

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

January 19, 2005

1:06 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 41

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 41

SHORT TITLE: ASSAULT ON SCHOOL EMPLOYEES

SPONSOR(S): REPRESENTATIVE(S) LYNN, MCGUIRE

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	JUD, FIN
01/19/05	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CAROL COMEAU, Superintendent of Schools  
Anchorage School District (ASD)  
Municipality of Anchorage (MOA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 41, provided comments and responded to a question.

REPRESENTATIVE BOB LYNN  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as one of the prime sponsors of HB 41.

PEGGY COWAN, Superintendent of Schools  
Juneau Borough Schools  
City & Borough of Juneau (CBJ)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 41, provided comments and responded to questions.

BILL BJORK, President  
NEA-Alaska (National Education Association, Alaska branch)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 41, provided comments and responded to questions.

DAVID W. MARQUEZ, Chief Assistant Attorney General  
Legislation & Regulations Section  
Office of the Attorney General  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 41, relayed the governor's support and responded to questions.

LINDA WILSON, Deputy Director  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 41, provided comments and responded to a question.

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:06:22 PM](#). Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Anderson were present at the call to order. Representatives Kott and Gara arrived as the meeting was in progress.

HB 41 - ASSAULT ON SCHOOL EMPLOYEES

[Contains mention of support for HB 88.]

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CHAIR McGUIRE announced that the only order of business would be HOUSE BILL NO. 41, "An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

CAROL COMEAU, Superintendent of Schools, Anchorage School District (ASD), Municipality of Anchorage (MOA), said that with the exception of one concern - that being that the ASD feels that the bill should apply to all school district employees, for example, bus drivers, during the performance of their duties - the ASD is very supportive of HB 41, and she characterized it as very important legislation. She thanked the sponsors for submitting the legislation, saying the concept embodied therein has been a large priority for the ASD. In response to a question, she indicated that the ASD has always been supportive of the bill applying to teachers as a start, but has also wanted it to eventually include all employees.

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REPRESENTATIVE BOB LYNN, Alaska State Legislature, one of the prime sponsors of HB 41, said that by instituting a mandatory minimum sentence of imprisonment for assaulting a school employee while he/she is performing school duties, the bill provides the same protection to teachers who are assaulted as current law provides to peace officers, fire fighters, correctional employees, emergency medical technicians, paramedics, ambulance attendants, and other emergency responders who are assaulted while engaged in the performance their official duties. He noted that last year's version of the bill passed out of the House Judiciary Standing Committee, but characterized HB 41 as being a better bill because of the input from Chair McGuire, the other prime sponsor of the bill. After mentioning that he has served in the military and as a teacher, he offered his belief that [the legislature] is obligated to add the proposed protections because schools should be made safe for teachers and other school employees, and characterized HB 41 as a giant step in that direction. He asked the committee for favorable action on the bill.

REPRESENTATIVE ANDERSON, after saying he supports the bill, asked how the minimum sentence of 60 days was arrived at.

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REPRESENTATIVE LYNN, after noting that the current version of the bill doesn't address verbal assault of school employees because the enforcement aspect was deemed problematic, said that the 60-day minimum sentence was chosen for HB 41 because it was used in last year's legislation.

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REPRESENTATIVE DAHLSTROM, referring to the word, "knowingly" on page 1, line 7, asked the sponsor to comment with regard to the burden of proof, and with regard to elevating teachers to the same level as peace officers, fire fighters, correctional employees, and other emergency responders. She also asked how the bill would apply in a situation where two children are brawling and a teacher gets hit.

CHAIR MCGUIRE, speaking as one of the prime sponsors of HB 41, relayed that committee staff would provide members with copies of the statute outlining the various mental states. She then noted that the 60-day sentence is already part of existing statute and the bill merely proposes to add school employees to the list for whom a mandatory minimum sentence shall be imposed.

REPRESENTATIVE LYNN, in partial response to Representative Dahlstrom, offered his belief that an assault on a school employee is an assault on a government employee and so should engender the same sentence as an assault on a peace officer, fire fighter, correctional employee, or other emergency responder.

REPRESENTATIVE COGHILL mentioned that in the past he'd introduced a bill making it an aggravator to assault [a school employee]. He referred to the examples mentioned by Ms. Comeau and said he wanted to know what penalties were actually imposed in those instances, and also whether there are any examples wherein the penalty imposed [seemed] insufficient.

REPRESENTATIVE LYNN suggested that perhaps someone else would be able to provide the committee with that information.

REPRESENTATIVE COGHILL said he wants to make sure that a 60-day sentence is appropriate for the crime; pointed out that peace

officers, fire fighters, correctional employees, and other emergency responders are often in situations where they have to handle people who are in an excitable state; and suggested that teachers wouldn't generally find themselves in such situations.

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REPRESENTATIVE LYNN offered his belief that school employees constitute a special class of people who are deserving of the same protections as those listed under current statute. He pointed out that school employees do face situations wherein parents are in an excitable state, sometimes highly enraged. He reiterated his belief that there should be a mandatory minimum sentence for assaulting school employees because they are government employees.

REPRESENTATIVE GARA noted that there is already a strict penalty for assaults that result in serious physical [injury], and that the bill only addresses [assault in the fourth degree]. Referring to newspaper articles in members' packets, he mentioned that in a couple of the aforementioned actual examples, the judges imposed sentences greater than 60 days; therefore, he is not sure that the bill is needed, since it proposes a shorter sentence than what judges have actually imposed.

REPRESENTATIVE LYNN said that although judges to date have imposed longer sentences, in the future there might be judges who would be inclined to impose a shorter sentence, and so he feels that the state should step in and mandate a minimum sentence of 60 days.

REPRESENTATIVE GARA asked whether there are any similar cases wherein the sentence has not been substantial, wherein it hasn't already been more than 60 days. In other words, he asked, why is this bill needed?

REPRESENTATIVE LYNN suggested that other testifiers could perhaps address that issue, but offered his belief that establishing a mandatory minimum sentence of 60 days is a way of saying that the legislature supports school employees and students.

CHAIR McGUIRE concurred that the articles in members' packets point out that the actual sentences imposed have been longer than what the bill proposes, and remarked that Representative Gara is making a fair point.

REPRESENTATIVE KOTT asked whether there is a statutory definition of "school duties", and whether the bill, as currently written, would apply to an assault on a school janitor.

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REPRESENTATIVE LYNN said he couldn't answer whether there is already a statutory definition of "school duties", but added that he didn't see school janitors as being different than any other school employee and suggested that children don't see them as different.

REPRESENTATIVE KOTT questioned whether the bill would be elevating janitors to the same level as peace officers, fire fighters, correctional employees, and other emergency responders. He also asked whether the bill would cover employees of charter schools.

REPRESENTATIVE LYNN offered his belief that charter schools are part of the school system.

REPRESENTATIVE KOTT asked whether the bill would cover an assault that occurs in the school parking lot after school hours.

REPRESENTATIVE LYNN offered his belief that it would, since cars in school parking lots are subject to search.

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REPRESENTATIVE KOTT said he would have a difficult time considering walking to one's car as engaging in school duties.

REPRESENTATIVE GARA, remarking that although teachers provide a service to the community, noted that other groups of people also provide a service to the community - for example, physical therapists and nurses - and asked about having the bill also apply to them.

REPRESENTATIVE LYNN offered his belief that a nurse, for example, is not a government employee and so shouldn't have the same protection as a teacher.

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REPRESENTATIVE GARA asked whether the bill would apply if a school groundskeeper, for example, gets assaulted by his/her angry girlfriend/boyfriend on school grounds. Would it be the sponsors' intent to impose a 60-day sentence in that circumstance?

REPRESENTATIVE LYNN replied, "I don't know that we can try to examine the motivation, the mental intent, of the people who are doing the [assaulting]; ... it doesn't mitigate the assault."

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REPRESENTATIVE GRUENBERG, referring to AS 12.55.135(g), noted that it only provides for a minimum sentence of 30 days for a second conviction of assault in a domestic violence context, and said he has difficulty with the concept of elevating the sentence for an assault on a school employee past that. He asked whether, under the bill, there would have to be a second trial per Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004) and, if so, "who would make that decision." With regard to the issue of including school bus drivers, he pointed out that some bus drivers are school employees but some work for independent contractors. He suggested that because of this, and because the bill only applies to assaults on adults and not on students, there might be equal protection issues.

CHAIR McGUIRE suggested that the same issues could be raised with regard to other contract employees.

REPRESENTATIVE GRUENBERG mentioned that perhaps HB 41 could become a good vehicle for dealing with any sentencing issues that arise as a result of the Blakely decision.

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CHAIR McGUIRE offered her understanding that in Blakely, the U.S. Supreme Court has said that when there are aggravators, there must be a separate jury trial [for sentencing]. She noted that the governor has a similar idea with regard to sentencing those convicted of assaulting school employees, but it takes the form of a thirty-first aggravator. She remarked that in addition to the policy question of whether to treat a school district employee differently than other citizens, there is also the practical aspect of how to do it - for example, whether to do it via an aggravator or via a mandatory minimum sentence. She also mentioned the need, when considering proposed changes

to the current sentencing scheme, to look at how the sentences for other crimes against persons compare.

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PEGGY COWAN, Superintendent of Schools, Juneau Borough Schools, City & Borough of Juneau (CBJ), offered her belief that HB 41 recognizes the service of school employees and encourages safety in schools, which she characterized as key to students' academic success. She said, however, that she would discourage the committee from trying to create different classes of school employees. She opined that the bill is key in making schools safe and violence free. In response to a question, she offered her belief that schools should rank at a different level with regard to safety - thus, anything that encroaches on school safety is of concern - and noted that there are violence-prevention standards in place at the federal level.

REPRESENTATIVE GRUENBERG suggested that it shouldn't make a difference who the victim is, the punishment should be the same for anyone assaulting anyone, employee or student, while at school or at a school function.

MS. COWAN said she is supportive of anything that reduces violence in schools.

REPRESENTATIVE GRUENBERG asked whether the bill should include preschools or colleges.

MS. COWAN acknowledged that inclusion of such would be a legislative decision, but pointed out that some elementary schools do have preschool students because of special education requirements.

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BILL BJORK, President, NEA-Alaska (National Education Association, Alaska branch), said that he wanted to testify in favor of positive action on HB 41. Referring to past legislation, he said that NEA-Alaska believes that HB 41 ought to be the vehicle that is ultimately passed into law. He suggested that parents send their children to school believing that outside of the home, schools are the safest place for their children to be; however, because of acts of violence that have received publicity, the idea that children are safe in schools has been placed in doubt. He, too, remarked that safety in schools is essential for students' success, and commended the

sponsors' efforts to increase safety. At a recent NEA-Alaska meeting, he relayed, it was decided that NEA-Alaska should pursue legislation elevating the penalty for assaulting a school employee to the same level as the penalty for assaulting a police officer. He remarked that NEA-Alaska's hope is that if passed, HB 41 will serve as a deterrent and won't have to actually be utilized, that the change could be explained in the communities such that it becomes absolutely clear that violence has no place in schools.

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MR. BJORK, in response to a question, said that NEA-Alaska believes that all school employees should be protected, noting, for example, that the school secretary is often the first one to come in contact with an enraged parent.

REPRESENTATIVE GARA acknowledged that the bill's potential to send a message to the community and act as a deterrent is a compelling argument. He mentioned, however, that he still has a concern regarding the bill's definition of assault, because it might apply to an angry poke to someone's chest. He asked whether NEA-Alaska would be amenable to changing the bill so that it does not apply in such instances.

MR. BJORK posited that that type of incident - wherein a school employee receives an angry poke to the chest - probably wouldn't rise to the level of crime listed in the bill. He opined, however, that any assault that does rise to that level - for example, if someone takes a swing at a school employee - should result in a 60-day sentence.

REPRESENTATIVE GARA offered his belief, though, that as currently defined in AS 11.81.900, an angry poke to the chest could qualify as assault in the fourth degree because it could cause "physical pain", which is one of the criteria of "physical injury" as the term is used in the bill.

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REPRESENTATIVE COGHILL asked whether NEA-Alaska has had to take part, on behalf of a school employee that's been assaulted, in any of the court cases.

MR. BJORK said that NEA-Alaska has merely encouraged its members who've been assaulted to file charges, which has put those cases in the public arena.

REPRESENTATIVE COGHILL asked Mr. Bjork whether he knows of any instances of an assaulted teacher not finding adequate remedy through the courts.

MR. BJORK offered his belief that many altercations don't rise to the level that the aforementioned actual examples did and so the court system has not come in to play; in such instances there hasn't been adequate remedy. He suggested that the bill has the potential to be a good deterrent, and will bring the issue to the forefront.

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REPRESENTATIVE DAHLSTROM asked whether a teacher is held to a higher standard if he/she assaults someone.

MR. BJORK said yes, pointing out that teachers are also bound by well-defined standards of ethical behavior, for example, with regard to corporal punishment or sexual conduct. In response to a question, he said he would do research on the issue of whether judges have consistently imposed a long sentence for assaults on teachers.

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DAVID W. MARQUEZ, Chief Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law (DOL), offered the governor's support of [HB 41], relaying that the governor feels it's critical, for both students and teachers, to have a safe school environment. Referring to a 2003 ASD study, he noted it indicated that 13 percent of students responding to the survey reported feeling unsafe in school, more than double the national average. He went on to say, "We support the approach of this bill, rather than other efforts that have been suggested that would make a separate crime to protect a particular class of victims; this bill provides an important public pronouncement that we want additional protection for teachers." In conclusion he said that the administration looks forward to working with the sponsors on HB 41.

REPRESENTATIVE GRUENBERG offered his belief that if there is an additional factual finding to impose a mandatory minimum sentence, it would trigger "the same kind of ... Blakely inquiry" and thereby present the issues of: "the standard of proof," and "who decides."

MR. MARQUEZ said that the DOL has reviewed the bill and Blakely has not been raised as an issue. He opined that the legislature can establish a minimum sentence, such as is being proposed via HB 41, and, since it would not be considered an aggravator, there wouldn't need to be an extra trial.

REPRESENTATIVE GRUENBERG said, however, that it seems to him that in order to arrive at a mandatory minimum sentence, the prosecution must also prove that the perpetrator "knowingly" assaulted a school employee, and this would be an additional element warranting an additional factual finding. He asked the DOL to research that issue.

MR. MARQUEZ said he would have someone do so, but opined that for the type of crime being discussed, the factual circumstances would be brought out in the first trial.

CHAIR MCGUIRE noted that the House Judiciary Standing Committee would look at the Blakely decision in more detail at a later date, and requested that the DOL be prepared to discuss another U.S. Supreme Court case pertaining to federal mandatory minimum sentencing; she offered her understanding that that case provides for more judicial discretion.

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REPRESENTATIVE GRUENBERG, reiterating his belief that a mandatory minimum sentence for a misdemeanor will require at least one more factual finding, asked whether such a finding would have to be made before a jury and whether it must be made beyond a reasonable doubt.

CHAIR MCGUIRE offered her belief that HB 41 doesn't have any Blakely "problems."

REPRESENTATIVE COGHILL asked whether there is a nexus between safety personnel - such as peace officers, fire fighters, correctional employees, and other emergency responders - and school employees.

MR. MARQUEZ offered his belief that the goal of the bill is to send a message that schools should be safe, adding that he feels that that is nexus enough.

REPRESENTATIVE COGHILL said he is committed to safety in schools, but struggles [with the bill] because it is creating a

huge penalty. He said that he wonders how many fourth degree assaults are "pled out," and noted that there is a lot of frustration on the part of constituents when offenders do that. He asked whether a 60-day sentence will have the unintended consequence of causing more such offenders to plead out.

MR. MARQUEZ indicated that he would research those points. In response to a question, he offered his belief that it is already a more serious crime to assault a child, adding that he will research that issue as well.

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LINDA WILSON, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), cautioned that creating a special category of victims could be problematic, and noted that the types of individuals already covered in the statute that the bill is proposing to change are either uniformed or otherwise clearly identified, and that even though teachers are important, they are not uniformed. She pointed out, with regard to who should be included in the bill, that there are other groups of people that are also sometimes government employees, so there may be forthcoming legislation to add other special groups. She, too, remarked that the sentences handed down in the actual examples are longer than what is being provided for in the bill, and suggested that this illustrates that judges are already taking this issue seriously; thus, there may not be a need for this legislation, since there have not been any examples of lesser sentences being imposed.

REPRESENTATIVE COGHILL asked Ms. Wilson whether she knows of any situations wherein an assault on a uniformed official was "plead to something lower."

MS. WILSON said she doesn't know of any such cases that have been reduced down something less than [assault in the fourth degree].

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REPRESENTATIVE GRUENBERG, referring to the language on page 1, line 11 - "other emergency responder" - asked whether community patrol volunteers would fall under that category.

MS. WILSON said she didn't know.

MR. MARQUEZ indicated that he would research that issue.

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REPRESENTATIVE GARA said that it seems that the current law is not broken, and asked about the possibility of sending the message - that violence against school employees will not be tolerated - by providing that anyone who commits such an assault must also give his/her permanent fund dividend (PFD) to the victim, remarking that violence towards school employees is inappropriate and that since the jail time currently being imposed is already sufficient, perhaps being faced with both penalties will act as a deterrent.

REPRESENTATIVE LYNN, in conclusion, offered his belief that everyone is trying to get to the same place, and said that he supports HB 88. He thanked the governor and [the administration's staff] for their support of HB 41.

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CHAIR McGUIRE relayed that she would keep public testimony open on HB 41. [HB 41 was held over.]

#### **ADJOURNMENT**

[2:24:28 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:24 p.m.