

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 18, 2005

8:36 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

CONFIRMATION HEARINGS:

Board of Governors of the Alaska Bar: Mr. Joseph N. Faulhaber

CONFIRMATION ADVANCED

Chief Administrative Law Judge: Ms. Terry L. Thurbon

CONFIRMATION ADVANCED

SENATE BILL NO. 154

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

MOVED CSSB 154(JUD) OUT OF COMMITTEE

SENATE BILL NO. 86

"An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date."

MOVED CSSB 86(CRA) OUT OF COMMITTEE

SENATE BILL NO. 134

"An Act relating to arrest; relating to investigation standards for police officers conducting criminal investigations and violations of those standards."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 154

SHORT TITLE: JUVENILE DELINQUENCY PROCEEDINGS

SPONSOR(s): SENATOR(s) THERRIAULT

03/29/05	(S)	READ THE FIRST TIME - REFERRALS
03/29/05	(S)	STA, JUD
04/07/05	(S)	STA AT 3:30 PM BELTZ 211
04/07/05	(S)	Moved CSSB 154(STA) Out of Committee
04/07/05	(S)	MINUTE(STA)
04/08/05	(S)	STA RPT CS 2DP 1NR SAME TITLE
04/08/05	(S)	DP: THERRIAULT, DAVIS
04/08/05	(S)	NR: WAGONER
04/18/05	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 86

SHORT TITLE: STATE/MUNI LIABILITY FOR ATTORNEY FEES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/31/05	(S)	READ THE FIRST TIME - REFERRALS
01/31/05	(S)	CRA, JUD
02/09/05	(S)	CRA AT 1:30 PM BELTZ 211
02/09/05	(S)	Heard & Held
02/09/05	(S)	MINUTE(CRA)
04/04/05	(S)	CRA AT 1:30 PM BELTZ 211
04/04/05	(S)	Moved CSSB 86(CRA) Out of Committee
04/04/05	(S)	MINUTE(CRA)
04/05/05	(S)	CRA RPT CS 1DP 2DNP 2NR
04/05/05	(S)	NR: STEVENS G, STEDMAN
04/05/05	(S)	DP: WAGONER
04/05/05	(S)	DNP: ELLIS, KOOKESH
04/15/05	(S)	JUD AT 8:00 AM BUTROVICH 205
04/15/05	(S)	Heard & Held
04/15/05	(S)	MINUTE(JUD)

WITNESS REGISTER

Mr. Joseph N. Faulhaber

POSITION STATEMENT: Confirmation Candidate

Ms. Terry L. Thurbon

POSITION STATEMENT: Confirmation Candidate

Ms. Heather Brakes

Staff to Senator Therriault

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 154

Ms. Patty Ware, Director

Division of Juvenile Justice

Department of Corrections

PO Box 110635

Juneau, AK 99811

POSITION STATEMENT: Commented on SB 154

Mr. Tony Newman, Program Officer

Division of Juvenile Justice

Department of Corrections

431 N. Franklin, Suite 400

Juneau, AK 99801

POSITION STATEMENT: Commented on SB 154

Ms. Anne Carpeneti, Attorney

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Commented on 154

Ms. Linda Wilson, Deputy Director

Alaska Public Defenders Agency

900 W. 5th Ave

Anchorage, AK 99501

POSITION STATEMENT: Testified in opposition to SB 154

Mr. Craig Tillery, Assistant Attorney General

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 86

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:36:32 AM](#). Present were Senators Charlie Huggins, Gene Therriault and Chair Ralph Seekins.

Confirmation Hearing: Board of Governors of the Alaska Bar: Mr. Joseph N. Faulhaber

[8:37:33 AM](#)

CHAIR RALPH SEEKINS asked Mr. Faulhaber the reason he aspires to be confirmed to the Board of Governors.

MR. JOSEPH FAULHABER said he had a desire to do something about Alaska tort law, specifically Alaska Civil Rule 82. The English system makes the prevailing party well - meaning; a victim of a frivolous lawsuit would recoup 100 percent of reasonable costs, which seems a reasonable conclusion. The operation of the Bar system is also interesting. He said he would like to contribute to running a balanced budget and to ensure it is cost effective.

[8:40:23 AM](#)

SENATOR CHARLIE HUGGINS moved to advance Mr. Joseph Faulhaber to the Senate Floor for consideration. Hearing no objections, the motion carried.

Confirmation Hearing: Board of Governors of the Alaska Bar: Ms. Terry L. Thurbon

[8:41:34 AM](#)

CHAIR RALPH SEEKINS asked Ms. Thurbon the reason she aspires to be confirmed as Chief Administrative Law Judge.

MS. TERRY THURBON, acting chief administrative law judge, Office of Administrative Hearings, explained she aspires to be the very first chief administrative law judge while getting the program off on the right foot. She has past experience developing existing programs but would like the opportunity to start a program off from the beginning and oversee the entire operation. In addition to conducting hearings, the office is charged with providing training and publishing decisions and other peripheral functions. She said she finds it very interesting and very challenging and would appreciate the opportunity to help make the adjudication system in Alaska more consistent and efficient.

SENATOR GENE THERRIAULT asked Ms. Thurbon to apprise the committee of the timeline for setting up the operation.

[8:44:20 AM](#)

MS. THURBON explained the Legislature created the Office of Administrative Hearings July 2004. The contemplation was that on July 1, 2005 the office would be up and running. The regulations might not be in effect at that point so there is a 6-month

window of opportunity to get things rolling. As of January 1, 2005 several hearing officer positions and some support staff positions transferred in. They have made good strides in getting decision writing consistent and are getting prepared to start publishing decisions and getting organized. The office is well on its way to having the code of conduct regulations that apply to all state hearing officers as well as the procedural regulations that will apply to the hearings.

[8:46:32 AM](#)

CHAIR SEEKINS asked Ms. Thurbon the location of the office.

MS. THURBON explained Anchorage and Juneau both have offices.

CHAIR SEEKINS asked the strengths of having a central panel.

MS. THURBON said a central panel has the benefit of a peer review, which contributes to more consistent and clearly written decisions. A central panel will prove to be more flexible and have more timely prosecution of cases. The biggest thing is consistency in the way hearings are conducted with respect to efficiency and fairness.

[8:51:01 AM](#)

Senator Hollis French joined the committee.

[8:51:07 AM](#)

MS. THURBON continued the office attempts to inform the public at every opportunity that they are an independent agency. They are trying to locate the Anchorage office away from the agencies that could be part of a dispute. Juneau is separate already. That change is improving the structure of the process.

[8:53:17 AM](#)

SENATOR THERRIAULT asked Ms. Thurbon whether she scrutinized and critiqued all written decisions.

MS. THURBON advised she is currently looking at every decision as part of her effort to making sure there is consistency in substance as well as in the written presentation.

[8:55:29 AM](#)

Senator Gretchen Guess joined the committee.

SENATOR THERRIAULT asked the level of interaction the drafters had with Ms. Thurbon's office regarding SB 141.

MS. THURBON clarified there was no interaction at all. The Office of Administrative Hearings is within the Department of Administration simply because they have to have a home somewhere. There are a number of things the Legislature put into law when creating the office that were meant to ensure decisional independence.

[8:59:01 AM](#)

MS. THURBON added she is required to copy the office budget requests directly to the finance committees of both houses. SB 141 legislation makes the Office of Administrative Hearings the final decision-maker on the appeals.

SENATOR THERRIAULT asked Ms. Thurbon whether she is receptive to the idea of cross training.

[9:01:05 AM](#)

MS. THURBON voiced they have been working on cross training and there has been no resistance.

[9:02:43 AM](#)

SENATOR THERRIAULT moved to advance Ms. Terry Thurbon to the Senate Floor for consideration. Hearing no objections, the motion carried.

Chair Seekins announced a brief recess at [9:03:18 AM](#).

Chair Seekins reconvened the meeting at [9:08:08 AM](#).

SB 154- JUVENILE DELINQUENCY PROCEEDINGS

[9:08:34 AM](#)

CHAIR RALPH SEEKINS announced SB 154 to be up for consideration.

Ms. HEATHER BRAKES, staff to Senator Therriault, introduced SB 154. SB 154 would improve the state's ability to hold juvenile offenders accountable. It would also increase efficiency of the juvenile justice system by allowing telephonic hearings in some court proceedings. SB 154 addresses a loophole and places jurisdiction for an adult discovered to have committed a crime while under the age of 18.

[9:11:22 AM](#)

MS. PATTY WARE, director, Division of Juvenile Justice, Department of Corrections (DOC), voiced support of SB 154. She advised the committee of two cases in Kenai involving serious charges relating to sexual abuse of a minor. The Alaska Superior Court, in both cases, ruled there was no legal jurisdiction

either for the juvenile justice system or the criminal court system. The first instance was of a 19 year old who committed a sexual assault when he was 17.

[9:13:05 AM](#)

The second situation was of a 20 year old alleged to have committed crimes when he was 15 and 17. The Alaska Superior Court dismissed both cases due to lack of jurisdiction. She read a quote from the Alaska Superior Court ruling on the second case:

The court recognizes the state's concern that this interpretation can allow juvenile criminal activity to go unpunished if the crime did not come to light until after the juvenile's 18th or 19th birthday. This result is not of the court's making. For whatever reason, the Legislature has mandated that juvenile jurisdiction in all cases comes to an end at the time of the juvenile's 19th birthday unless the juvenile consents to a longer period. The resolution of this problem rests not with the court, but with the Legislature.

[9:14:47 AM](#)

SENATOR HOLLIS FRENCH asked whether either order was appealed.

MS. WARE admitted she was not sure. Section 1 of SB 154 adds a new subsection to the delinquency statutes establishing legal jurisdiction. Section 2 establishes applicability of the rest of the delinquency laws to this particular class of minor, which are persons over the age of 18 by the time they come before the court.

[9:17:10 AM](#)

MR. TONY NEWMAN, program officer, Division of Juvenile Justice demonstrated a visual presentation on a flip chart that related to juvenile and adult offense jurisdictions. There are a couple of instances where juvenile offenders are managed in the adult system, such as murder and armed robbery. Another way a juvenile can be forwarded into the adult criminal system is through AS 47.12.100 where the state must demonstrate the juvenile is not amenable to treatment. Dual sentencing provisions apply to serious offenses such as repeated felony crimes where the district attorney can seek both a juvenile and adult sentence for a minor.

[9:20:35 AM](#)

SB 154 addresses situations where crimes are not discovered until after the person has turned 18 and will give the state the opportunity for restitution.

[9:24:03 AM](#)

SENATOR FRENCH asked whether the first move would be to ask for the discretionary waiver into adult court.

MR. NEWMAN said it would depend on the offense and the offender.

[9:25:57 AM](#)

SENATOR FRENCH asked whether subsequent hearings would be in adult court.

MR. NEWMAN answered yes.

SENATOR FRENCH asked whether SB 154 would grant the state jurisdiction of an adult in juvenile court.

[9:27:34 AM](#)

MR. NEWMAN responded yes.

[9:28:51 AM](#)

MS. WARE continued the second half of SB 154 allows the juvenile justice system to use state resources. Section 9 proposes a change to the delinquency rules. It specifies specific hearings where a juvenile has a right to be physically present. It allows for telephonic presence. Currently the DOC spends over \$200,000 a year transporting young people to court.

[9:32:13 AM](#)

SENATOR FRENCH asked where the evidentiary hearing would fit into the scheme.

MS. WARE said those types of issues happen fairly infrequently. She emphasized they would not request a telephonic hearing for serious issues.

[9:34:57 AM](#)

MS. ANNE CARPENETI, Department of Law (DOL), commented a motion hearing is not specified in SB 154 as a proceeding where the juvenile has to be present. Paragraph 3 of the rule provides that appearance by television is not allowed under any circumstances in a proceeding where sworn testimony is presented. A motion hearing would be supported by testimonial evidence. She said that might need to be added into Paragraph 1.

SENATOR FRENCH moved Amendment 1.

Page 7, line 6; after the word "television" add the words "or telephone."

Hearing no objections, the motion carried.

9:36:52 AM

SENATOR GENE THERRIAULT asked Ms. Ware the number of cases SB 154 would apply.

MS. WARE answered she would get back to the committee with the information.

9:38:56 AM

MS. LINDA WILSON, deputy director, Alaska Public Defender Agency, testified she is quite familiar with this area of law and offered to answer questions. She guessed there would be a large number of cases that would fall under SB 154.

9:43:12 AM

MS. WILSON expressed concern over telephonic participation of a juvenile. Juveniles often don't understand what is happening to them. She said they need their attorney present and they have a right to have them present during hearings because the hearings are critical and address liberty. She disputed the zero fiscal notes saying the cost will shift to another agency, such as public defender travel costs. The attorney, the client, and the judge being in the same room create a far greater impact.

9:45:12 AM

SENATOR THERRIAULT asked Ms. Wilson whether she would travel to be next to her client, no matter how brief the hearing was anticipated to be.

MS. WILSON responded not in every case. Allowing the juvenile the right to waive presence at a hearing is appropriate. Allowing the Department of Law the right to exclude the juvenile is worrisome.

SENATOR FRENCH asked whether most contested hearings involve sworn testimony.

MS. WILSON answered sometimes detention review hearings can be contested but not necessarily evidentiary.

SENATOR THERRIAULT asked committee members to consider zeroing out the indeterminate fiscal note. He asked Ms. Ware to comment.

[9:48:18 AM](#)

MS. WARE remarked the proposed changes are addressing the types of hearings where a public defender would not travel.

CHAIR SEEKINS asked whether there existed an electronic method where the juvenile and the attorney could communicate on a secure line.

MS. WARE said due to the size and remoteness of Alaska, many times the primary communication is telephonic.

SENATOR THERRIAULT offered the hearing could be recessed so the juvenile and attorney could communicate through another phone line.

[9:50:39 AM](#)

MS. WILSON advised there is often not another phone line. Many times juveniles won't interrupt a proceeding to ask a question.

CHAIR SEEKINS asked whether the attorneys properly communicate with the client to make sure they understand that they can ask questions.

MS. WILSON stated sometimes they don't remember. She maintained it is important for the attorney to be physically present in order to initiate breaks to explain things and answer questions.

[9:52:36 AM](#)

SENATOR FRENCH asked Ms. Wilson the most substantive type hearing where she felt SB 154 would prevent attendance by the juvenile.

MS. WILSON divulged it would be the detention review hearings, which is similar to a bail hearing.

MS. WARE agreed every court hearing is important. SB 154 is an attempt to propose an option for the judge to consider the cost/benefit analysis.

[9:56:09 AM](#)

MS. CARPENETI added the rule provides the judge is the entity who decides whether the person needs to be there. The DOL and the DOC are not excluding the child; they are asking the judge to decide whether it is essential for the child to be physically present.

SENATOR FRENCH articulated the closer the call, the more likely the judge would make sure all parties are in the same room.

MS. WARE agreed.

[9:57:31 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR THERRIAULT moved the Senate Standing Judiciary Committee draft a zero fiscal note for the office of public defender. Hearing no objections, the motion carried.

SENATOR THERRIAULT moved CSSB 154(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

CHAIR SEEKINS announced a brief recess at [10:00:18 AM](#).

CHAIR SEEKINS reconvened the meeting at [10:20:41 AM](#).

SB 86-STATE/MUNI LIABILITY FOR ATTORNEY FEES

[10:20:41 AM](#)

CHAIR RALPH SEEKINS announced SB 86 to be up for consideration.

SENATOR HOLLIS FRENCH asked Mr. Craig Tillery to explain to the Senate Standing Judiciary Committee the current law regarding what happens when a public interest litigant loses their case.

MR. CRAIG TILLERY, assistant attorney general, Department of Law (DOL), divulged when a public interest litigant loses a case they are not required to pay the attorney fees of the prevailing party.

SENATOR FRENCH asked whether SB 86 changes that.

MR. TILLERY answered SB 86 is not intended to impact or affect the situation where a public interest litigant loses a lawsuit.

SENATOR FRENCH asserted those changes are in HB 145, which is currently tied up in court.

MR. TILLERY agreed.

[10:23:06 AM](#)

SENATOR GENE THERRIAULT asked Mr. Tillery to comment on necessity of the findings section.

MR. TILLERY informed the findings and intent section is in SB 86 to make it clear that the Legislature is enacting the bill as a matter of sovereign immunity.

[10:25:16 AM](#)

SENATOR FRENCH asked Mr. Tillery whether SB 86 would embody a court rule change.

MR. TILLERY answered no.

SENATOR FRENCH clarified HB 145 was found contrary by the one court who has reviewed it.

MR. TILLERY said SB 86 responds to that by taking into account the views of the Alaska Superior Court.

[10:26:30 AM](#)

CHAIR SEEKINS asked Mr. Tillery whether there was a sovereign immunity issue in HB 145.

MR. TILLERY said there was no sovereign immunity in HB 145. He said SB 86 is entirely different from HB 145.

SENATOR THERRIAULT moved CSSB 86(CRA) from committee with individual recommendations and attached fiscal note(s).

SENATOR FRENCH objected.

Roll call proved CSSB 86(CRA) passed from committee on a 3-2 vote with Senators French and Guess dissenting. There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:29:04 AM](#).