

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

April 4, 2005

1:32 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 85(JUD)

"An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school."

MOVED CSHB 85(JUD) OUT OF COMMITTEE

SENATE BILL NO. 10

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 85

SHORT TITLE: PRESCRIBED MEDICATION FOR STUDENTS

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/19/05	(H)	READ THE FIRST TIME - REFERRALS
01/19/05	(H)	HES, JUD
02/15/05	(H)	HES AT 3:00 PM CAPITOL 106
02/15/05	(H)	Moved CSHB 85(HES) Out of Committee
02/15/05	(H)	MINUTE(HES)
02/18/05	(H)	HES RPT CS(HES) 6DP
02/18/05	(H)	DP: CISSNA, GARDNER, ANDERSON, MCGUIRE, SEATON, WILSON
02/18/05	(H)	FIN REFERRAL ADDED AFTER JUD
03/07/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/07/05	(H)	Moved CSHB 85(JUD) Out of Committee

03/07/05 (H) MINUTE(JUD)
 03/09/05 (H) JUD RPT CS(JUD) 5DP
 03/09/05 (H) DP: GRUENBERG, DAHLSTROM, COGHILL,
 GARA, MCGUIRE
 03/09/05 (H) FIN REFERRAL WAIVED
 03/15/05 (H) TRANSMITTED TO (S)
 03/15/05 (H) VERSION: CSHB 85(JUD)
 03/16/05 (S) READ THE FIRST TIME - REFERRALS
 03/16/05 (S) HES, JUD
 04/04/05 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 10

SHORT TITLE: PARENTAL LIABILITY FOR CHILD'S DAMAGE

SPONSOR(s): SENATOR(s) GUESS, DYSON

01/11/05 (S) PREFILE RELEASED 12/30/04
 01/11/05 (S) READ THE FIRST TIME - REFERRALS
 01/11/05 (S) HES, JUD
 01/19/05 (H) HES AT 1:30 PM SENATE FINANCE 532
 01/19/05 (S) Heard & Held
 01/19/05 (S) MINUTE(HES)
 01/26/05 (S) HES AT 1:30 PM BUTROVICH 205
 01/26/05 (S) -- Meeting Canceled --
 04/04/05 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER

State Capitol Bldg.

Juneau AK

POSITION STATEMENT: Sponsor of HB 85.

MIKE PAWLOWSKI, Staff

Representative Kevin Meyer

State Capitol Bldg.

Juneau AK 99801

POSITION STATEMENT: Answered questions on HB 85.

MARGE LARSON

Alaska Asthma Coalition

POSITION STATEMENT: Supported HB 85.

PHIL CALLUZZO

Anchorage AK

POSITION STATEMENT: Supported HB 85.

SHARON BARTON, Director

Permanent Fund Dividend Division
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400
POSITION STATEMENT: Commented on SB 10.

LARRY WIGET, Director
Governmental Relations
Anchorage School District
Anchorage AK
POSITION STATEMENT: Supported SB 10.

ACTION NARRATIVE

[1:32:06 PM](#)

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:32 p.m. Present were Senators Olson, Wilken, Elton and Chair Dyson.

HB 85-PRESCRIBED MEDICATION FOR STUDENTS

CHAIR DYSON announced HB 85 to be up for consideration.

[1:32:33 PM](#)

REPRESENTATIVE KEVIN MEYER, sponsor, introduced HB 85 by saying:

It is estimated that there are 6.3 million children who have asthma in the United States. Young people with asthma miss over 14 million days of school each year because of the disease. In fact, in a recent survey done by the school nurses, they indicated that asthma is more disruptive to school routines than any other chronic condition. But being disruptive is the least of our concerns. Asthma and allergic reactions can be fatal. Several children have died in our schools from asthma attacks that could have been prevented if they had their self-medication with them.

He showed the committee an example of an inhaler that is very easy to use in treating asthmatic attacks and continued:

Juries have held schools liable for millions of dollars surrounding some of these deaths that have occurred at schools that could have been prevented. So, to address this problem, Congress passed the Asthmatic School Children's Treatment and Health Management Act of 2004. The federal law requires that

the secretary of HES [United States Health and Education Senate Committee] to give preference when awarding grants to various states to those states who allow their students to have self-administered asthma medication.

House Bill 85 brings Alaska into compliance with the provisions of the federal law and gives schools, parents, and most importantly children, protection from potentially life threatening conditions and consequences that can from these.

HB 85 protects schools, parents and children in two different ways. The first provision allows the children, with the parent, guardian, health care provider's certification, to self-administer medication for asthma. And so, in order for this to happen, a school must allow self administration of the asthma treatment if they receive a written authorization from the parent or legal guardian and if the written certification from the student health care provider shows that the student has the condition in question, has received proper instruction on how to use the medication and is capable of using the medication. HB 85 puts the decision to allow self-administration of the medication squarely on the shoulders of the parents and the health care providers.

The second part of this bill, then, is it just removes the school of any civil liability related to the medication. While HB 85 helps Alaska qualify for federal grants, the real purpose behind this bill is giving parents, doctors and schools the ability to ensure that our children are safe and hopefully save some lives....

[1:36:33 PM](#)

SENATOR LYDA GREEN and SENATOR GARY WILKEN joined the committee.

SENATOR DONNY OLSON asked the bill applies to public schools and private schools equally.

MIKE PAWLOWSKI, staff for Representative Meyer, responded that Legislative Legal Services told him there was essentially no difference between the way the law applies to public and private schools.

SENATOR OLSON asked if private schools had testified on this issue.

MR. PAWLOWSKI replied that he had not heard from any private schools.

SENATOR OLSON asked whether other medications would be required to be on-site for asthmatic students that go into the severe form of static asthmaticus, which is the most severe form of asthma that cannot be broken by inhalers and is treated with epinephrine.

MR. PAWLOWSKI replied that epinephrine is allowed under the bill as well as inhalers.

CHAIR DYSON said:

I want the record to clearly reflect that Senator Olson asked whether or not private schools were included under what this bill does and the affirmative answer was private schools have the same right or provision here to apply this same, in essence, privilege, for asthmatic children and the sponsor says that's right.

[1:39:17 PM](#)

SENATOR ELTON said the legal analysis attached to the bill clearly says that Section 1 requires public elementary and secondary schools to allow the provision. He thought the issue needed to be addressed.

CHAIR DYSON asked Representative Meyer to get a legal opinion on that question before the bill goes to the Senate Judiciary Committee.

REPRESENTATIVE MEYER replied that he would do so.

SENATOR OLSON asked whether school districts currently prohibit inhalers from being used on their premises.

REPRESENTATIVE MEYER replied that many schools ask that all medications be given to the school nurse.

SENATOR OLSON asked whether the bill allows students to carry and administer other medications for other medical conditions.

[1:43:03 PM](#)

REPRESENTATIVE MEYER replied that HB 85 applies to allergy type conditions such as asthma, bee stings, and anything that can be controlled with an inhaler or an epinephrine pen. He has considered conditions such as diabetes, but that is a whole different area and the physicians testifying on the bill recommended that other conditions not be included.

[1:44:15 PM](#)

MARGE LARSON, Alaska Asthma Coalition, supported HB 85. She remarked that schools have a great liability without its provisions in place. She commented that inhalers are a life-saving, critical part of asthma management.

[1:46:50 PM](#)

PHIL CALLUZZO, Anchorage resident, said that he suffers from asthma and supported HB 85.

CHAIR DYSON explained that HB 85 would give all schools, both private and public, the option of doing this, but it does not compel private schools, in particular, to do so.

SENATOR GREEN asked if the state could tell a private school what to do in this case and if the legislation benefits the school or the student.

CHAIR DYSON replied that HB 85 gives both public and private schools the option of doing this and it protects them against liability if they do so if they follow the prescribed protocol. But it is essentially for the good of the student.

SENATOR WILKEN moved to report HB 85 out of committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

SB 10-PARENTAL LIABILITY FOR CHILD'S DAMAGE

CHAIR FRED DYSON announced SB 10, version C, to be up for consideration.

SENATOR GUESS, sponsor, explained that SB 10 focused on civil liability and lifting the current civil liability caps for vandalism. Research has led her in many directions and into a fairly comprehensive, very different CS. The process for recovering restitution from vandalism is that first a suspect has to be identified and then he needs to go through some type

of channel whether it's criminal or civil. "Then we have to collect."

School districts have said that it's more difficult to find who committed the smaller vandalisms, but vandals of the over \$100,000 in damages cases are usually found, but this bill does not address that issue.

Currently, different restitution processes are used for different crimes and most juvenile crime goes through an informal process in the juvenile justice system. It holds the offender accountable while protecting the public and supporting the development of social and personal skills. A probationary deal is brokered with the perpetrator. Restitution isn't required, but accountability is one of the goals. Parent liability can be required, but juvenile liability is the main focus.

On the other hand, the criminal adjudication process says that you have to have suitable restitution, but it does not definition what that is. It holds both the parent and the juvenile liable and leaves it up to the judge to determine what happens.

On the civil side, there are limits for vandalism, but other crimes are limited by other tort reform and apportionment of fault. This committee substitute is needed, because parent liability is capped for vandalism and there is no juvenile liability.

[1:56:09 PM](#)

SENATOR GUESS said she included all crimes and tried to make accountability and restitution consistent. However, she ran into equal protection issues when one crime, specifically, was treated different from other crimes. She excluded shoplifting because the shoplifting statute is already well thought-out. She thought the committee should discuss whether the bill should cover only vandalism or all crimes and discuss the equal protection issues. She pointed out that she applied the adult statute, which pays the victim full restitution.

[2:00:10 PM](#)

She explained that ninety-nine percent of crimes are under \$5,000, so a student would be accountable for up to that amount; and parents would be liable for up to \$15,000, which is the current civil cap. The list of people the bill exempts from the parent liability consists of current criminal and civil

exemptions. Additionally, the bill allows a driver's license to be revoked for repeated alcohol, drug and possession of weapons charges, but no other charges. Judges and other people who have worked with youth have all said the best deterrent is revoking a driver's license and she decided to use that for all crimes at the misdemeanor and felony levels. PFDs can also be garnished if restitution is not paid and the court can order people to apply for a PFD if they are in this situation.

[2:03:37 PM](#)

SENATOR ELTON asked if an insurance company could be considered a victim if it paid the damages through a claim.

SENATOR GUESS responded that the victim is always the owner of the property.

SENATOR ELTON asked if the victim would collect the entire damage amount or the remainder beyond the settlement.

[2:05:41 PM](#)

SENATOR GUESS replied that the bill does not address that question, but maintains that the family and the perpetrator pay full restitution to the victim.

CHAIR DYSON said that it is his intention that the victim is not paid twice, but if the victim had insurance that restored his property to him, the insurance company could collect from the perpetrator.

[2:07:34 PM](#)

SENATOR ELTON asked if the parent could pay the child's liability.

SENATOR GUESS answered that they could, but the child would still be the responsible party.

SENATOR ELTON asked regarding page 8, line 23, whether a parent would be liable for restitution if they report their child. He didn't want a suspect to skate because the parent would have to pay \$15,000. He was not interested in the parent of a runaway, but in the parent of an at-home child who knows their child is responsible for a crime.

[2:09:31 PM](#)

SENATOR GUESS responded that could happen, but right now a parent might not know he may be jointly responsible for his

child's criminal action and this bill may not elevate that knowledge.

[2:11:33 PM](#)

SENATOR ELTON said the committee should consider adopting an amendment that would allow parents to do the right thing without facing a financial disincentive for doing so.

SENATOR GREEN asked if a parent could be regarded as an accessory to a vandalism crime if he does not report his child.

CHAIR DYSON replied that he thought a parent could be considered an accessory in such a situation, because he would gain a benefit.

[2:13:35 PM](#)

SENATOR GREEN asked if the title should mention criminal actions as well.

SENATOR GUESS replied that she was right and the title should be corrected to reflect the bill.

SENATOR GREEN said that sometimes hard-to-place children are placed with families when they are one year old and asked:

One would assume that 14 years later we've made some strides, because they would have been receiving...and financial assistance. Is there any ability to place a time-frame around the time in-house...? I don't think because someone has a hard-to-place child in their home that they should be absolved forever from being responsible for the action.

SENATOR GUESS responded that the first reference was on page 4, line 5, and that was pulled for current statute. The juvenile never gets exempted, although sometimes the parents do.

[2:16:17 PM](#)

CHAIR DYSON added that subsidized foster children are evaluated and reclassified relatively frequently and this may address Senator Green's concern. He did not want to raise barriers for people who take in hard-to-place children.

SENATOR GREEN informed the committee that the parent must initiate the reclassification process, not the state.

[2:19:15 PM](#)

SENATOR WILKEN said the revocation of a driver's license would not deter children and may be an unnecessary punishment in reference to page 2, line 20. He asked if there was a definition of "harms a person" and asked if the harm could be mental as well as physical.

SENATOR GUESS answered that she was told by the drafter that language would encompass any crime.

SENATOR WILKEN said he appreciated the intent of the bill, but he didn't understand the driver's license link. The effect of losing a driver's license is that a 17-year old is put on the street without a driver's license or insurance and that could make the problem worse. "It's too big a hammer for what we are trying to do.... Why is everything else bad, but shoplifting is just sort of bad?"

2:22:02 PM

SENATOR GUESS responded that the committee could remove the driver's license language if it chooses to do so, but experts informed her that suspending a driver's license has proved to be a very effective deterrent.

The shoplifting statute is very unique she said because of the difference in magnitude of offenses and the provision she included accommodates minor shoplifting offenses.

SENATOR OLSON felt that suspending a driver's license was an appropriate and effective deterrent to vandalism, which is becoming more and more rampant. So he did not support taking that provision out. However, shoplifting is often committed inadvertently and he thought the bill should accommodate that also.

2:26:05 PM

SENATOR WILKEN asked whether payment of damages in a felony incident would affect the placement of the crime on the child's adult record.

SENATOR GUESS advised that a felony incident would be dealt with as it is today in a sealed record.

SENATOR WILKEN said the Anchorage School District recently paid a surprisingly large portion of its budget to repairing vandalism damage and recovered only a small part of it. He speculated that given the low recovery rate, SB 10 might cause

the school districts to incur more legal fees to chase the little things they don't have any success in getting anyhow.

SENATOR GUESS acknowledged that school districts recover very little restitution for vandalism cases. Current civil and criminal procedure caps the amount of recoverable damage and SB 10 would help to reverse the "leave it to insurance" attitude that prevails today.

[2:31:04 PM](#)

SENATOR WILKEN said there is a difference between vandalism committed to a person and vandalism committed to a larger institution.

SENATOR GUESS responded that her intent was to try and get more restitution out of the informal criminal system so school districts don't have to spend any money on legal fees versus everything is civil now where many districts determine it's just not worth it to go after.

[2:33:32 PM](#)

CHAIR DYSON related that the police department has concluded it is more effective to prevent criminal development early in life. Also, he pointed out that if Senator Guess is successful in getting the criminal process to take care of restitution orders, the system would have gained a whole lot. He also had a judge tell him that it is up to the civil department to collect on a restitution order. However, their records are so antiquated on who is making restitution payments that the data is not readily available to the criminal section.

SENATOR WILKEN said he is surprised that there is no fiscal note from the Public Defenders Office since he thought some folks in the state would require immediate representation.

CHAIR DYSON asked the sponsor if she considered the bill's definition of harm since mental harm is a rather vague term.

SENATOR GUESS remarked that the definition was adopted at the request of the drafters, but some people have suggested limiting the language to property harm versus harm to a person and she would consider that if the committee wants. She would need more discussions with the drafter on constitutional problems, however.

[2:40:18 PM](#)

CHAIR DYSON said he thought the definition of harm might already be in existing statute under assault. So, harm to a person might already be covered and she might not be losing anything by restricting this language to crimes against property.

SENATOR ELTON expressed concern about creating a financial disadvantage for parents reporting their children. He asked the sponsor to consider allowing insurance companies to be considered victims.

[2:42:26 PM](#)

SHELDON WINTERS, State Farm Insurance Company, said case law says the property insurer steps into the shoes of their insured and if State Farm covers a loss, it has the option of pursuing legal action against the perpetrator.

MR. WINTERS said he was concerned that the current definition of harm creates a new cause of action and with the concept of attaching liability for personal injury claims to a parent. He said that the phrase "harms the person" is the language of greatest concern.

[2:45:44 PM](#)

SENATOR ELTON asked Mr. Winters if he is more concerned with emotional damages other than physical damages.

MR. WINTERS replied that he is concerned with physical damage as well. He explained:

The history is simply this. It all goes back to holding a parent vicariously liable for the conduct of a child even when the parent did nothing wrong. I keep using the term "Super Dad" or "Super Mom." The history is this. Public policy through the court system through a couple hundred years of case law has consistently held that parents are not liable for the torts of their children simply because they're parents. They may be liable if they negligently supervised their children. If they did something wrong and knew this child had the propensity to go out and commit whatever act of vandalism or assault people, then certainly there is a cause of action or a duty on behalf of the parent of the cause of action for violating that duty. But the concern is about again the Super Dad or the Super Mom - the kid has done nothing wrong in the past; there's no history there; there's no reason to believe that the parent should be

doing anything other than what they are doing and then goes out and commits the one act and the parent is on the hook for that. That's the policy level concern, question - that we have - is why we need to be doing that.

Alaska, through AS 34.50, years ago decided to address that issue in the context of vandalism and they said a parent is basically vicariously strictly liable for a child's act of vandalism, but limited up to \$10,000. A couple of years ago through continued discussion raised that to \$25,000. It's something completely different now to morph that into a parent's strict liability for what would be emotional distress or even a fight that a kid may get into....

[2:48:44 PM](#)

SENATOR ELTON responded that the bill caps the parental responsibility at \$15,000 and the "super parent" argument he made is equally applicable whether it relates to vandalism and property damage or damage to a person that requires extensive reconstructive surgery and asked whether the distinction was artificial.

MR. WINTERS replied that he didn't think there was a realistic reason to have a distinction between vandalism and personal injury. But the vandalism law is now on the books and the question is if it is going to be expanded to something way beyond vandalism and include all personal injury. He was real concerned about that. He had also researched the company's claims history to find if the cap had ever precluded them from recovery and couldn't find any instance where it had. State Farm had only four of these claims in the last couple of years. With this change, they would have a lot more claims and lawsuits. His concern is that the parent would be sued in every instance the child does anything wrong and that is his concern.

[2:50:18 PM](#)

MR. WINTERS said the word "harm" is open to a large number of interpretations in this bill and it should be limited and defined.

CHAIR DYSON asked him if their disclaimer of not paying for criminal activities had ever been challenged.

MR. WINTERS replied no. Their policies do not cover a child's intentional conduct, but this statute imposes liability on a

parent regardless of the conduct - whether it's intentional or not.

CHAIR DYSON remarked in a recent case, a child caused far greater damage with a fire than he intended. He asked what would happen if a child caused great damage accidentally.

MR. WINTERS replied that the only limitation in the CS under the civil statute is that the action doesn't have to be a crime. The only limitation on the type of conduct is that it is done intentionally or knowingly, language that comes from criminal statutes, which is less than intentional.

CHAIR DYSON asked the sponsor to consider whether she wanted her bill to deal with criminal activity or to include accidental activity that would include damages that would only proceed in civil court because there was no criminal activity.

SENATOR ELTON said he thought that covering physical harm to a person could be a little bit of a wash.

[2:54:07 PM](#)

SHARON BARTON, Director, Permanent Fund Dividend Division, Department of Revenue (DOR), said she was available to answer questions.

CHAIR DYSON asked her if she saw any problems with the concept of using permanent fund checks for restitution in vandalism cases.

MS. BARTON replied that she could not see any problems with processing those claims.

[2:57:43 PM](#)

SENATOR ELTON asked if releasing Permanent Fund information in connection with a vandalism incident could be considered a breach of sealed juvenile records.

MS. BARTON replied that her division sees no detail behind the garnishments. It simply receives the list of garnishments with the certification from the court system that they are all legitimate.

SENATOR OLSON asked how the division would prioritize garnishment in vandalism cases.

MS. BARTON referenced page 5 of the bill that listed the priorities of the division for garnishment and this writ was number five.

SENATOR OLSON asked if perpetrators could be forced to file an application for a PFD so it could be garnished.

MS. BARTON replied that she knows that some judges impose such requirements on other kinds of crimes, but her division does not track them.

[3:01:16 PM](#)

LARRY WIGET, Director, Government Relations, Anchorage School District, thanked the committee for its efforts on this legislation.

CHAIR DYSON said he would hold SB 10 in committee. There being no further business to come before the committee, he adjourned the meeting at [3:04:38 PM](#).