

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

March 1, 2005

8:35 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senator Con Bunde

**COMMITTEE CALENDAR**

SENATE BILL NO. 87

"An Act relating to motor vehicle safety belt violations."

MOVED SB 87 OUT OF COMMITTEE

SENATE BILL NO. 95

"An Act relating to the collection of, and the use of reasonable force to collect, a deoxyribonucleic acid sample from persons convicted of or adjudicated delinquent for certain crimes."

MOVED CSSB 95(JUD) OUT OF COMMITTEE

SENATE BILL NO. 104

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 87

SHORT TITLE: SEAT BELT VIOLATION AS PRIMARY OFFENSE

SPONSOR(s): SENATOR(s) BUNDE

02/02/05 (S) READ THE FIRST TIME - REFERRALS  
02/02/05 (S) STA, JUD  
02/17/05 (S) STA AT 3:30 PM BELTZ 211  
02/17/05 (S) Moved SB 87 Out of Committee  
02/17/05 (S) MINUTE (STA)  
02/18/05 (S) STA RPT 2DP 2NR  
02/18/05 (S) NR: THERRIAULT, HUGGINS  
02/18/05 (S) DP: ELTON, WAGONER  
03/01/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 95

SHORT TITLE: COLLECTION OF DNA/USE OF FORCE

SPONSOR(s): SENATOR(s) BUNDE

02/07/05 (S) READ THE FIRST TIME - REFERRALS  
02/07/05 (S) STA, JUD  
02/22/05 (S) STA AT 3:30 PM BELTZ 211  
02/22/05 (S) Heard & Held  
02/22/05 (S) MINUTE (STA)  
02/24/05 (S) STA AT 3:30 PM BELTZ 211  
02/24/05 (S) Moved SB 95 Out of Committee  
02/24/05 (S) MINUTE (STA)  
02/28/05 (S) STA RPT 2DP 2NR  
02/28/05 (S) DP: THERRIAULT, DAVIS  
02/28/05 (S) NR: ELTON, HUGGINS  
03/01/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 104

SHORT TITLE: PERMANENT FUND DIVIDEND FRAUD

SPONSOR(s): SENATOR(s) SEEKINS

02/14/05 (S) READ THE FIRST TIME - REFERRALS  
02/14/05 (S) STA, JUD  
02/22/05 (S) STA AT 3:30 PM BELTZ 211  
02/22/05 (S) Heard & Held  
02/22/05 (S) MINUTE (STA)  
02/24/05 (S) STA AT 3:30 PM BELTZ 211  
02/24/05 (S) Moved CSSB 104(STA) Out of Committee  
02/24/05 (S) MINUTE (STA)  
02/28/05 (S) STA RPT CS 4DP SAME TITLE  
02/28/05 (S) DP: THERRIAULT, ELTON, HUGGINS, DAVIS  
03/01/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Senator Con Bunde  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SB 87 and SB 95

Ms. Lauren Wickersham, staff to Senator Bunde  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Commented on SB 87 and SB 95

Lt. Todd Sharp  
Division of Alaska State Troopers  
Department of Public Safety  
3700 East Tudor Road  
Anchorage, Alaska 99507  
**POSITION STATEMENT:** Supports SB 87

Ms. Joan Dimond  
City of Anchorage  
Department of Health  
Anchorage, AK  
**POSITION STATEMENT:** Supports SB 87

Ms. Anne Carpeneti  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Supports SB 95

Ms. Portia Parker  
Department of Corrections  
431 N. Franklin, Suite 400  
Juneau, AK 99801  
**POSITION STATEMENT:** Supports SB 95

Mr. Tony Newman  
Division of Juvenile Justice  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Supports SB 95

Mr. Michael Macleod-Ball, Executive Director  
Alaska Civil Liberties Union  
419 Barrow St.  
Anchorage, AK 99520  
**POSITION STATEMENT:** Opposes SB 95

Mr. Brian Hove, staff to Senator Seekins  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced SB 104

Ms. Sharon Barton, Director  
Permanent Fund Dividend Division  
Juneau, AK 99801

**POSITION STATEMENT:** Supports SB 104

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:35:40 AM](#). Present were Senators Hollis French, Gene Therriault, Gretchen Guess, Charlie Huggins and Chair Ralph Seekins.

#### **SB 87-SEAT BELT VIOLATION AS PRIMARY OFFENSE**

[8:35:40 AM](#)

CHAIR SEEKINS announced SB 87 up for review. He called Senator Con Bunde and Ms. Lauren Wickersham to introduce SB 87.

SENATOR CON BUNDE introduced SB 87. Over 20 years ago federal law passed requiring the use of seatbelts. SB 87 addresses enforcement of that law. Currently Alaska has a secondary seatbelt law, meaning one can be stopped for not wearing a seatbelt only if their passenger is 16 years or younger. One can be issued a ticket for not wearing a seatbelt only if stopped by an officer for another offense.

SB 87 proposes a seatbelt violation could be probable cause for an officer to stop a vehicle. Research shows the majority of Alaskans wear seatbelts. Failure to use seatbelts cost Alaskans thousands because insurance rates are negatively impacted. Monetary losses also impact Medicaid. In states where a primary seatbelt law is in effect, seatbelt usage has gone up. Had last year's bill passed it would have delivered a positive monetary impact and seven people would still be alive.

[8:41:57 AM](#)

MS. LAUREN WICKERSHAM, staff to Senator Con Bunde, referenced a survey of 586 people. The survey indicated most people favor a law requiring seatbelt use.

[8:43:36 AM](#)

CHAIR SEEKINS commented he spoke with a national highway traffic safety officer and statistics show that seven Alaskans would be alive had the previous bill passed. Damages, loss of income, hardships, and economic and sociological impact also should be considered.

[8:46:46 AM](#)

SENATOR BUNDE concluded with reference to a news article. SB 87 will save lives. Others' rights stop when they impact other people. 87 percent of accidents cost Alaskans money in some form.

[8:50:06 AM](#)

MS. JOAN DIMOND, municipality of Anchorage, Department of Health and Social Services (DHSS), testified SB 87 is a priority of the city of Anchorage. SB 87 will save lives and reduce medical costs.

[8:52:34 AM](#)

LT. TODD SHARP, Alaska State Troopers, offered to answer questions.

SENATOR CHARLIE HUGGINS asked Lt. Sharp the cause and effect of SB 87.

LT. SHARP said the data shows when SB 87 passes, more people will wear seatbelts through education efforts.

CHAIR SEEKINS asked Lt. Sharp if he anticipated troopers would stop vehicles more frequently.

LT. SHARP answered no.

SENATOR HOLLIS FRENCH asked Lt. Sharp if a trooper would make a stop if s/he were unsure whether someone was wearing a seatbelt.

LT. SHARP answered that would not be a probable cause. The trooper has to be certain.

[8:55:05 AM](#)

SENATOR GRETCHEN GUESS made a motion to move SB 87 out of committee with individual recommendations and zero fiscal notes. There being no objections, it was so ordered.

**SB 95-COLLECTION OF DNA/USE OF FORCE**

[9:00:48 AM](#)

SENATOR CON BUNDE introduced SB 95. Current law allows people who are incarcerated to refuse to provide a deoxyribonucleic acid (DNA) sample. He offered a committee substitute (CS).

MS. LAUREN WICKERSHAM, staff to Senator Bunde, advised the CS was in front of committee members.

SENATOR GENE THERRIault made a motion to use version \F as the working document. With no opposition, the motion carried.

SENATOR BUNDE referenced Section 2, subsection (p) and advised it addressed immunity for a person using reasonable force to collect DNA.

[9:03:14 AM](#)

SENATOR GUESS asked Senator Bunde why the language was changed from reasonable force to "for actions arising out of DNA collection."

SENATOR BUNDE replied it was due to advice from Dean Guaneli and the Department Of Law (DOL). He deferred Senator Guess's question to the DOL.

SENATOR GUESS asked Senator Bunde to expand on the reference to misdemeanors in the fiscal notes.

SENATOR BUNDE answered crimes against a person can also fall within the misdemeanor statute of assault.

SENATOR THERRIault said the new subsection (p) does not contain the word reasonable but it appears in subsection (o) so the verbiage appears more succinct.

CHAIR SEEKINS commented as long as they use reasonable force they are indemnified.

[9:06:25 AM](#)

SENATOR BUNDE offered "reasonable force" is well established in the law.

MS. ANNE CARPENETI, criminal division, Department Of Law (DOL), testified that Section 2 includes municipal prosecutions for crimes against a person, and addresses problems with people who refuse to provide a DNA sample. DNA samples could solve crimes. The procedure is a Q-tip swab inside the mouth, which doesn't take much force. DOL experts in civil liability suggested the

language change. SB 95 addresses people who have already been convicted.

9:10:16 AM

SENATOR THERRIAULT asked Ms. Carpeneti if the rewording in Section 2 was merely a structural change.

MS. CARPENETI answered instead of saying a person has immunity; Section 2 says a person cannot bring a cause of action for reasonable actions taken to obtain a DNA sample.

SENATOR THERRIAULT asked how it was different.

MS. CARPENETI answered the purpose is to stop a frivolous lawsuit in the early stages, but DOL didn't want to immunize anyone who was using unreasonable force.

9:12:15 AM

SENATOR THERRIAULT asked Ms. Carpeneti if she views the new suggested language as more broad.

MS. CARPENETI answered yes in the sense of civil liability. The purpose of Section 2 is due to tort liability.

SENATOR THERRIAULT asked if the criminal part was separated.

MS. CARPENETI answered yes. Section 2 is less broad in the criminal sense but more broad in the civil sense.

SENATOR THERRIAULT commented he wants to understand why Ms. Carpeneti views the language as broader.

MS. CARPENETI said that it attaches at a different period of litigation. Protection kicks in earlier.

SENATOR THERRIAULT asked if that was the only change, or whether Section 2 gives broader protection under civil liability. He commented that it seems like it is all attached to "reasonable" so the standard is the same.

MS. CARPENETI answered yes.

9:14:00 AM

SENATOR FRENCH said most people would cooperate if advised it's a class C felony to refuse to give a DNA sample.

CHAIR SEEKINS said the swab would be taken during booking.

MS. CARPENETI advised most DNA swabs would be taken at conviction, not during booking.

SENATOR FRENCH asked whether maximum-security inmates often refuse to cooperate.

MS. CARPENETI answered yes.

SENATOR FRENCH commented a claim could be filed in the case of an injury. The judge will have to decide.

MS. CARPENETI replied as currently drafted, yes.

SENATOR FRENCH clarified a claim wouldn't be automatically rejected due to SB 95, but that a hearing would be held with a motion to dismiss. Then either a judge or jury would decide. He asked Ms. Carpeneti if that is how she sees the process.

MS. CARPENETI agreed.

SENATOR FRENCH commented that corrections officers work in stressful situations and may not always get along well with life-long inmates. A Q-tip swab could be used to hurt someone.

[9:16:41 AM](#)

SENATOR FRENCH referred to subsection (o) and the use of reasonable force compared with non-deadly force. He asked Ms. Carpeneti to explain the difference between the terms.

MS. CARPENETI explained people are comfortable with the language of reasonable force. The concept of reasonable force is in the constitution and throughout Alaska state law. Non-deadly force has a broad connotation.

SENATOR FRENCH asked if non-deadly force allows more force than reasonable force.

MS. CARPENETI said that is the way she interprets it. The person receiving the swab sets the parameters. It depends on the circumstances but the purpose is to use as little force as necessary.

MS. PORTIA PARKER, Department of Corrections (DOC), explained reasonable force. Force elevates through the response of a person. The DOC has to apply different levels of force every day depending on the situation. Officers are trained to use the

least amount of force possible to accomplish the lawful end. The definition is ambiguous. It is the amount of lawful force that is used to reach a lawful end. The DOC doesn't anticipate having to use force to take a DNA sample.

9:21:06 AM

CHAIR SEEKINS asked Ms. Parker how hard it is to get a DNA sample.

MS. PARKER replied that it generally takes a few officers to hold the prisoner and one to take the swab.

CHAIR SEEKINS commented unless severe injury occurred, the person could not bring a nuisance lawsuit.

MS. PARKER agreed.

SENATOR THERRIAULT commented reasonable force is considered on a sliding scale.

MS. PARKER said the least amount of force is used but it depends on the response of the offender.

9:22:25 AM

CHAIR SEEKINS asked Ms. Parker whether the DOC uses force in its daily activities.

MS. PARKER answered yes.

SENATOR THERRIAULT asked Ms. Parker to describe the swab.

MS. PARKER replied the Department of Public Safety (DPS) provides DNA kits. It is a small oral swab rubbed along the cheek. It then goes into a special container, which is sent to the crime lab.

9:23:48 AM

SENATOR HUGGINS commented the correctional system is a controlled environment. He recognized that it was part of a normal daily process for the DOC to maintain control, which, if SB 95 passes, will be another part of the job.

MS. PARKER agreed. The DOC recently went to Arizona to help collect 45 DNA samples and experienced no refusals.

MICHAEL MACLEOD, executive director, Alaska Civil Liberties Union (ACLU) opposed SB 95. The ACLU opposes most all systems

where the government is collecting identifiable information on individual citizens. He is concerned with privacy rights, recognizing that offenders forego many of their rights. He disputed an earlier reference to fingerprinting saying that DNA collection is invasive. He questioned any direct link with the collection of DNA to resolving crimes. He questioned probable cause to suspect a link to other crimes. He has concerns about due process and the need to use an independent decision maker to resolve whether or not a DNA sample should be taken from an individual.

[9:28:35 AM](#)

MR. MACLEOD asked whether the information could constitutionally be used in any future proceedings if forcibly taken without probable cause.

SENATOR THERRIAULT asked Mr. Macleod whether that ground wasn't already covered by the use of fingerprinting for identification purposes.

MR. MACLEOD agreed there are two identification systems with distinctions between the methods. The invasiveness of swabbing is greater than taking fingerprints.

[9:30:28 AM](#)

CHAIR SEEKINS asked Ms. Carpeneti whether the question of what offenses would apply is already set into law.

MS. CARPENETI replied yes. SB 95 refers only to those people convicted of crimes.

CHAIR SEEKINS asked whether SB 95 changes current law regarding who is tasked with taking the DNA sample.

MS. CARPENETI said no. The judge, at the time of conviction, orders the person to give a DNA sample. It is not a decision made by a correctional officer, it is pursuant to a court order.

[9:31:37 AM](#)

SENATOR HUGGINS asked Mr. Macleod whether he has any court cases pending on this issue.

MR. MACLEOD answered no.

SENATOR BUNDE commented the DNA database has generated 30 hits and has aided in 38 different investigations. That makes Alaska one of the most successful per capita in the nation.

MS. CARPENETI commented the connection to DNA and solving crimes is significant.

9:33:29 AM

CHAIR SEEKINS asked Ms. Carpeneti whether taking a swab from someone's mouth is considered to be extremely invasive.

MS. CARPENETI replied no. Blood draws are considered more invasive.

CHAIR SEEKINS asked Ms. Parker whether the DOC performs any other normal procedures that are considered more invasive than taking a DNA sample.

MS. PARKER answered yes. The DOC does not view taking a DNA sample to be invasive. The booking procedure and medical examinations are more invasive. Taking a DNA sample is a forensic collection of evidence.

9:35:10 AM

CHAIR SEEKINS asked which booking procedures are invasive.

MS. PARKER replied inmates are required to submit their clothing and possessions. They are given a full medical and sometimes mental health exam. They are watched very closely initially.

CHAIR SEEKINS asked Ms. Parker if she was aware of any other jurisdictions that have ruled DNA sampling to be unconstitutional.

MS. PARKER answered no.

SENATOR HUGGINS commented DNA testing could be used to accuse or to clear someone of a crime. He observed the accuracy of DNA testing favors the innocent person.

MS. PARKER agreed.

MS. CARPENETI commented she does not consider a Q-tip swab to be invasive.

9:37:28 AM

CHAIR SEEKINS asked Ms. Carpeneti if she knew of any jurisdiction that has found DNA sampling to be in violation of fundamental rights.

MS. CARPENETTI answered no.

MR. TONY NEWMAN, program officer, Division of Juvenile Justice testified probation officers have never had to use force while collecting DNA in the juvenile system.

SENATOR GUESS asked Senator Bunde why SB 95 has no effective date.

[9:39:59 AM](#)

SENATOR BUNDE answered inmates generally serve a long-term incarceration. He didn't see a need for an immediate law.

CHAIR SEEKINS asked Senator Bunde if he wanted to add an amendment for an effective date.

SENATOR BUNDE said he was not sure it was necessary, but he recognized it could speed up an investigation.

SENATOR GUESS made a motion to amend SB 95 to include an immediate effective date. Hearing no objections, the motion carried.

[9:43:01 AM](#)

SENATOR THERRIAULT moved CSSB 95(JUD) from committee with individual recommendations and accompanying fiscal notes. With no objection, the motion carried.

[9:43:25 AM](#)

**SB 104-PERMANENT FUND DIVIDEND FRAUD**

[9:50:54 AM](#)

MR. BRIAN HOVE, staff to Senator Seekins, introduced SB 104. SB 104 establishes a Permanent Fund Dividend (PFD) investigation unit. SB 104 would make submission of a fraudulent PFD application a class C felony. In 2004 the Department of Revenue (DOR) examined over 1,600 fraud tips and audited over 1,700 PFD applications suspected of being fraudulent. This resulted in \$1.4 million in denied or assessed dividends. There were three federal indictments and one conviction for crimes involving PFD fraud.

The most common PFD fraud offense involves persons who forge signatures with the intent to receive a dividend to which they are not entitled. SB 104 is not intended to capture cases where spouses sign for each other. Current law (AS 11.46.500-510) describes three separate degrees of forgery - the two most serious offenses are punishable as class B and C felonies, but

are limited to cases involving various types of financial instruments.

Forgery in the third degree covers instances where a person intentionally makes a false statement on a written instrument such as a PFD application. This offense is punishable as a class A misdemeanor. The DOR's proposal to elevate PFD fraud from a misdemeanor to a Class C felony is expected to provide a more effective deterrent for theft. SB 104 aids in identifying and curing instances of PFD fraud by codifying in statute a fraud investigation unit within the DOR. This unit will assist the Department of Law (DOL) in investigating instances of PFD fraud.

[9:53:37 AM](#)

SENATOR THERRIAULT said that Section 1 separates dividend fraud out of the statute. By doing so it creates too many categories of fraud. He suggested the committee rework the overall structure.

[9:55:50 AM](#)

SENATOR FRENCH asked Senator Therriault if he was suggesting a list of fraudulent activities and the punishment that relates to them.

SENATOR THERRIAULT replied yes. It would make it more of a standard format.

CHAIR SEEKINS agreed.

SENATOR THERRIAULT added that if one were looking for falsification it would be all in one section.

[9:57:01 AM](#)

CHAIR SEEKINS announced that committee substitute version \Y was before the committee as the working document. He asked Sharon Barton to clarify the changes.

MS. SHARON BARTON, director, Permanent Fund Dividend Division agreed that Senator Therriault's proposal had merit. To explain the \Y draft, it made the language simpler. The PFD division was looking at going after falsification written and orally. The drafters trimmed three sections down to two and identified the class C felony.

[9:59:55 AM](#)

CHAIR SEEKINS suggested SB 104 might have a title change since it would be setting up new section of law.

SENATOR THERRIAULT disagreed saying it would be putting together a framework.

CHAIR SEEKINS liked Senator Therriault's suggestion.

SENATOR FRENCH did as well.

CHAIR SEEKINS said he would ask his staff to meet with the drafters to accommodate Senator Therriault's suggestion.

[10:02:11 AM](#)

SENATOR THERRIAULT said page 1, line 14, which is the section title, would be lost in the new draft.

CHAIR SEEKINS offered it wouldn't impact the functionality. He said he would refer the issue to the drafters and hold SB 104 over to the next committee meeting.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:03:37 AM](#).