

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 4, 2005

8:37 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 117

"An Act relating to the admissibility into evidence of the prior recorded statement of a crime victim less than 16 years of age; and adding Rule 413, Alaska Rules of Evidence, and amending Rules 402 and 403, Alaska Rules of Evidence."

MOVED CSSB 117(JUD) OUT OF COMMITTEE

SENATE BILL NO. 20

"An Act relating to offenses against unborn children."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 117

SHORT TITLE: RECORDED STATEMENTS OF CHILD VICTIMS

SPONSOR(S): SENATOR(S) FRENCH

02/28/05	(S)	READ THE FIRST TIME - REFERRALS
02/28/05	(S)	JUD, FIN
03/10/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/10/05	(S)	Scheduled But Not Heard
03/31/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/31/05	(S)	Heard & Held
03/31/05	(S)	MINUTE (JUD)
04/04/05	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 20

SHORT TITLE: OFFENSES AGAINST UNBORN CHILDREN

SPONSOR(S): SENATOR(S) DYSON

01/11/05	(S)	PREFILE RELEASED 12/30/04
01/11/05	(S)	READ THE FIRST TIME - REFERRALS
01/11/05	(S)	STA, JUD
03/01/05	(S)	STA AT 3:30 PM BELTZ 211
03/01/05	(S)	Heard & Held
03/01/05	(S)	MINUTE (STA)
03/15/05	(S)	STA AT 3:30 PM BELTZ 211
03/15/05	(S)	Moved CSSB 20(STA) Out of Committee
03/15/05	(S)	MINUTE (STA)
03/16/05	(S)	STA RPT CS 1NR 4AM SAME TITLE
03/16/05	(S)	AM: THERRIAULT, ELTON, WAGONER, HUGGINS
03/16/05	(S)	NR: DAVIS
03/16/05	(S)	FIN REFERRAL ADDED AFTER JUD
03/31/05	(S)	JUD AT 8:30 AM BUTROVICH 205
03/31/05	(S)	Scheduled But Not Heard
04/04/05	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Ms. Michele Pettijohn, Social Worker
Office of Children's Services
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Testified in support of SB 117

Senator Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 20

Mr. Wes Keller
Staff to Senator Dyson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 20

Ms. Anna Franks
Planned Parenthood

POSITION STATEMENT: Testified in opposition of SB 20

Ms. Jasmin Cherian
No address provided

POSITION STATEMENT: Testified in support of SB 20

Ms. Rebecca Whiteman, Representative
Family Violence Prevention Fund

POSITION STATEMENT: Testified in opposition of SB 20

Ms. Cassandra Johnson
No address provided

POSITION STATEMENT: Testified in opposition of SB 20

Ms. Carrie Robinson, Attorney
Alaska Network on Domestic Violence and Sexual Assault

POSITION STATEMENT: Testified in opposition of SB 20

Mr. Chip Waggoner, Executive Director
Alaska Catholic Conference

POSITION STATEMENT: Testified in support of SB 20

Ms. Anne Carpeneti
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 20

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:30 AM](#). Present were Senators Huggins, Therriault, Guess, and Chair Seekins.

CHAIR SEEKINS announced SB 117 to be up for consideration.

SB 117-RECORDED STATEMENTS OF CHILD VICTIMS

[8:38:35 AM](#)

SENATOR HUGGINS moved Version \Y as the working document. Hearing no objections, the motion carried.

SENATOR FRENCH informed the committee he carried SB 117 over in order to allow the public an opportunity to testify.

CHAIR SEEKINS asked Senator French to outline the changes to SB 117.

SENATOR FRENCH informed Page 2 line 9, subparagraph (H) was changed to read, "the court has had an opportunity to review the recording", which makes it less burdensome but does not make it mandatory for the court to watch the recording at the time.

[8:40:01 AM](#)

SENATOR HUGGINS asked Senator French what the word "available" means in terms of the victim in the courtroom.

SENATOR FRENCH responded the victim would not have to be inside the courtroom but available in the building.

[8:42:00 AM](#)

MS. MICHELLE PETTIJOHN, social worker, Office of Children's Services, testified in support of SB 117. She said she has been trained to perform forensic interviews at advocacy centers. Forensic interviews should be admissible in court because children should only have to state their story one time.

[8:45:51 AM](#)

MS. ROSEMARY HAGEVIG, Catholic Community Services testified in support of SB 117.

CHAIR SEEKINS moved SB 117 from committee with individual recommendations and accompanying fiscal notes. Hearing no objections, the motion carried.

SB 20-OFFENSES AGAINST UNBORN CHILDREN

[8:47:15 AM](#)

SENATOR FRED DYSON introduced SB 20. He said federal law gives protection to unborn children through the Unborn Victims of Violence Act, and SB 20 is a state version of the federal law.

[8:49:16 AM](#)

SENATOR DYSON said he has been very careful not to attack the current right of a woman for a legal abortion. No one can be prosecuted for the death or injury of an unborn child when it happens in the course of medical treatment. SB 20 is also careful not to assign personhood to an unborn child.

[8:51:33 AM](#)

SENATOR DYSON said there are now children born at 24 weeks who survive. SB 20 is an attempt to afford some measure of protection to an unborn child as it is developing. He encouraged the board members to think about culpability as if it were against a person already born.

[8:54:07 AM](#)

SENATOR DYSON added he believes there are no unwanted children. The Legislature has the ability to provide protection of the law to most entities including game and streams.

[8:59:35 AM](#)

SENATOR GRETCHEN GUESS asked Senator Dyson to reconsider on the violence against pregnant women issue. She suggested using aggravating sentences. The best thing to do to protect an unborn child is to protect all women against violence.

[9:01:08 AM](#)

SENATOR GUESS asked for the definition of death of an unborn child in the concept of miscarriages. She stated her concern was a miscarriage could be prosecuted under the statutes.

[9:02:49 AM](#)

SENATOR DYSON stated it would have to be "intentionally and knowingly."

SENATOR GUESS stated "recklessly" is also included in the criteria.

MR. WES KELLER, staff to Senator Dyson, testified the recklessly standard is for manslaughter and criminally negligent applies to homicide.

[9:04:29 AM](#)

SENATOR DYSON said it was a very high standard to prove it was a knowingly intentional act.

[9:06:08 AM](#)

SENATOR GUESS asked the committee to think about the issue. A woman who runs a 10K race could be prosecuted. SB 20 opens up the possibility to prosecute any woman who suffers a miscarriage.

[9:07:45 AM](#)

CHAIR SEEKINS said he has seen pregnant women taking part in activities that some could call risky where others would not. The medical community has differing standards.

[9:10:27 AM](#)

SENATOR DYSON asked the committee members to think of the issue as if it were a born child.

SENATOR HOLLIS FRENCH stated there was difficulty analyzing the situation when trying to consider an unborn fetus a born child.

[9:13:44 AM](#)

SENATOR FRENCH said the law currently provides penalties for someone who kills a fetus through the definition of "serious physical injury." Someone who hurts a woman and causes serious physical injury can be prosecuted. He asked Senator Dyson how manslaughter minimum sentences would be affected.

[9:15:43 AM](#)

SENATOR DYSON answered Alaska law makes clear distinctions and it involves transferability of intention. When someone hurts an unintended victim, the intention can be transferred.

[9:17:56 AM](#)

SENATOR FRENCH said adding a separate sentence for a woman who is 4 weeks pregnant is problematic.

[9:20:07 AM](#)

CHAIR SEEKINS pondered whether a 4-week-old fetus deserves protection under the law.

SENATOR GENE THERRIault said the issue becomes problematic when it is an action the woman takes herself.

[9:23:10 AM](#)

CHAIR SEEKINS commented there was a delicate balance between a woman choosing to participate in a physical activity, which could bring harm to an unborn child, and a woman choosing to ingest a harmful substance.

SENATOR GUESS commented going to work could be a physical activity. It is also difficult when you consider a woman does not always know when she is pregnant.

[9:25:44 AM](#)

SENATOR DYSON asserted that "knowingly" is the qualifier. He stated it was not the intent to have people calling the police on any woman who might be endangering an unborn child. He expressed doubt that innocent people would be prosecuted.

Chair Seekins announced a brief recess at [9:28:21 AM](#).

Chair Seekins reconvened the meeting at [9:39:10 AM](#).

[9:39:52 AM](#)

MS. ANNA FRANKS, chief executive officer, Planned Parenthood of Alaska, said Planned Parenthood of Alaska was unable to support SB 20 as it is currently written, although they would support some changes to the bill. A woman has the right to have a child as well as the right to have a legal abortion. Their primary

concern is giving separate legal rights to the fetus. She claimed SB 20 undermines the national trend toward a woman's right to choose.

[9:42:07 AM](#)

MS. FRANKS voiced doubt as to the ability to prove assault on a fetus resulted in a negative outcome. Her discussions with the Department of Law have led her to believe sentencing aggravators would be a more simpler and useful solution.

[9:43:49 AM](#)

CHAIR SEEKINS stated he supports giving rights to an unborn child.

[9:45:06 AM](#)

MS. CASSANDRA JOHNSON, informed committee members that she worked with victims and survivors of domestic and gender violence for nine years. Although she was pleased that the Legislature was addressing this prevalent problem, she couldn't support the current draft of SB 20. She pointed out that nationwide domestic violence experts unanimously oppose this type of bill.

She reported that since the late 1970s Alaska has been in the top five states for reported sexual assaults and in 2002 Alaska led the nation in women killed by a significant other. It's necessary to educate all society members to send the message that gender violence won't be tolerated in Alaska. Sentencing aggravators would recognize a crime committed against a pregnant woman and give the courts flexibility to consider harm to or loss of the fetus. Acts of violence against a woman are abhorrent and particularly disturbing when committed against a pregnant woman.

When a violent crime against a pregnant woman results in miscarriage or stillbirth everyone shares the desire for the criminal justice system to respond decisively to exact the appropriate punishment. Protecting pregnant women from violence is a very serious problem that deserves to be elevated above political agendas and partisan politics, she concluded.

[9:48:33 AM](#)

MS. CARRIE ROBINSON, attorney, Alaska Network on Domestic Violence and Sexual Assault, explained that the network has programs statewide and it fully supports efforts to prevent violent acts toward women. However, SB 20 has a number of

unintended consequences including preventing a victim of domestic violence from seeking necessary medical care.

In Alaska, nearly one in four teenage mothers have reported physical abuse suffered during pregnancy. It's important to remember that these are just the reported statistics because many acts of domestic violence go unreported.

[9:50:10 AM](#)

Alaska ranks in the top three per capita nationwide in sexual assault and in 2002 it ranked number one for women murdered by men. Furthermore, the American Medical Association Journal has reported that murder is the number one cause of injury to pregnant women. Studies show that abuse escalates during pregnancy and that pregnancy is the time when a woman is at the greatest risk of injury. Because of that, it's important that the justice system is able to react strongly and decisively to such acts.

She asked members to imagine their reaction if it were their daughter who was happily married when she brought home the news that she was pregnant but after that time her husband became abusive. Because the couple had a non-violent relationship prior to the pregnancy, she mistakenly believes the abuse will stop once the baby is born.

If she were to miscarry because of the abuse to her abdomen, her husband would be charged with murder under SB 20. The unintended consequence of this is that her husband might be less likely to take his wife in for emergency care and the woman might also be reluctant to seek medical attention if she knew that her husband might be charged with murder or manslaughter.

[9:52:17 AM](#)

MS. ROBINSON reported that for a number of reasons it takes a woman approximately seven times to extract herself from an abusive relationship. It's well documented that this is the most dangerous time for her to leave the relationship. That coupled with the fact that she may have limited financial and support options raises the question of whether she could be charged with failing to protect her unborn fetus under this bill.

Looking at another scenario she questioned whether a snow machine driver should be charged with manslaughter if his pregnant wife miscarries as a result of the ride. Without question this would be a tragic accident, but it becomes much more complex if it rises to the level of manslaughter.

Instead of complicating the current criminal statutes, she suggested looking at making domestic violence crimes an aggravator and keeping the focus on the women. "Alaska can be a leader for the nation by acknowledging a batterer cannot hurt a fetus without hurting a woman."

[9:54:37 AM](#)

CHAIR SEEKINS asked how long the network had been in existence.

MS. ROBINSON replied they have been in Alaska for more than 20 years.

CHAIR SEEKINS questioned whether she thought the justice system already provides adequate protection to pregnant women.

MS. ROBINSON replied she did not.

CHAIR SEEKINS asked why the network hadn't brought legislation forward for consideration before this time.

MS. ROBINSON explained that in 1996 the network fully supported the 1996 Domestic Violence and Protection Act and has always striven for enhanced penalties and stricter laws to punish violence against women. It's unfortunate that these crimes frequently are pled out or become misdemeanor domestic violence. Resources are short for the Department of Law to be able to handle existing caseloads and so these crimes aren't always punished under existing laws as they should be.

CHAIR SEEKINS advised he knows legislators who would be happy to carry individual bills that look at what she is suggesting.

MS. ROBINSON responded the network would fully support a bill that made it an aggravator in the criminal statutes.

[9:56:12 AM](#)

CHAIR SEEKINS commented it would be easy to get such a bill going. There are aggravators for all sorts of things and the network would be advised to take such a project on.

MS. ROBINSON said she understands there is comprehensive legislation looking at all sentencing in Alaska.

CHAIR SEEKINS said that bill already passed, but it didn't deal with naming additional aggravators it's just how they would be categorized.

SENATOR THERRIAULT remarked several aggravators were added to the bill before it was signed. He then asked Ms. Robinson to clarify how a woman might be charged if she didn't take steps to protect herself and her unborn child from an abusive situation because the harm wouldn't be self inflicted.

MS. ROBINSON responded with the hypothetical situation of a physician who advised a woman to leave a domestic violence relationship because of the potential for injury to herself or the unborn fetus. If the woman wasn't able to extract herself before another assault happened she understands the legislation to have the reckless element. That is to have reckless disregard of a known risk. Therefore she would argue that under that definition, she could be charged with failing to protect the fetus.

[9:58:40 AM](#)

SENATOR THERRIAULT opined that is a bit of a stretch.

MS. ROBINSON argued it isn't a stretch when you consider that other states have passed child protective legislation in which mothers have lost custody because they didn't get out of an abusive situation.

SENATOR THERRIAULT disagreed, but if she could point out how that would realistically happen then the committee should look at ways to prevent that misapplication of the law.

[9:59:34 AM](#)

CHAIR SEEKINS agreed with Senator Therriault.

SENATOR GUESS said that's where she would agree to disagree. Referencing page 2, lines 16-23 she said that according to her reading of "reckless" and "negligent" in the criminal statutes, Ms. Robinson's interpretation is correct. Certainly a woman would be told she should have gotten out of the relationship because she knew it was hurting herself and the unborn child. Even if she didn't know, she should have known because of the body of available evidence.

Progress is being made in the evolution of domestic violence and sexual assault because in the last ten years we've stopped blaming the victim. However, the situation Ms. Robinson outlined could fall under manslaughter and criminal negligence, but not murder

In the five years she has been a legislator she has dealt with a number of sexual assault and domestic violence bills and the issue of aggravators has come up. It hasn't been easy to get domestic violence and sexual assault bills passed. Issues that were smaller than this have failed in one body or the other.

CHAIR SEEKINS said he would be happy to look at an aggravator bill for domestic violence and sexual assault.

10:01:45 AM

SENATOR THERRIAULT read the terms, "recklessly causes" and "the person causes" from page 2, lines 18 and 23 and said that if you fail to extricate yourself from a potentially dangerous situation you haven't caused the damage.

SENATOR CHARLIE HUGGINS said it pales him to lean over backwards to protect the mother while subordinating the fetus.

Referencing page 5, line 12 he read, "...misconduct involving a controlled substance in the first degree," and asked for her thoughts on that phrase.

MS. ROBINSON said she didn't understand the question.

SENATOR GUESS advised him that misconduct involving a controlled substance is another part of the law.

SENATOR HUGGINS said he understands that, he simply wanted her take on what that really means from her perspective.

MS. ROBINSON asked if he was referring to a domestic violence context.

SENATOR HUGGINS said no, he wanted to know what that means to her if it's talking about misconduct of the mother.

CHAIR SEEKINS said it's a felony to do that.

SENATOR GUESS added it's a section of law.

10:05:48 AM

CHAIR SEEKINS clarified this adds murder of an unborn child to the existing felonies.

SENATOR HUGGINS said he understood that then questioned if it is conduct of the mother that is being described.

CHAIR SEEKINS replied it could be.

MS. ROBINSON said yes, it could be. Under the current version there is no exception that the mother could be prosecuted for something like that, but she wasn't clear how that relates to the context of domestic violence and whether he wanted better clarification from the Department of Law.

CHAIR SEEKINS interpreted the question to ask how people feel about a pregnant woman who was using a controlled substance in a manner that caused the death of an unborn child.

SENATOR HUGGINS said yes.

MS. ROBINSON responded that is a whole other issue.

[10:07:52 AM](#)

MS. JASMINE CHARIAN, 8th grade student at Dzantik'i Heeni middle school, testified in support of SB 20. She stated the belief that when a fetus has a heartbeat it has life and taking away that life is unfair to the baby and even more so for the parents. If both the mother and the fetus are injured intentionally, more than one life should be recognized.

[10:09:30 AM](#)

MS. REBECCA WHITEMAN, Family Violence Prevention Fund representative, described the nonprofit as the U.S. Department of Health and Human Services national resource center on domestic violence and healthcare. They work on policy at the federal level and on the issue of healthcare and domestic violence at the statewide level. Her area of expertise is in prenatal health and she has been working on how to better screen for family violence into those programs.

[10:10:38 AM](#)

MS. WHITEMAN said they were asked to weigh in because in other states precedents have been set when people have worked toward something that seemed to be a good idea, but had unintended consequences. She expressed concern that SB 20 could put women in harms way and set them up to be re-victimized. The concerns are exactly those expressed by Ms. Robinson. If a woman is in a violent relationship and a doctor advises her to leave and she doesn't do so she might not seek medical care due to concern about what would happen to the partner.

[10:13:05 AM](#)

MR. CHIP WAGGONER, executive director Alaska Catholic Conference, testified that the federal government has passed a similar law with regard to crimes on federal property and at least 29 states have passed a similar law.

MR. WAGONER expressed the view that God created each person and as such, each person has dignity and a right to life from conception to a natural death.

[10:14:12 AM](#)

MR. WAGGONER said SB 20 recognizes that a child in the womb deserves the same protection as everyone in the room. Quoting a parent who attended the Key Campaign, he said that when an unborn child is taken and a parent's dreams for that child are shattered, the responsible party should be held accountable. The Catholic Conference fully supports SB 20 and would also support those people working in the domestic violence arena to prevent domestic violence. They and the Catholic bishops recognize this as a serious problem in the state. He clarified the Catholic Conference is the official public policy voice for the Roman Catholic Church in Alaska.

[10:16:02 AM](#)

SENATOR GUESS asked if the Catholic Conference has taken a position on whether or not any miscarriage should be criminalized.

MR. WAGGONER replied they have not taken a position and none of the bishops are criminal attorneys. He had a number of observations. He suggested the attorney general should give an opinion on the bill to make sure it treats the unborn in a manner that is consistent with those who are alive. He acknowledged that accidents do happen and not all are crimes. He hadn't heard prosecutorial discretion raised and certainly prosecutors do have to decide whether or not something falls within the realm of an accident or the realm of a crime. Not all snowmobile accidents should result in a charge of negligent homicide or reckless endangerment. He suggested the same thing would happen with this bill. You simply have to rely on prosecutors to do the right thing.

[10:19:09 AM](#)

SENATOR HUGGINS said he didn't believe a mother would be held responsible for exercising during pregnancy if she were to miscarry.

CHAIR SEEKINS asked if any organization affiliated with the Catholic Church has ever taken a position that a mother could be held responsible for harm to an unborn child if she was participating in a lawful activities.

MR. WAGGONER said abortion.

CHAIR SEEKINS said he understood the position on abortion. He was talking about horseback riding, or a 10K race or a rollercoaster ride.

MR. WAGGONER said no.

CHAIR SEEKINS advised the committee is charged with examining potential bills to make sure they comply with both the U.S. and state constitutions. It's understood that Roe versus Wade is an interpretation of the Constitution but what he's been hearing is that the state doesn't have the right to operate in other areas that people would have liked Roe versus Wade to have applied.

Looking strictly at the language and interpretation of Roe versus Wade, he suggested that nowhere does it say the state cannot extend protection of unborn children in situations that are outside the particular circumstances addressed in that case. He didn't believe this bill was treading on dangerous ground with regard to Roe versus Wade so when people say that SB 20 is treading on their constitutional rights he remains unconvinced. He encouraged those who opposed the bill on constitutional grounds to bring supporting evidence forward.

If there is conclusive evidence that the committee is treading where they are not authorized to tread, he needs to see the evidence.

[10:24:46 AM](#)

CHAIR SEEKINS asked Ms. Carpeneti to comment on the interpretation of the word, "causes" on page 2, lines 18 and 23.

[10:25:13 AM](#)

MS. ANNE CARPENETI, criminal division, Department of Law (DOL), acknowledged she heard the discussion that a woman might disregard her doctor's advice and return to an abusive relationship and the concern about charges if there was a subsequent miscarriage. Those situations would depend on facts and it would be an extreme fact situation to argue that going back to the relationship contributed to the death of the unborn child.

CHAIR SEEKINS noted that Black's Law Dictionary defines "feticide" as the act or instance of killing a fetus, usually by assaulting and battering the mother - an intentionally induced miscarriage. He asked if folding SB 20 into that definition would come closer to the discussion heard that day about unintentionally induced miscarriages.

MS. CARPENETI didn't know that the term used would make a difference.

CHAIR SEEKINS asked for a definition to protect the mother so that an unintentional miscarriage wouldn't be against the law.

MS. CARPENETI replied in murder of an unborn child it's against the law to intend to cause the death of an unborn child or for another person to cause the death of an unborn child. Problems arise when discussing manslaughter and criminally negligent homicide.

[10:28:06 AM](#)

CHAIR SEEKINS asked what kind of language it would take to exclude the unintentional miscarriage of the child by the mother.

MS. CARPENETI said it was too important an issue to give an opinion without more thought. Last year lawful acts by the mother were added and she didn't know if the sponsor was interested in going that direction this year.

CHAIR SEEKINS said that section of the bill was of particular interest to him and he didn't want anyone in the justice system to charge that they would try to put a mother on trial for participating in a legal activity that unintentionally caused a miscarriage.

Chair Seekins held SB 20 in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:30:14 AM](#).