

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

April 12, 2005

8:48 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

**COMMITTEE CALENDAR**

SENATE BILL NO. 20

"An Act relating to offenses against unborn children."

HEARD AND HELD

SENATE BILL NO. 128

"An Act relating to consideration by the Local Boundary Commission of a requested borough incorporation."

MOVED SB 128 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

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  
 04/04/05 (S) Heard & Held  
 04/04/05 (S) MINUTE(JUD)  
 04/12/05 (H) JUD AT 8:00 AM CAPITOL 120

BILL: SB 128

SHORT TITLE: BOROUGH INCORPORATION

SPONSOR(S): SENATOR(S) THERRIAULT

03/03/05 (S) READ THE FIRST TIME - REFERRALS  
 03/03/05 (S) CRA, JUD  
 03/21/05 (S) CRA AT 1:30 PM BELTZ 211  
 03/21/05 (S) Moved SB 128 Out of Committee  
 03/21/05 (S) MINUTE(CRA)  
 03/22/05 (S) CRA RPT 3DP 1NR  
 03/22/05 (S) DP: STEVENS G, WAGONER, KOOKESH  
 03/22/05 (S) NR: STEDMAN  
 04/06/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/06/05 (S) Heard & Held  
 04/06/05 (S) MINUTE(JUD)  
 04/07/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/07/05 (S) Scheduled But Not Heard  
 04/08/05 (H) JUD AT 8:00 AM CAPITOL 120  
 04/08/05 (S) Scheduled But Not Heard

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Sponsored SB 20

Mr. Wes Keller  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified in support of SB 20

Ms. Anne Carpeneti  
 Department of Law  
 PO Box 110300  
 Juneau, AK 99811-0300

**POSITION STATEMENT:** Commented on SB 20

Ms. Caren Robinson, Lobbyist  
Alaska Women's Lobby  
PO Box 33702  
Juneau, AK 99803

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Robin Smith  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Meghan Gaughan  
PO Box 1765  
Bethel, AK 99559

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Michelle Dewitt  
PO Box 2847  
Bethel, AK 99559

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Brenda Stanfill  
Fairbanks, AK

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Janel Hafner, Attorney  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Kate Bourkhart, Attorney  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition of SB 20

Ms. Cathy Girard  
No address provided

**POSITION STATEMENT:** Testified for Ms. Sherry Goll in opposition of SB 20

Ms. Tessa Beedle  
Juneau, AK

**POSITION STATEMENT:** Testified in support of SB 20

Ms. Maddie Nolan  
Juneau, AK

**POSITION STATEMENT:** Testified in support of SB 20

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:48:41 AM](#). Present were Senators Hollis French, Charlie Huggins, Gene Therriault, Gretchen Guess and Chair Ralph Seekins.

Chair Seekins announced the committee would continue hearing SB 20.

**SB 20-OFFENSES AGAINST UNBORN CHILDREN**

[8:49:02 AM](#)

SENATOR FRED DYSON continued his introduction of SB 20. He presented a committee substitute (CS), which he referred to as Version \C. He said the issue in the previous meeting, when can a mother be charged, is solved by changing the standard to "recklessly." Under criminal law, a person acts recklessly when they are aware of and consciously disregard a substantial risk where the result would be a gross deviation from what a reasonable person would do.

[8:51:31 AM](#)

MR. WES KELLER, staff to Senator Dyson, explained what has been added is "reckless means by a dangerous instrument."

[8:52:36 AM](#)

CHAIR SEEKINS asked Senator Dyson for a definition of dangerous instrument.

MR. KELLER explained it is defined in AS 11.81.900 as "any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury."

CHAIR SEEKINS asked whether that could include fist or feet.

MR. KELLER said according to the Department of Law (DOL), yes.

[8:53:58 AM](#)

SENATOR DYSON explained Page 4 narrows the meaning of physical injury. Line 7 adds the complication of birth weight for premature births.

CHAIR SEEKINS inquired on the conversion of 2,500 grams to pounds.

SENATOR GUESS commented 2,500 grams was approximately 5 pounds.

SENATOR DYSON further explained Page 4; lines 9-15 of the CS add "controlled substance", "addicted infant", and "clear case of fetal alcohol syndrome" (FAS). Since the CS was drafted, the DOL suggested adding a definition of FAS.

[8:56:01 AM](#)

SENATOR THERRIAULT asked for clarification on who would get charged in the case of FAS.

SENATOR DYSON responded the woman would get charged. He said it was a policy decision to not totally excuse the mother for reckless actions taken against the unborn child.

[8:57:37 AM](#)

MR. KELLER pointed out a drafting error in the CS. Page 4; line 6 should be the word "additionally" after the word "includes", which expands the definition of "serious physical injury." Page 4 line 15 delete the word "and" and insert the word "or".

[8:59:45 AM](#)

SENATOR FRENCH said he does not see a causation element in subsection 1, lines 7-8.

CHAIR SEEKINS commented there were many things that would cause a child to be born under 2,500 grams.

[9:02:02 AM](#)

CHAIR SEEKINS noted the problem could easily be corrected.

SENATOR FRENCH expressed he needs to know from a doctor the acts that might produce a premature birth.

MR. KELLER stated the causal part is in the term "recklessly."

CHAIR SEEKINS noted there could be many natural causes for a premature birth not induced by reckless acts.

[9:04:24 AM](#)

SENATOR GUESS noted Page 4 line 7 seems out of place. She inquired as to why it was included.

SENATOR DYSON responded the definition of a premature child is modified in a multiple birth. He wanted to make sure if it is a multiple birth situation that someone doesn't get charged.

SENATOR GUESS disputed the definition of premature.

[9:06:11 AM](#)

CHAIR SEEKINS voiced his support of the concept that someone who causes a miscarriage by a reckless act should not walk free.

[9:07:46 AM](#)

SENATOR THERRIAULT asked Senator Dyson whether SB 20 would apply to a woman who puts herself into a questionable situation.

SENATOR DYSON responded it would have to be knowingly and recklessly.

SENATOR GUESS said reckless is "aware of and consciously disregards a substantial and unjustifiable risk". She said the district attorney would decide and it wouldn't necessarily be clear whether or not a situation was reckless.

[9:09:06 AM](#)

SENATOR GUESS stated with the language in SB 20, a person could easily prosecute a woman for not adhering to bed rest by claiming she demonstrated reckless behavior.

CHAIR SEEKINS said Senator Guess would have demonstrated reckless behavior if she had gone on a roller coaster when she was ordered bed rest by her doctor.

SENATOR GUESS agreed and said that would also be true if she was up an hour more than ordered during the day. She noted the sponsor probably does not intend to criminalize all premature births, but the law can be interpreted that way.

SENATOR DYSON said that is why the DOL added dangerous instrument.

[9:10:45 AM](#)

CHAIR SEEKINS reviewed the proposed changes with the committee.

SENATOR FRENCH suggested taking the words "purposeful act" out.

SENATOR GUESS concurred.

Chair Seekins announced a short recess at [9:13:31 AM](#).

Chair Seekins reconvened the meeting at [9:22:57 AM](#).

CHAIR SEEKINS voiced his primary concern lies on page 4 lines 5-8 where the topic for discussion is huge. He shared his personal experience with his first son who was born one ounce over the proposed 2,500 grams limit. He said the state should hold

someone accountable for substance abuse regardless of the birth weight.

[9:24:16 AM](#)

SENATOR DYSON said adding the multiple birth section protects the mother from being charged. He agreed the 37 weeks and the birth weight issue needs more research. He expressed concern that FAS is clear medically, but fetal alcohol effects (FAE) are not.

[9:26:04 AM](#)

SENATOR HUGGINS moved to adopt Version \C as the working document.

SENATOR DYSON stated it would be helpful to make the conceptual amendments that were mentioned earlier.

SENATOR GUESS moved conceptual amendment 1. Hearing no objections, the motion carried.

[9:28:42 AM](#)

SENATOR GUESS asked the committee members to consider the case in multiple births where there are selection choices. The current language of SB 20 would allow for penalizing women who choose not to have a child who has been determined in utero to have cerebral palsy. This could happen more often as technology moves forward.

Chair Seekins called Ms. Anne Carpeneti to answer questions.

[9:32:04 AM](#)

SENATOR FRENCH asked Ms. Carpeneti to explain sentencing of a drunk driver who kills a woman who is 2 weeks pregnant.

Ms. ANNE CARPENETI cited, AS 12.55.127 requires consecutive terms. Currently, murder 2 is a mandatory minimum of 20 years for a child and 10 years for an adult.

[9:35:44 AM](#)

SENATOR GUESS asked Ms. Carpeneti if SB 20 becomes law would there be remedy in civil court.

MS.CARPENETI hesitated to advise the committee on civil liability. She stated an act that is a crime generally could be a basis for civil liability.

[9:37:33 AM](#)

MS. BRENDA STANFILL testified she shared SB 20 with 28 women who all expressed concern that there are a lot of unintended consequences. In our society we often hear, "Why does she stay?" Very seldom do we hear, "Why does he continue beating her?" The committee should not pass a bill that allows prosecutors to prosecute women who they perceive as choosing to live in a domestic violence situation.

[9:39:49 AM](#)

MS. STANFILL wondered whether doctors would have to report all miscarriages and stillborn deaths, and whether there would be an investigation. She asked about women who will not seek medical care for fear of being charged of a crime, and of those who cannot access prenatal care. She suggested the committee explore using sentencing aggravators instead of passing SB 20.

[9:41:09 AM](#)

MS. MEGAN GUYHAN testified in opposition of SB 20 and stated it completely bypasses the primary victim. If society would focus on keeping the woman safe it would also keep the fetus safe. In abusive situations, many women are hesitant to seek medical attention if they feel the abuser will be charged with homicide. Perpetrators will prevent women from seeking medical attention knowing they could be prosecuted. She said Alaska's rates of assault on women are far too high.

[9:43:02 AM](#)

MS. MICHELE DEWITT echoed the comments of previous testifiers. She expressed concern with the words, "means of a dangerous instrument" and the discussion by the committee of what may or may not be prosecuted. She claimed there is a lot of discretion by prosecutors and if SB 20 were to pass it would be impossible to know what will and will not be prosecuted. SB 20 does not address the crime of violence against women.

[9:45:12 AM](#)

MS. JANELE HAFNER testified the creation of a separate criminal offense regarding violence against women is redundant. SB 20 introduces legally unsound principles. It rests on legislative adoption of medically inaccurate and misleading terminology and ultimately places Alaska on a collision course with basic tenets of Alaska Constitutional Law. SB 20 does not decrease the number of pregnant women being assaulted. Statutory aggravators serve as a far more appropriate remedy in punishing violent acts. They serve as a better utilization of state resources. They alleviate the problems with prosecutorial discretion and the proof problems written in SB 20. She suggested the committee increase

domestic violence spending across the board, offer greater access to prenatal care and improve and expand women's access to educational, social and health programs.

[9:47:13 AM](#)

SENATOR HUGGINS asked Ms. Hafner to elaborate on constitutional collision.

MS. HAFNER stated many constitutional and legal problems that are addressed in SB 20 are not raised until legally challenged. She said she believes SB 20 is subject to a legal challenge. She asserted she is speaking on behalf of herself and not speaking on behalf of the DOL. The U.S. Supreme court has ruled that a woman has a right to terminate pregnancy and the state cannot interfere.

Ms. Hafner said:

The state creates legal personhood while simultaneously stating it's homicide and assault for an individual to perpetrate acts, which cut that short. It seems somewhat unbelievable to me that you can then exempt a woman, who undergoes a legal abortion. You're essentially allowing a woman to consent to murder or to consent to an assault on her fetus, which conflicts with the very idea of a protected choice under the constitution. So I think that's fairly problematic.

[9:49:25 AM](#)

CHAIR SEEKINS:

I don't agree with that concept. I think this bill has protected a woman's so called constitutional rights, but it doesn't allow anyone else to kill that child.

MS. HAFNER respectfully disagreed and stated SB 20 creates a legal conundrum. The safest, easiest, and most effective approach is to commit resources to statutory aggravators, which don't carry the same legal threats.

SENATOR HUGGINS asked Ms. Hafner whether she is concerned about newly born children affected by drugs and alcohol.

MS. HAFNER answered yes. She said she is not supportive of any provisions in SB 20 that serve as punitive measures for a pregnant woman. It is more appropriate to remedy and alleviate the underlying causes rather than to punish pregnant women for their conduct.

SENATOR HUGGINS asked Ms. Hafner whether she was advocating for no accountability for the mother in the case of FAS or drug addiction at birth.

[9:51:14 AM](#)

MS. HAFNER responded from a social standpoint, resources are better spent remedying the problem than punishing behavior after it exists. She said if we are all generally concerned with the prevalence of FAS across the state, we can agree on a common approach, which is targeting it before the circumstances which give rise to a woman's drinking exists.

SENATOR FRENCH commented Ms. Hafner had a good point. He said there might be legal accountability short of punitive measures.

CHAIR SEEKINS commented he has no tolerance for violence against anyone born or unborn. He voiced his feelings that FAS is the result of abuse and that someone should be held accountable.

[9:54:05 AM](#)

MS. KATE BERKHART testified the intent of SB 20 is laudable although she does not support it. She agreed with Senator Seekins statements regarding holding people accountable. She stated a violent crime against a woman is assault in the 4<sup>th</sup> degree, which is a misdemeanor but a violent crime against a pregnant woman would be a felony. SB 20 says the pregnancy is more important than the woman who is pregnant. She suggested Alaska would be better served by using sentencing aggravators.

[9:58:28 AM](#)

MS. ROBIN SMITH testified in opposition to SB 20. She expressed concerned with the concept of reckless behavior. Alcoholism is a disease. Pregnant alcoholics may not be able to make the choice to act appropriately while carrying. There is a proven genetic predisposition to alcoholism. Young women who are afraid of being prosecuted would not seek prenatal care.

[10:00:57 AM](#)

MS. SMITH added if SB 20 becomes law she might encourage a drinking pregnant woman to have an abortion so as to avoid prosecution.

[10:02:39 AM](#)

SENATOR HUGGINS asked Ms. Smith for her idea of a solution.

MS. SMITH stated she does not understand why the Legislature is cutting programs from the budget that assist women. She suggested the state work on prevention.

[10:05:00 AM](#)

MS. SMITH pondered whether the numbers have really changed.

SENATOR GUESS commented to the committee members there is a wait list in Anchorage for alcoholic treatment for pregnant women. She expressed this should be a priority. Senator Dyson testified it is currently unknown how and when alcohol begins to affect a fetus.

[10:09:20 AM](#)

MS. CAREN ROBINSON, Alaska Women's Lobby, testified in opposition to SB 20 stating the focus must be shifted back to the women. The focus should be on dangers to the pregnant woman. There is a simple way to accomplish extra protection for a pregnant woman and that is with sentencing aggravators. She asked the committee to make sure they understand each level of SB 20. On behalf of the network and agency programs across the state, she offered to brief the Senate Judiciary Standing Committee on the programs they are working on in Alaska.

[10:13:42 AM](#)

MS. ROBINSON responded to Senator Huggins' comment that a fetus can't defend itself. She said sometimes it is hard for a woman to defend herself.

[10:15:31 AM](#)

MS. TESSA BEETLE testified in support of SB 20.

MS. MATTIE NOLAN testified in support of SB 20.

[10:18:06 AM](#)

MS. KATHY GIRARD testified on the behalf of Sherry Goll, principal of Pacific Solutions, and read her letter of opposition. Her letter reiterated previous testimony.

[10:20:59 AM](#)

CHAIR SEEKINS announced the end of public testimony. He asked Ms. Carpeneti whether the state would have to prove reckless behavior and use of a dangerous instrument in the case of a low birth rate.

MS. CARPENETI responded the most recent draft on page 3 lines 22-23 do not require a dangerous instrument.

[10:25:41 AM](#)

CHAIR SEEKINS announced SB 20 would be held over.

SENATOR FRENCH offered an amendment for the members of the committee to consider.

**SB 128-BOROUGH INCORPORATION**

[10:26:20 AM](#)

CHAIR SEEKINS announced SB 128 to be up for consideration. He asked Senator Therriault if he had any new information to contribute.

SENATOR THERRIAULT expressed the view that the bill is fine the way it notwithstanding the numerous warring legal opinions.

CHAIR SEEKINS asked for a motion.

SENATOR THERRIAULT moved SB 128 from committee with individual recommendations and the one zero fiscal note. Hearing no objections, it was so moved.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:27:34 AM](#).