

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

April 11, 2005

2:10 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

SENATE BILL NO. 10

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

MOVED CSSB 10(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
04/04/05	(S)	Heard & Held
04/04/05	(S)	MINUTE(HES)
04/06/05	(S)	HES AT 1:30 PM BUTROVICH 205
04/06/05	(S)	Scheduled But Not Heard
04/11/05	(S)	HES AT 1:45 PM BUTROVICH 205

WITNESS REGISTER

MATTHEW BAUTISTA, Student
Dzantik'i Heeni Middle School
Juneau AK 99801

POSITION STATEMENT: Opposed SB 10.

SHELDON WINTERS
State Farm Insurance Co.
Juneau AK 99801

POSITION STATEMENT: Supported SB 10 and adopted amendments.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [2:10:11 PM](#). Present were Senators Kim Elton, Lyda Green, Gary Wilken, Donny Olson, and Chair Fred Dyson.

[2:10:46 PM](#)

SB 10-PARENTAL LIABILITY FOR CHILD'S DAMAGE

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

SENATOR GRETCHEN GUESS, sponsor of SB 10, assured the committee that the title was fine. There was also a question about what is on a juvenile's record and she explained:

Currently, records of proceedings against minors including records of drivers' license proceedings under AS 28.15.185 are permanent, but confidential with some exceptions. They are sealed when a minor turns 18 or at a later time if the court retains jurisdiction over the minor past the age of 18. But they may be used in pre-sentencing reports.

CHAIR DYSON asked if a creditor who was exploring a child's records would know that the child has a court-ordered liability.

SENATOR GUESS responded that she believed that that information would stay confidential even after the child turned 18. Failure to report a child's illegal behavior is not a crime for parents under current statute, but parents could be protected from liability if they turn in their child with an amendment to the exemption section.

SENATOR ELTON asked her to make a value judgment about whether or not she thought that such an amendment would be acceptable.

SENATOR GUESS responded, "This is a bill of constant policy calls." If the parents know all the laws, they may choose to not turn their child in because of their own liability. Parents are being held accountable in other situations. She would leave that up to the committee to decide.

SENATOR WILKEN arrived at [2:15:46 PM](#).

CHAIR DYSON remarked that accessory provisions are activated when someone doesn't report a crime and receives a benefit from it. He said that a parent who does not report may be considered an accessory.

SENATOR GUESS said that mandatory reporting is only required in certain professions and crimes against children. She said that the exemption of hard-to-place children could be included with an amendment.

SENATOR GREEN arrived at [2:17:31 PM](#).

SENATOR GUESS said that there is a question about unintentional acts and the crimes in this bill would be covered in a similar manner to other crimes in a civil court - a preponderance of the evidence in a criminal act that is beyond a reasonable doubt. She said that obviously age considerations would play a role in evaluating these cases.

She wanted to eliminate any possible application of this bill to crimes against persons as she had not intended to include those and wanted to limit it to crimes against property. She noted that a conceptual amendment was in the process of being drafted.

[2:21:24 PM](#)

CHAIR DYSON stated that other statutes have provisions for restitution relating to crimes against persons.

[2:22:48 PM](#)

CHAIR DYSON asked her to explain bullets 3 and 4.

SENATOR GUESS explained that the second bullet makes the statute consistent with the idea that you can lose the right to your driver's license if you are convicted of a crime, a misdemeanor or a felony. However, there are constitutional problems with limiting the bill to property crimes, because that limitation means that some crimes are being dealt with differently than others.

CHAIR DYSON said that his intention is that taking a driver's license should be one of the tools a judge could use with the assumption that if a child is involved in a long-term payment plan, he could be allowed restricted driving privileges. But he also wanted to the judge to have the option of telling the person with a long-term payment plan that three minutes after they fail to meet the payment plan, the driving privilege would be revoked.

[2:24:29 PM](#)

SENATOR GUESS responded that those issues had been addressed except the last one, which has constitutional problems. The third amendment says that the PFD provisions in the bill go to all crimes. So, if there is restitution, the minor's PFD goes toward paying that restitution and the state can order the minor to apply for it.

[2:26:21 PM](#)

CHAIR DYSON remarked that it would be proper for the committee to separate the conceptual amendment into three. He announced that Amendment 1 returns the bill to just being crimes against property and deletes crimes against persons.

SENATOR ELTON moved to adopt conceptual Amendment 1 as follows:

Direct the drafter to make the restitution provisions of this bill (sections 3, 8, 9, 10, 12, 13, 14 and 15) apply only to property crimes and harm to property. Statutes regarding non-property crimes and harm to persons would remain unchanged by this bill.

He then objected to comment saying there were more discreet ways of accomplishing the purpose of Amendment 1 - like describing harm to a person as physical harm. He used the recent example of an assistant attorney general who had been beaten in a manner that required expensive reconstructive surgery.

That kind of harm, I think, is just as egregious and possibly more egregious, than harm to property. I think that there ought to be consequences and I think that there ought to be economic assistance that accrues to that kind of victim as well as a victim of property violence....

He said he would work with the sponsor.

[2:29:19 PM](#)

SENATOR GREEN asked if the instance given by Senator Elton would be defined as assault and battery that already has a remedy.

CHAIR DYSON agreed saying that he worked on that issue a couple of years ago, but he offered to work on it again.

A roll call vote was taken. Senators Olson, Green, Wilken and Chair Dyson voted yea; Senator Elton voted nay; and conceptual Amendment 1 was adopted.

CHAIR DYSON moved to adopt conceptual Amendment 2, which retains the application of driver's license provisions of the bill in sections 1, 2, 4, 5, 6 and 11 to all crimes currently specified in the bill.

SENATOR ELTON objected for the purpose of clarification. He asked if the committee needed to amend the bill to retain that language if it's already in it.

SENATOR GUESS explained that when she wanted to pull out the "harm to persons" provision, but wanted to retain the driver's license and PFD provisions, the drafter responded with these directions, given that she couldn't get the CS to the committee in time.

[2:32:38 PM](#)

SENATOR OLSON asked if she supported both amendments.

SENATOR GUESS replied that she supported both amendments.

CHAIR DYSON noted there were no objections to conceptual Amendment 2 and it was adopted.

CHAIR DYSON moved to adopt conceptual Amendment 3 to retain the application of the PFD provision in section 7 relating to all crime and harm to persons or property as currently specified in the bill.

SENATOR GREEN objected to ask if they are talking out the reference to harm to persons in an earlier section.

SENATOR GUESS replied yes.

[2:34:44 PM](#)

CHAIR DYSON noted there were no further objections and conceptual Amendment 3 was adopted. He asked the committee if it

wanted to hold the bill for a CS on Wednesday or pass it on to the Judiciary Committee.

SENATOR ELTON said he would go with the comfort level of the chair.

[2:36:10 PM](#)

MATTHEW BAUTISTA, Dzantik'i Heeni Middle School student, opposed SB 10 saying that minors should be entirely responsible for their actions. He said the rate of vandalism has increased dramatically for people between the ages of 12 and 18 and SB 10 would reduce the deterrent affect to children by deferring the responsibility of those acts to their parents. He asked the committee members how they would feel if their children committed acts of vandalism and whether introducing parental accountability would reduce it.

CHAIR DYSON responded that the bill is intended to establish a long-term payment process, which would make the children pay the bulk of the restitution, but if parents had to pay in the beginning, he hoped that would encourage them to force their child to work to pay them back.

[2:40:47 PM](#)

SENATOR GREEN asked whether or not wages could be garnished for restitution.

SENATOR GUESS said that the court would set up a payment plan and it currently garnishes wages for restitution.

[2:42:13 PM](#)

SHELDON WINTERS, State Farm Insurance Co., supported the proposed amendments.

SENATOR GREEN moved to pass CSSB 10(HES) out of committee with individual recommendations and attached fiscal notes. There were no objections and it was so ordered.

CHAIR DYSON adjourned the meeting at [2:42:44 PM](#).