Ensemble, the U.S. Commission for Civil Rights Advisory Committee, and the Catholic Social Services Advisory Committee for Immigration and Refugees, among others.

MS. BUCHHOLDT said she heard that SB 246 might do better this year because it has no fiscal note. She served on both the House Finance and Judiciary Committees for several years during her four terms in the [Alaska] House of Representatives and is aware that a bill with no fiscal note is generally a mere gesture and hardly enforceable. She continued:

However, in this case, the legislation will be enforced by the prosecutors and the courts in their normal course of criminal procedures. I believe there should be a fiscal note to this bill to provide for the design and establishment of our diversity [indisc.] training programs, mandated for juvenile offenders within the Department of Health and Social Services. And, for adult offenders, we need the corrections system.

I do have one concern, and that's in SB 246. As drafted now, it would curtail the court's ability to apply the SIS - or suspend imposition of sentence - which I consider to be an important tool in dispensing justice. For crimes such as felony assault, where the SIS is already disallowed, this legislation would make no difference. Here under SB 246, however, but for the hate crime factor, SIS would not be an option. However, I believe that the bill should be amended to require some specifications and conditions [indisc.] as the moral rehabilitation of the offender. As a condition of avoiding jail and having this shameful crime dismissed, hate criminals should be required to undergo well-designed programs of diversity, tolerance, counseling and training. This would allow our judges with greater discretion that is expressly provided by [SB] 246.

While I'm not convinced that mandatory sentencing and [indisc.] hate crime offenders will deal effectively with the underlying hatred, I do think that the proper discretion and direction, judges can condition SIS release and ongoing diversity-tolerance programs to help to change the heart and mind of the hate crime offender. However, what is clear is that the offender's hatred is badly engendered, particularly in the case of juvenile offenders. Family counseling should be ordered as a condition of SIS release. In addition, conditioning SIS release on diversity, tolerance, training, and the Department of Corrections should likewise condition probation and early parole.

Thank you for hearing me out this morning. I think that you should pass this bill. It would be our

public declaration of our intolerance for hate crime practices....

SENATOR THERRIAULT informed Ms. Buchholdt that two of the fiscal notes are indeterminate, not zero, so the departments may incur an expense but do not know how much that might be.

TAPE 04-36, SIDE B

MS. DENISE MORRIS, President of the Alaska Native Justice Center, told members she served as a member of the Tolerance Commission, formed in 2001. The Justice Center represented and advocated on behalf of several of the paintball incident victims who were traumatized. She believes many of them had been victims of hate crimes in the past but those crimes went unreported. When the Tolerance Commission traveled and took testimony across Alaska, many people came forward and said they had been victims of hate crimes. She pointed to the Poindexter serial rapist case, of which all nine victims were Alaska Native women. That crime was not treated as a hate crime. More recently, in the Hunter case, 99 percent of the victims were Alaska Native women. No aggravator could be applied to those cases because Alaska does not have hate crime legislation.

MS. MORRIS noted that Alaska Native women are 4.5 times more likely to be homicide victims. In Anchorage alone, over 50 percent of the reported cases of sexual assault are reported by Alaska Native women. Alaska Native men are much more likely to be homicide victims and more likely to be victims of hate crimes in Alaska. She understands the concerns expressed by members, but the bill reflects the values of people and signals that crimes motivated by hate are especially tragic. An open society is one that promotes fundamental human rights, guarantees impartial justice, provides opportunities for people to make the most of their talents and makes public decisions through a democratic process that is open to full participation and constant re-examination. SB 246 alone cannot eliminate bias and hate but it will hold people accountable for their actions. She urged members to pass SB 246.

9:00 a.m.

MS. CELESTE HODGE, Deputy Director and Community Outreach Liaison of the Anchorage Mayor's Office of Equal Opportunity, shared a hate message left on her voice mail immediately after launching a program to increase diversity within the municipal

workforce. The message left her feeling terrorized and vulnerable. She encouraged members to pass SB 246.

MR. NICK KOKOTOVICH, a member of the Youth Leadership Team, and chair of the "Undo Racism Group," told members he attends Yakoosgé Daakahídi, part of Juneau-Douglas High School (JDHS). He has seen a lot of hate crimes at JDHS this past year while visiting. He said although a paintball cannot kill a person, it can cause serious eye damage. He told members that last year, because he is Native, he was harassed to the point of physical violence by a certain person. The same boy harassed three other Native boys. The school district suspended [the perpetrator] for three days, along with the boys who were harassed, because the school has a policy of no fighting. SB 246 will give all youth in Alaska the security they need.

MS. ALEXIE OLSON, a junior at JDHS, told members she is involved in school activities, gets good grades, and is related to Elizabeth Peratovich. She said during her sophomore year at JDHS she wanted to quit school. Students were harassing her every morning at school, pushing her so that she would burn herself with the hot drink she carried. Her girlfriend who is not Alaska Native did not experience any harassment, although they were together everyday. She reported the incidences to the school administrator but nothing was done. She recounted being pushed, called names, shoved into lockers, and hurried down stairs purposely. She remarked that all Alaska Natives experience racial discrimination and harassment. Most of them just want to complete their educations in a safe environment and to be respected for who they are. She asked members to pass the bill.

SENATOR OGAN asked Ms. Olson if her dislocated knee was caused by the harassment.

MS. OLSON said she was shoved by a "white" person and injured herself badly.

SENATOR OGAN asked Ms. Olson if she reported that incident to the police.

MS. OLSON said she did not.

SENATOR OGAN expressed sympathy about her experience but said he also was shoved around in the halls at school because of his size. In retrospect, he turned it into a good thing because although he suffered a lot from that harassment, he

took karate and took on his opponent. That was the last time he was harassed. He hoped Ms. Olson's experiences can make her a stronger person.

CHAIR SEEKINS asked Ms. Olson if the school administration does nothing when she reports these incidences.

MS. OLSON said that she was called into the minister's office. He had her point out the people who were harassing her but nothing came of it. The harassment continued all year.

CHAIR SEEKINS asked Ms. Olson if she has a counselor she can work with in the school to bring these issues to the administration's attention and increase awareness.

MS. OLSON said she told some of her teachers because they saw the burns on her arms but they told her to talk to her counselor who told her to talk to the administrator. She did, but no follow-up occurred.

CHAIR SEEKINS expressed concern that nothing was done about basic bad behavior.

SENATOR LINCOLN told members that the students marched to the Capitol Building about two weeks ago and started a dialog with the school administration. She believes that because of these students, the allegations are being looked into but she does not know the results yet. She added that someone is writing KAN on the school and buses, an acronym for kill all Natives.

CHAIR SEEKINS asked if it would be a crime to deliberately cause a person to burn herself with hot liquid.

SENATOR FRENCH affirmed it would.

CHAIR SEEKINS encouraged anyone in that situation to pursue whatever remedy is necessary to prevent that from happening again.

SENATOR FRENCH commented that there was a spate of racially motivated incidents at JDHS, which has raised the awareness of the community and sparked some rallies. He believes the reports have gotten back to the authorities and the community has given a fair amount of attention to the matter.

CHAIR SEEKINS thanked participants and announced that he would hold the bill in committee to allow others to testify and to

address members' concerns. He then announced a five-minute recess.

9:23 a.m.

SB 323-WORKERS COMPENSATION AND CONTRACTORS

CHAIR SEEKINS called the meeting back to order. Senators French, Ogan, Therriault and Chair Seekins were present.

CHAIR SEEKINS informed members that one question that came up on this bill had to do with its effect on a sole proprietor or partner with no employees. He has asked Todd Larkin to work on a proposed amendment to address that scenario. He explained that under the current statute, a sole proprietor or a partner without any employees could be exempt from the requirement to have workers' compensation coverage for them. If either had employees, they would be required to have coverage. He said the proposed amendment would say if the sole proprietor or partner does not have workers' compensation coverage, the project owner or contractor is released from any claims that could be brought under workers' compensation up the ladder. He clarified that a sole proprietor or partner is not required to have workers' compensation coverage but, if they make that choice, their exclusive remedy is against themselves, not who they are working for.

MR. JACK MILLER, an attorney with the Alaska State Chamber of Commerce, informed members that he spoke with Mr. Larkin that morning and was made aware of the issue relating to sole proprietors and partners. He recommended addressing that issue in AS 23.30.239, which specifically deals with sole proprietors and partners and allows them to opt in or out of the workers' compensation system. He suggested the simplest fix would be to add subsection (e) to AS 23.30.239 to read:

A sole proprietor or a member of a partnership, who does not elect coverage as an employee under this chapter, may not make a claim for compensation in respect of an injury, disability or death against a contractor or other employer.

SENATOR OGAN remarked that he was a sole proprietor for 25 years and did not have workers' compensation coverage. He was always willing to take that risk and would not have considered trying to hold someone else responsible for any injuries he sustained. He stated strong support for the proposed amendment

and declared that he may have a conflict of interest at some point in the future.

CHAIR SEEKINS announced that he would have an amendment drafted and bring it up at the afternoon meeting.
9:32 a.m.

SB 308-DOMESTIC VIOLENCE PROTECTIVE ORDERS

SENATOR HOLLIS FRENCH, sponsor of SB 308, told members that he reviewed the Rules of Professional Conduct in response to the question of whether attorneys are or might encourage divorce clients to run to court to get a restraining order against their spouses. The rules state that a lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent. Therefore, an attorney would be risking his or her professional license if he or she engaged in such activity.

SENATOR THERRIAULT asked how he would seek a remedy if he suspected his wife's divorce attorney was recommending she get a restraining order against him.

SENATOR FRENCH said he would file a complaint with the Alaska Bar Association.

SENATOR THERRIAULT asked if he would have to hire an attorney to do so.

SENATOR FRENCH said he would not have to but would probably be better off doing so. He noted the Alaska Bar Association prosecutes the complaints in-house. The bar collects information from the complainant, asks the attorney for a statement, looks into the matter and makes a decision.

CHAIR SEEKINS commented that domestic violence complaints seem to show up very quickly in ugly divorces, especially with young people. While it may be against the rules of professional conduct for an attorney to encourage a client to get a restraining order for bogus reasons, it might be difficult to prove the attorney's motives. He added that sometimes a spouse is even baited into an argument so that the other spouse can get a restraining order. He said he would lean toward giving the court discretion to determine what is going on. He stated, "It just seems to me that any order that would automatically be effective for one year may be leaning outside of the discretion of the court. I don't have any

problem with the court saying that they have a leeway - they can make that effective for six months to 12 months, rather than making it one or the other."

SENATOR FRENCH offered the following amendment [Amendment 1] to page 1, lines 13 and 14, to read:

(2) (c)(2)-(16) of this section are effective for a minimum of six months or up to one year unless earlier dissolved by court order.

CHAIR SEEKINS responded that makes him feel better because in talking to some people off the record, they would prefer to have some discretion rather than a fixed limit.

SENATOR FRENCH amended his amendment to change the word "or" to "and" so that it reads "a minimum of six months and up to one year...".

SENATOR THERRIault questioned the reason for the change.

SENATOR FRENCH withdrew the amendment to Amendment 1.

CHAIR SEEKINS announced that without objection, Amendment 1 was adopted.

SENATOR OGAN offered Amendment 2, which reads as follows:

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: SB 308

BY SENATOR OGAN

Page 1, line 1, following "Act":

Insert "**relating to warnings on domestic violence forms and**"

Page 1, following line 14:

Insert a new bill section to read:

"* **Sec. 2.** AS 18.66.150 is amended by adding a new subsection to read:

(e) Forms and instructions for petitions and requests to modify petitions must contain a conspicuous warning that the petitions and requests are submitted under oath under penalty of perjury and that a person making a false statement may be prosecuted for perjury

and, if found guilty, may be punished for violation of a felony."

CHAIR SEEKINS objected for the purpose of hearing an explanation.

SENATOR OGAN explained that Amendment 2 changes the title and adds a new section that simply says that forms, instructions, petitions, and requests to modify petitions must contain a conspicuous warning, for the purpose of informing people that if they make a false statement, they could be charged with perjury and, if found guilty, could be punished for a felony. He maintained that Amendment 2 would put people on notice so that if they plan to manipulate the system by making a false statement to gain an advantage, they are committing perjury.

SENATOR FRENCH believed that petition statements are sworn to now so Amendment 2 would comport with the way the statements are currently made and the penalty for false statements. He was unsure whether protective order statements are given under oath.

CHAIR SEEKINS said the key word in Amendment 2 is "conspicuous" because the notice would have to stand out and be easily noticed.

SENATOR OGAN affirmed that is his intent.

SENATOR THERRIAULT clarified that the [protective order] form is signed before a notary.

CHAIR SEEKINS said the notary is notarizing the signature, not the statement.

SENATOR THERRIAULT noted the petitioner swears or affirms under penalty of perjury. He asked whether the font would be made larger and/or bolder.

CHAIR SEEKINS said he doesn't read it to say the person could be punished for the violation of a felony. He pointed out that most conspicuous statements are required to be in larger, bolder or a different font type that is easily recognizable.

SENATOR THERRIAULT said if the effect of Amendment 2 is to flesh that statement out and make it bolder, he sees no problem with it.

SENATOR OGAN affirmed that is his intent.

CHAIR SEEKINS removed his objection and, with no further objection, Amendment 2 was adopted.

SENATOR OGAN moved to adopt Amendment 3, which reads as follows:

A M E N D M E N T 3

OFFERED IN THE SENATE
TO: SB 308

BY SENATOR OGAN

Page 1, line 1, following "Act":

Insert **"relating to warnings on domestic violence and stalking forms and"**

Page 1, following line 3:

Insert a new bill section to read:

"* Section. 1. AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to \$5,000." **Forms and instructions for petitions and requests to modify petitions must contain a conspicuous warning that the petitions and requests are submitted under oath under penalty of perjury and that a person making a false statement may be prosecuted for perjury and, if found guilty, may be punished for violation of a felony.**"

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

Page 1, following line 14:

Insert a new bill section to read:

"* Sec. 3. AS 18.66.150 is amended by adding a new subsection to read:

(e) Forms and instructions for petitions and requests to modify petitions must contain a conspicuous warning that the petitions and requests are submitted under oath under penalty of perjury and that a person making a false statement may be prosecuted for perjury and, if found guilty, may be punished for violation of a felony."

CHAIR SEEKINS objected for the purpose of discussion.

SENATOR OGAN explained that Amendment 3 would add the same conspicuous warning onto domestic violence stalking forms.

There being no discussion, CHAIR SEEKINS removed his objection. With no further objection, Amendment 3 was adopted.

SENATOR THERRIAULT asked if the intent of the committee is that any existing forms be thrown out on the effective date of this bill or to allow existing forms to be used up.

SENATOR OGAN said to save state resources and trees, he would not object to using up the existing forms within a reasonable time but not to print new forms without the conspicuous notice.

SENATOR THERRIAULT thought it would lower the fiscal note to make the change when the next group of forms is printed.

No member objected.

SENATOR OGAN offered to draft a letter of intent from the committee to address on the Senate floor.

CHAIR SEEKINS noted he would indicate the letter of intent is the will of the committee.

There being no further discussion, SENATOR OGAN moved CSSB 308(JUD) from committee with individual recommendations and attached fiscal notes.

CHAIR SEEKINS announced that with no objection, the motion carried.

HB 252-OCC LICENSING: TERMS OF BD & CONT. EDUC

MR. HEATH HILYARD, staff to Representative Lesil McGuire, sponsor of HB 252, informed members that the proposed

committee substitute, labeled version S, addresses some of the concerns expressed by committee members about placing sideboards on the continuing education requirements in the bill. He worked with staff in Senator Therriault's office to come up with the language on page 2, lines 18 through 22.

TAPE 04-37, SIDE A

MR. HILYARD read from that language:

...the continuing education requirements may not exceed standards established by a national accrediting body or other recognized professional organization.

He said he believes that language will prevent the board from imposing continuing education requirements that are onerous.

SENATOR OGAN moved to adopt version S as the working document before the committee.

MR. HILYARD indicated that "or other recognized professional organization" was added on recommendation of the legal drafter.

SENATOR OGAN asked why this industry needs more government regulation and what this bill fixes.

MR. HILYARD told members the organizations regulated by the Board of Registration for Architects, Engineers and Land Surveyors want the Board to establish continuing education requirements to maintain professional competency. He said he could not speak to why the different organizations feel those requirements are necessary.

SENATOR THERRIAULT reminded members the original bill spoke to the terms and duties of the board members. However the standard review done by the Legislative Budget and Audit Committee suggested that the legislature consider revising statutes requiring continuing education for architects, engineers and land surveyors.

CHAIR SEEKINS announced that without objection, version S was adopted.

MR. HILYARD pointed out that an accompanying title change resolution had been prepared, labeled 12-LS1850\A. He then

noted version S is the same as the previous version in all other respects.

SENATOR THERRIault moved to adopt the senate concurrent resolution to affect the necessary title change to HB 252.

CHAIR SEEKINS announced that without objection, the motion carried.

SENATOR THERRIault moved SCS CSHB 252(JUD) from committee with individual recommendations and its attached zero fiscal note.

CHAIR SEEKINS announced that without objection, the motion carried.

SENATOR OGAN moved the senate concurrent resolution from committee.

CHAIR SEEKINS announced that without objection, the motion carried. He then recessed the meeting until 5:30 p.m.