

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

January 20, 2005  
8:14 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess (via teleconference)

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 56

"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."

MOVED CSSB 56(JUD) and letter of intent from committee

SENATE BILL NO. 19

"An Act relating to the creation of a civil legal services fund."

MOVED CSSB 19(JUD) from committee

**PREVIOUS COMMITTEE ACTION**

BILL: SB 56

SHORT TITLE: CRIMINAL LAW/PROCEDURE/SENTENCING

SPONSOR(s): SENATOR(s) THERRIAULT

01/14/05	(S)	READ THE FIRST TIME - REFERRALS
01/14/05	(S)	JUD, FIN
01/18/05	(S)	JUD AT 8:30 AM BUTROVICH 205
01/18/05	(S)	Heard & Held
01/18/05	(S)	MINUTE(JUD)
01/19/05	(S)	JUD AT 8:30 AM BUTROVICH 205
01/19/05	(S)	Heard & Held
01/19/05	(S)	MINUTE(JUD)
01/20/05	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 19

SHORT TITLE: CIVIL LEGAL SERVICES FUND  
SPONSOR(s): SENATOR(s) SEEKINS

01/11/05 (S) PREFILE RELEASED 12/30/04  
01/11/05 (S) READ THE FIRST TIME - REFERRALS  
01/11/05 (S) JUD, FIN  
01/19/05 (S) JUD AT 8:30 AM BUTROVICH 205  
01/19/05 (S) Heard & Held  
01/19/05 (S) MINUTE(JUD)  
01/20/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Ms. Linda Wilson  
Alaska Public Defender's Office  
Department of Administration  
900 W 5<sup>th</sup> Ave.  
Anchorage, AK 99501-2090  
**POSITION STATEMENT:** Commented on SB 56

Ms. Susan Parkes  
Deputy Attorney General  
Department of Law  
310 K St.  
Anchorage, AK 99501  
**POSITION STATEMENT:** Commented on SB 56

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:34:42 AM](#). Senators Therriault, Huggins, French, and Chair Seekins were present. Senator Guess was participating via teleconference. The committee took up SB 56.

**SB 56-CRIMINAL LAW/PROCEDURE/SENTENCING**

SENATOR THERRIAULT moved to adopt version I as the working document before the committee. He explained that version I contains three amendments, on pages 2, 3, and 4, that the committee previously adopted.

CHAIR SEEKINS noted that without objection, version I was the working document before the committee.

SENATOR THERRIAULT said he noticed that the effective date in Section 34 is not until July 1 and suggested making that date

sooner since this change would allow people who are sentenced to make challenges. He then moved an immediate effective date that would replace Section 34.

CHAIR SEEKINS noted that without objection, the effective date would occur immediately upon passage into law.

SENATOR THERRIAULT moved to adopt the January 17, 2005 letter of intent.

CHAIR SEEKINS announced that without objection, the January 17, 2005 letter of intent was adopted.

[8:38:38 AM](#)

SENATOR FRENCH asked for clarification of the amendment incorporated into version I on page 2, regarding the composite sentence of less than two years to serve. He said his intent was to preserve a judge's ability to impose a periodic sentence for a two-year sentence, since that is the benchmark for a second C felony. He suggested changing "of less" to "no more" so that it would stop at two years.

CHAIR SEEKINS asked if he was suggesting language that says two years or less.

SENATOR FRENCH said it should say two years or less or no more than two years to serve.

SENATOR THERRIAULT urged Senator French to move a conceptual amendment and leave the appropriate language up to the legal drafter.

SENATOR FRENCH agreed and said the idea is that the "gate" for a periodic sentence will slam shut at two years and not at two years and one day.

[8:40:09 AM](#)

CHAIR SEEKINS noted that without objection, that conceptual amendment would be adopted as Amendment 5.

[8:40:36 AM](#)

CHAIR SEEKINS asked if Ms. Rogers from Fairbanks wanted to testify; however she was not available at this time. He then

asked if anyone had any more proposed amendments. There were none.

CHAIR SEEKINS directed the discussion to the fiscal notes.

8:42:29 AM

CHAIR SEEKINS pointed out the committee had some discussion with members of the Public Defender's Office that a zero fiscal note would be inappropriate because of possible constitutional challenges. He said that although he thought the committee discussed that topic in depth and decided that no constitutional problems existed, he would like Ms. Wilson to address that topic.

MS. LINDA WILSON, Deputy Director of the Alaska Public Defender's Office, explained that Department of Law (DOL) staff testified that no constitutional violation exists, but that is the department's opinion and it will not prevent challenges. The court will decide whether or not this remedy is constitutional. The Alaska Public Defender's Office represents clients who make those challenges and it believes that challenges will happen. The challenges will likely be to the right to a grand jury on aggravators, as well as to equal protection for a disparity within the range. She believes there will be more jury trials on the aggravators and predicted there will be more sentences with probationary time.

8:46:03 AM

MS. WILSON felt the sentence within the range will encourage a judge to give probation time. She believes that if more people are put on probation, more probation violations will occur. That will create more petitions to revoke probation. Because the public defender's agency represents the bulk of those clients, she expects to see an increase in those types of cases. She also felt there will be challenges to the portion of the bill that eliminate some of the prior conviction-based aggravators from a right to a jury trial. She noted that was Section 21 in the first draft of the bill. Some will require additional facts that need to be proved to a jury beyond a reasonable doubt.

8:48:16 AM

SENATOR THERRIAULT noted that any piece of legislation carries a potential cost to state government and pointed out, as an example, that a bill could trigger the need to redraft

regulations that could be challenged. However, those costs don't trigger a fiscal note because that is the cost of doing business. Regarding probation, the Department of Corrections has said it is unable to predict with any accuracy the future action of judges. He said his understanding of an indeterminate fiscal note is one in which a department is sure the piece of legislation will have associated costs but those costs cannot be quantified. He said that most of what has been enumerated in the fiscal notes is very speculative and that he strongly disagrees with this fiscal note.

[8:50:37 AM](#)

CHAIR SEEKINS said it has not been his policy to speculate the cost of a possible challenge and put that into a fiscal note. He noted that many of the bills that have passed out of the Senate Judiciary Committee might be challenged.

[8:51:26 AM](#)

SENATOR FRENCH pointed out that the bill authorizes longer sentences. He would expect the DOL to argue for longer sentences in appropriate cases and for longer sentences to be imposed. He said the strongest argument in favor of an indeterminate fiscal note would be that longer sentences would be imposed under this bill.

[8:51:58 AM](#)

CHAIR SEEKINS said he didn't necessarily disagree. He was a negotiator for 35 years, and if he was negotiating on the cost of something and knew it could cost more if he didn't negotiate hard for a lower cost, he would negotiate harder. He said it is possible the opposite could be argued in terms of attorney negotiations for a plea bargain because it could reduce the cost to the parties. He said that is why he proposed the zero fiscal note from the Senate Judiciary Committee; he would like to adopt that fiscal note if the committee goes forward with the bill.

[8:53:18 AM](#)

SENATOR GUESS said her observation matches Senator French's in that mathematically, if the baseline remains the same but the upper range is expanded, the average sentence is likely to be longer; therefore an impact on the Department of Corrections is likely. She noted she had not considered the plea bargaining aspect.

SENATOR THERRIAULT said according to the recent court decision, an expense will be associated with triggering aggravators. This legislation imposes ranges so a judge, in order to impose a longer sentence, has a range. If the judge lives within that range, he won't have to trigger additional jury action. He said no one knows whether that would be enough to offset what might have been a higher range reached with aggravators. He said one must look at striking a balance and noted the current court cases have triggered actions that will cost; SB 56 is attempt to mitigate those costs.

[8:55:07 AM](#)

SENATOR GUESS asked if Senator Therriault was saying that a zero sum gain is likely because some department may see increases while others see decreases.

SENATOR THERRIAULT agreed but said the same argument can be made for each department. He explained that if the court had to go through a jury for an aggravator to get a longer sentence, the public defender and the prosecutor would have additional costs.

[8:55:54 AM](#)

SENATOR THERRIAULT then said, "So it is how we balance the scales in totality but you also have the same argument going on with each individual player in the system too and have the scales remained balanced within their own department?"

[8:56:14 AM](#)

SENATOR GUESS asked if that would be the case with DOC as well.

SENATOR THERRIAULT noted that Ms. Parker could speak to the two zero fiscal notes from DOC.

[8:57:02 AM](#)

CHAIR SEEKINS said he was not willing to say that just because judges will be allowed to use a wider range, they will give inappropriate sentences. He thought the judicial branch understands the necessity of fitting the punishment to the crime and of the fiscal situation of Alaska.

SENATOR THERRIAULT pointed out that the committee also adopted the letter of intent, which tells the court that the legislature

does not expect a jump across the board of longer sentences. He noted that the committee has also heard testimony that minimum sentences are too high and the judiciary would like to make those smaller.

8:58:40 AM

SENATOR FRENCH said he likes the bill - his concern is only about the fiscal note and is from his personal experience. He believes that reality dictates increased costs from longer jail terms.

CHAIR SEEKINS said the intent is to give judges the authority to mete out an appropriate sentence with an appropriate amount of probation supervision.

9:00:07 AM

SENATOR THERRIAULT moved to adopt the Senate Judiciary Committee fiscal note for the public defender's office.

CHAIR SEEKINS announced that without objection, the motion carried.

9:00:34 AM

SENATOR THERRIAULT moved CSSB 56(JUD) from committee with the five zero fiscal notes and letter of intent.

SENATOR FRENCH objected and said that after re-reading the Blakely decision, he does not believe it requires the ranges, although he believes that providing for a range in sentencing is a good solution. He asked whether DOL believes that the Blakely decision requires ranges.

9:01:38 AM

MS. SUSAN PARKES, Deputy Attorney General, Department of Law, said the Blakely decision does not require this particular solution. DOL discussed many options with legislators, one being to impose high sentences and mitigate down. DOL was looking for a balance within the legal constraints of Blakely.

SENATOR HUGGINS asked if this legislation was modeled after legislation adopted by the Kansas legislature.

MS. PARKES said it is similar to the Kansas model. She attended a seminar about sentencing during which a presentation about Kansas was given. Kansas was the only state that had gone to jury findings of aggravators but it has sentencing ranges like those in SB 56.

[9:03:13 AM](#)

CHAIR SEEKINS asked if any objection to passing CSSB 56(JUD) from committee was maintained. With no further objection, CHAIR SEEKINS announced the motion carried. He then announced a brief recess.

### SB 19-CIVIL LEGAL SERVICES FUND

[9:11:41 AM](#)

CHAIR SEEKINS called the meeting back to order and noted that a committee substitute had been distributed to members, labeled version G. He noted that without objection, version G was adopted as the working document before the committee. He then explained that the committee was looking at the definition of a low-income individual yesterday. He pointed to the bottom of version G and said the definition refers to an individual with an income equal to or less than the maximum income levels for Alaska determined by the Legal Services Corporation. It references 42USC 2996(b). He indicated the committee has not looked at an effective date, nor did it address how funds would be distributed, as that can be done in the Senate Finance Committee.

[9:13:25 AM](#)

SENATOR HUGGINS asked if version G creates a mechanism that does not make it mandatory for funding or imply that it must be funded.

CHAIR SEEKINS said that is correct; it establishes that 50 percent of receipts from punitive damages that go to the state can be used.

[9:13:59 AM](#)

SENATOR THERRIAULT did not think the bill needed an immediate effective date. He asked that Chair Seekins work with the co-chairs of the finance committee to make sure the language is broad enough to say that any dollar amount coming in from the

punitive damage settlements will be set aside into this fund. He did not anticipate the fund to be used as a funding source in FY 06, but rather that the money be collected during FY 06 and used in FY 07.

[9:15:13 AM](#)

SENATOR FRENCH pointed to a technical correction that needs to be made by putting parentheses around the letter "b".

CHAIR SEEKINS agreed.

[9:15:49 AM](#)

SENATOR THERRIAULT moved CSSB 19(JUD), version G, from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

[9:16:12 AM](#)

CHAIR SEEKINS announced that the Department of Law would give a review to the committee on Tuesday and that he was working with Senator Dyson to see if his legislation on the constitutional amendment for a spending limit would be ready to be heard on Wednesday. He then adjourned the meeting.