

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

January 26, 2005
8:37 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

None

COMMITTEE CALENDAR

Department of Law Overview

SENATE BILL NO. 65

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: OFFENSES BY MINORS/AGAINST TEACHERS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/05	(S)	READ THE FIRST TIME - REFERRALS
01/19/05	(S)	JUD, FIN
01/26/05	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Ms. Susan Parkes, Deputy Attorney General
Department of Law (DOL)
310 K Street, Ste 507
Anchorage, AK 99501

POSITION STATEMENT: Delivered DOL overview.

Ms. Anne Carpeneti, Assistant Attorney General

Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 65

Ms. Patty Ware, Director
Division of Juvenile Justice
Department of Health & Social Services
PO Box 110635
Juneau, AK 99801-0635

POSITION STATEMENT: Testified in support of SB 65

Ms. Carol Comeau, Superintendent
Anchorage School District
PO Box 196614
Anchorage, AK 99519

POSITION STATEMENT: Testified in support of SB 65

Sgt. Gil Davis, Sergeant
Anchorage Police Department
4501 S. Bragaw St.
Anchorage, AK 99508

POSITION STATEMENT: Testified in support of SB 65

Mr. Randy Ruaro, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 65

Mr. Bruce Johnson
Association of Alaska School Boards
1111 W 9th St
Juneau, AK 99801

POSITION STATEMENT: Testified in support of SB 65

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:52 AM](#). He announced that the committee would hear part of a review from the Department of Law and advised that David Marquez was present.

[8:38:30 AM](#)

Department of Law Overview

MR. DAVID MARQUEZ, Chief Assistant Attorney General, Department Of Law, thanked the committee for the opportunity to provide the overview. He noted that both attorney general Greg Renkes and deputy attorney general Scott Nordstrand were unavailable, but he would start the overview and complete it at a later time. Alaska Statutes 44.23.020 sets forth the duties and powers of the DOL. Its mission is to provide legal services to state government and to prosecute crime. The department is divided into three main sections: The Civil, Criminal, and Administrative Divisions. The handouts to the committee include a top-level organization chart, a 15-page budget report, and DOLs 2004 accomplishments. He instructed the committee to its website which includes the latest annual report.

[8:41:00 AM](#)

SUSAN PARKES, Deputy Attorney General, Criminal Division, provided an overview on how the criminal division is organized, and its main functions. She stated that Alaska has a unique DOL system in Alaska in that the AG is appointed, as well as all of the district attorneys. This system provides more consistency within the criminal justice system and also gives her the ability to shift resources as needs arise since everybody works for her and the Governor. The criminal division's main function is all adult criminal prosecution throughout the state. In a few areas, municipal prosecutors handle a few misdemeanor cases, but state prosecutors handle the bulk.

[8:42:56 AM](#)

She advised that last year one change in DOL was that the criminal division became solely responsible for all juvenile delinquency prosecutions as well. There are 13 offices statewide, including four solo attorney offices: Barrow, Dillingham, Kotzebue, and Sitka. The largest office is in Anchorage with approximately 30 lawyers. Overall the department has approximately 95 prosecutors and about 25 victim witness paralegals. Witness paralegals play a key role in the division's mission. They provide trial support to attorneys and carry the main responsibility of fulfilling victims' rights. They are very important to the mission.

[8:44:39 AM](#)

Last year DOL was given an increase of nine prosecutor positions; three were federally funded, six through general funds. This gave DOL the opportunity to do a better job handling

and processing cases. The caseload continues to increase, especially with felonies, sexual assault, sexual abuse, a very high incidence in violent crime. In 2002 they had 6,100 new felony referrals throughout the state. Last year that increased to 6,900. Misdemeanor referrals went up as well, from 22,000 in 2002 to 22,700 the next year.

[8:46:09 AM](#)

MS. PARKES reported that upcoming challenges are handling the caseload, especially with the recent Blakely decision. She appreciates the legislative effort of SB 56.

Another challenge is recruitment. Since the beginning of the current fiscal year, they've hired 16 new prosecutors throughout the state but are still down due to continuing turnover.

[8:47:07 AM](#)

They are losing experienced prosecutors mainly in remote and rural areas where it is hard to find qualified attorneys who are willing to take their families to those areas and be part of the community and prosecute.

This year DOL has asked for 2 new paralegal positions, which will add support to the new attorney positions.

MS. PARKES then offered to answer any questions.

[8:48:09 AM](#)

CHAIR SEEKINS addressed the comment made by Ms. Parkes regarding staffing in rural areas and asked her to elaborate.

MS. PARKES elaborated that it is a tough lifestyle for prosecutors to go to very small communities, especially the solo offices where they would be the only prosecutor in the town. They may be single. It's a very isolating position to be in since the prosecutor can be the focus of the town and very unpopular, with no support system. Housing can also be an issue. If the spouse has a different career, it can be difficult for them to find job opportunities. Those with children may find limited school activities. Such issues limit DOLs ability to get experienced prosecutors, which it needs in the solo offices.

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SENATOR HUGGINS stated his admiration for Ms. Parkes and added that she represents the DOL very well.

[8:50:44 AM](#)

SENATOR FRENCH agreed with Senator Huggins and added that the salaries in DOL are not competitive, especially in civil law. He stated that if the salary disparities are not addressed it gives them less of a chance to attract good people. He asked if there was anything in the current budget proposal to address that.

[8:51:44 AM](#)

MS. PARKES said no and that remains an issue. Law school is getting more expensive and people coming out of law school have large debt, which makes it more difficult for them to go into public service.

[8:52:15 AM](#)

In jest, CHAIR SEEKINS reminded the committee that his son is a prosecutor who would like a raise.

MS. PARKES responded that she would be happy to give all her employees a raise. They are hard working, dedicated people who work very long hours mostly out of a sense of public service and not to get rich.

[8:52:58 AM](#)

CHAIR SEEKINS agreed that they work long hours. He agreed that pay is an issue and validated her earlier statement regarding problems hiring prosecutors in remote areas. He added that the court system has the same problem, and although they have limited resources, they try to keep a local venue. He asked her for a comment regarding a total challenge in the DOL in the criminal division.

[8:54:40 AM](#)

MS. PARKES answered that it is a challenge for the whole system. The Department of Health and Social Services (DHSS) has difficulty getting juvenile probation officers and social workers. The result is that the system is always working understaffed, which exacerbates the problem. Rural communities suffer some of the worst social problems including alcoholism

and sexual offense. The areas of greatest need have the most trouble getting qualified people.

[8:55:58 AM](#)

CHAIR SEEKINS thanked her for trying to fill that need.

SENATOR FRENCH offered to work on the problem on the DOL sub-committee.

[8:56:25 AM](#)

CHAIR SEEKINS announced they completed the criminal law side of the DOL review and thanked the participants.

SB 65-OFFENSES BY MINORS/AGAINST TEACHERS

[8:56:59 AM](#)

ANNE CARPENETI, Department of Law, Criminal Division, presented SB 65. The bill addresses violence in the schools. She stated a 2003 survey revealed that 13% of Anchorage students were afraid in school. The bill intends to address this by adopting an aggravating factor in sentencing for school-related assaults. The second concern is gun-related crimes by juveniles. The bill includes another section, which addresses that problem. The first is an aggravating factor, which applies at sentencing in felony sentences to crimes against a person. These crimes include homicide, assault, kidnapping, sexual offenses, robbery and related matters. The proposed aggravating factor would allow a judge to increase the sentence for a person who is convicted of an offense prohibited under Alaska Statute 11.41, if the person directed the crime against a school employee while on school grounds, or at a school sponsored event.

[8:59:36 AM](#)

MS. CARPENETI continued, "Although aggravating factors apply specifically to felony offenses, it is a statement of legislative concern about particular behavior that we are free to, and we often do, argue at misdemeanor sentences." She added that it sends a message to both juveniles and adults that the legislature takes violence in schools seriously.

In the second regard for gun-related crimes, minors are prosecuted in the juvenile justice system. For very serious crimes, 16 & 17 year olds are automatically waived to adult

court. Crimes include murder, manslaughter, assault in the first degree, first-degree sexual assault, first-degree sexual abuse, and arson in the first degree. The bill, in section 4, adds misconduct involving weapons to those automatically waived to adult court.

MS. CARPENETI continued:

Misconduct involving weapons in the first degree is a Class A felony. It prohibits the following conduct: Using a gun during a drug crime and drive-by shootings under circumstances manifesting substantial and unjustifiable risk of harm to persons or property. Misconduct involving weapons in the second degree is a Class B felony. It prohibits the following conduct: Possession of a gun during a drug crime and second, after having been convicted of a felony, either as an adult or adjudicated for what would be a felony as a juvenile, possessing a concealed weapon on school grounds. Misconduct involving weapons in the second degree also prohibits shooting a gun at a building where there is likely to be a person in the building or in a dwelling.

[9:01:23 AM](#)

MS. CARPENETI said that after talking to police and prosecutors they are very concerned about the amount of this conduct, and they support the waiver.

[9:02:07 AM](#)

MS. CARPENETI advised that Carol Comeau, superintendent of schools for Anchorage, and Sgt. Gil Davis, Anchorage Police Department, are both on line waiting to testify in support of SB 65.

SENATOR FRENCH asked how many juveniles are committing the A or B felony gun crime while on school grounds statewide.

MS. CARPENETI answered that the Division of Juvenile Justice will answer those questions. They don't have the figures because they don't prosecute them.

[9:03:15 AM](#)

CHAIR SEEKINS asked Ms. Carpeneti to clarify an earlier statement regarding possession of a weapon on school grounds.

MS. CARPENETI:

It's a class B felony, which makes it misconduct involving weapons in the 2nd degree. For a person who has already been convicted of a felony, or a juvenile who has been adjudicated for a crime, that would be a felony to possess a concealed weapon on school grounds. And that would be one of the offenses that under this bill would be automatically waived to adult court for a 16 or 17-year old person.

[9:04:10 AM](#)

SENATOR HUGGINS asked if the age group of offenders was creeping lower toward 14 year olds.

MS. CARPENETI said that the behavior creep was already there. In terms of automatic waiver, the DOL and DHSS are firm that under 16 is not appropriate for automatic waiver. It is available for discretionary waiver.

[9:06:00 AM](#)

GIL DAVIS, Sergeant in charge of Robbery and Assault, Anchorage Police Department, advised he was notified about SB 65 yesterday and doesn't have detailed testimony ready. He said there are hellacious numbers of shootings in Anchorage. He reported that last Friday a 17-year old fired a gun through the door into the Dimond Mall. His friend had a pistol with the serial number ground off. Patrol officers report that almost every juvenile car has a stolen gun in it. He said that prosecutions in the adult system, a class A felony, result in probation which, in his opinion is much more effective in controlling the offenders than the juvenile system.

[9:08:30 AM](#)

SGT. DAVIS added that having an adult weapons felony on record enhances the further prosecutions. He said that SB 65 provides them an added tool to deal with the juveniles in regards to Project Safe Neighborhoods. Juveniles are not prosecuted at the A and B level, they are staying in the juvenile system, and they are not getting the attention they need. He cited several instances where the police officers go to shootings constantly but they can't prosecute.

9:10:55 AM

SGT. DAVIS said he would like to find a way to not have young people driving around late at night with loaded guns in the car. He said if children were going to commit big boy acts then they should have to go to big boy jail.

Senator Therriault arrived.

SENATOR FRENCH asked how many of these cases exist per year.

SGT. DAVIS said he did a search and came up with 11 per year but he wasn't confident that was a true number since it was just his personal search and he didn't do a thorough search of the database. He added that juvenile justice would have better statistics.

SENATOR FRENCH asked if these crimes happened on school grounds.

SGT. DAVIS replied they were crimes that involved 16 and 17 yr. olds that involved a weapon.

9:12:49 AM

CAROL COMEAU, Superintendent, Anchorage School District, offered her strong support for SB 65. She reported that the Anchorage School District has been working closely with the Anchorage Police Department to increase student safety, and has been working with US Attorney Tim Burgess on Project Safe Neighborhood. Further, they have made great strides in educating students to report dangerous behavior to ensure safety. She is also seeing the spillover effect - when the juveniles get back out into the community, it spills into the schools.

9:14:15 AM

She reported that they have not had many firearms on campuses in the last few years because they have aggressively gone after it. The second reason she supports the bill is in Section 3, however, she would prefer expansion of the language. In number 31 it says, "While on school grounds or at a school sponsored event..." they would like to include all school employees while performing in their jobs, or something like that because they have people assaulting school bus drivers, administrators, etc. They have had to install silent alarms in many buildings because of it.

9:15:51 AM

MS. CARPENETI clarified that in relation to the automatic waiver, bad activity occurs not only in schools, but also elsewhere in the community.

CHAIR SEEKINS asked Ms. Carpeneti why they would say it is a worse crime if it's committed on school grounds than elsewhere, in terms of the aggravating factor.

MS. CARPENETI replied that right now we protect police through mandatory sentences, because they have a particularly dangerous job. School employees have a job that requires them to be on school grounds teaching and protecting children. She recognized that it was a policy call for the committee to decide whether they deserve more protection. She believes it is a good legislative statement.

9:18:05 AM

SENATOR FRENCH commented that aggravators allow a judge to increase a sentence but it isn't a mandate.

MS. CARPENETI agreed.

SENATOR FRENCH explained that he is struggling with the same question on another bill regarding mandatory sentencing. He said he thinks the core conduct of assaulting a teacher in front of other kids for no reason is wrong. But if it's a landlord dispute with a custodian in the parking lot, and an assault ensues, then that's not really what they meant when the bill was written. He added that he is more inclined to be in favor of the aggravator.

9:19:35 AM

CHAIR SEEKINS asked if now the aggravator would have to be decided by a jury if SB 65 passes.

MS. CARPENETI replied only for felonies.

CHAIR SEEKINS expanded on the issue of aggravators and used an example of mall employees who work in the center of violence. He asked the question if they also deserve extra protection. He stated it is a legitimate concern, but how far do we go?

MS. CARPENETI agreed there were other concerns, but the DOL came down on the side of teachers because of serious problems with violence in school.

[9:21:08 AM](#)

CHAIR SEEKINS asked Ms. Comeau what does the data show of violence in the schools, other than the survey previously introduced.

MS. COMEAU asked the committee for some written questions and advised she will get the data to the committee in a few days.

[9:22:07 AM](#)

SENATOR THERRIAULT asked Ms. Carpeneti if there is any reason for the name of bill, "The School Violence Protection Act of 2005." He stated that there is other legislation protecting kids in schools, and this bill doesn't encapsulate all of them.

MS. CARPENETI answered that the drafted bill is a work in progress and that some think it does include other school and non-school related violence. However, she agrees that the title may no longer apply.

SENATOR THERRIAULT asked if there is anything in the intent that shouldn't just be covered in a letter of intent from the committee. He added that the previously discussed survey might not be accurate. He added that a lot of what is in the six-page bill shouldn't be put into the statute; therefore he prefers a letter of intent.

CHAIR SEEKINS affirmed that it has been the policy of this committee to not include special titles or findings and intent, but to cover it with a letter of intent.

MS. CARPENETI noted that the findings and intent section is in uncodified law so it doesn't go into the statute book anyway.

[9:25:17 AM](#)

SENATOR GUESS asked for the definition of a school employee.

MS. CARPENETI answered there is no definition. School grounds and school-sponsored events are terms that are used in other sections of our statute but are not defined either and are not a problem in terms of court interpretation. The intent tends to be

broad and Ms. Comeau wants to cover bus drivers, custodians, and administrative staff. She offered to write definitions of these.

9:27:16 AM

SENATOR GUESS asked if the term 'school employee' had been used and continued that she didn't know if a school bus driver was a school employee or a district employee.

MS. CARPENETI answered that they need to make that more clear.

CHAIR SEEKINS replied that in Fairbanks, a school bus driver is an employee of a contractor.

MS. COMEAU interrupted to say that wasn't necessarily true. In Anchorage they have district school bus drivers who are employed by ASD and they also have contractors.

CHAIR SEEKINS asked if it was her intent to cover only school district employees.

MS. COMEAU answered it is their intent to cover anyone who is engaged in performing their duties. If somebody assaults them, they should be covered.

9:28:19 AM

CHAIR SEEKINS asked about volunteers.

MS. COMEAU replied it was a gray area but she would push hard to cover anyone assaulted while working at the school. The focus right now is school employees who are performing their job functions.

SENATOR THERRIAULT identified that there are also food delivery people, parents, and volunteers, people who may not be in the classroom instructing. He stated the need to be clear about who the bill applies to.

SENATOR FRENCH informed them that he volunteers at West High at the Eagle's Cache Canteen selling food. He asked for clarity on the Youth Risk Behavior Survey and wants to know if it applies to Anchorage schools only.

9:30:48 AM

CHAIR SEEKINS said he is prone to look more favorably on the bill if the definition of the people who are covered is expanded beyond the narrow scope school employees.

MS. CARPENETI agreed they do need a definition due to all the variables.

[9:31:51 AM](#)

RANDY RUARO, Assistant attorney general with the legislation and regulation section DOL, testified that the survey was statewide. It included 42 public high schools in 19 districts.

CHAIR SEEKINS commented about the uncodified title.

[9:33:04 AM](#)

PATTY WARE, Director, Division of Juvenile Justice, DHSS, added she has worked closely with DOL on this bill. She advised she talked about the numbers in the juvenile system. Section 4 will expand the offenses to the adult system if the offender is 16 or older.

Based on data from two fiscal years, FY 03-04, they had 40 referrals come in to the division that covered both misconduct involving weapons in the first degree and in the second degree. Of those 40, kids that were 16 or older at the time committed 26. Under SB 65, 13 additional juveniles would be waived per yr into the adult system. These were serious offenses and they are looking to reduce violence in the schools and community.

[9:34:54 AM](#)

She said in terms of the details about how many were on school grounds, there are concerns about both issues of violence on school grounds and non-school grounds.

The majority of misconduct involving weapons in the first degree, most of those are not on school grounds. In terms of misconduct involving weapons in the second degree, most of those were on school grounds. Those were kids who had already been adjudicated for a prior felony. The other most common, was eight referrals on discharging a firearm at a dwelling. She offered to answer questions.

[9:36:09 AM](#)

CHAIR SEEKINS announced a 5-minute recess.

[9:43:18 AM](#)

CHAIR SEEKINS came back on record.

BRUCE JOHNSON, Association of Alaska School Boards, stated the board adopted a 2002 resolution that was revised in November that deals with assault on school employees. He added that the definition is more of a holistic look concerning people working with young people. He urged a broad definition to cover many people. He spoke of rural districts and identified many challenges in the communities with assault and threats of physical violence against school employees. He offered to help fashion the wording on the bill.

[9:44:51 AM](#)

SENATOR HUGGINS asked what is the organizational position on violence that starts at school but ends outside school grounds.

MR. JOHNSON admitted it is a difficult issue, and such situations occur. If an incident carried over from the school and started because of your role at the school, he would hope that would be covered.

[9:46:02 AM](#)

CHAIR SEEKINS said he wants this to be a school violence protection act. He recognized that the survey says 11 percent of high school students are afraid in schools but he sees no survey of school district employees, if they have been threatened. But if we pass this law, it's a greater offense to assault an employee than a student. He advised they work on SB 65 if they want to address the issue of concealed weapons, or threats at school. He would like to put all involved on an equal level. He said he would prefer to look at a broader spectrum and asked Mr. Johnson if his organization was opposed to that.

MR. JOHNSON replied no and assured he would work with the committee.

[9:48:33 AM](#)

SENATOR FRENCH asked a question regarding carrying a weapon and asked for a definition of the phrase.

MR. RUARO admitted that he can't answer the question and agreed with Senator French that there are instances of carrying a weapon legally.

SENATOR FRENCH said we have a good reduction in illegal weapon carrying between 1995 and 2003 and asked if anyone knew why.

MR. RUARO answered that he can't answer that but his guess is it is due to increased funding, posting peace officers at schools, and other efforts.

9:50:33 AM

CHAIR SEEKINS said he doesn't want to see an adult come onto school grounds to pick up a child, and, with a legal concealed weapon in the car, get arrested.

9:52:05 AM

CHAIR SEEKINS asked for further questions. He said he would prefer to look at the spectrum of people and come up with a more acceptable group. He offered to carry the bill over and asked for objections.

SENATOR GUESS asked to also define school grounds, especially buses.

SENATOR HUGGINS stated support of CHAIR SEEKINS.

CHAIR SEEKINS announced he will carry the bill over and adjourned the committee meeting.