

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 19, 2005

8:38 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."

MOVED CSSB 20(JUD) OUT OF COMMITTEE

SENATE BILL NO. 106

"An Act relating to sale, possession, and delivery of certain substances and precursors used in the unlawful manufacture of methamphetamine."

HEARD AND HELD

SENATE BILL NO. 74

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing an effective date."

SCHEDULED BUT NOT HEARD

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
 04/12/05 (S) Heard & Held
 04/12/05 (S) MINUTE(JUD)
 04/19/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 106

SHORT TITLE: SALE OF METHAMPHETAMINE AND PRECURSORS
 SPONSOR(s): SENATOR(s) GUESS

02/14/05 (S) READ THE FIRST TIME - REFERRALS
 02/14/05 (S) JUD, FIN
 03/29/05 (S) JUD AT 10:30 AM BUTROVICH 205
 03/29/05 (S) Heard & Held
 03/29/05 (S) MINUTE(JUD)
 03/30/05 (S) JUD AT 8:30 AM BUTROVICH 205
 03/30/05 (S) Heard & Held
 03/30/05 (S) MINUTE(JUD)
 04/19/05 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Commented on SB 20

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:38:38 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

SB 20-OFFENSES AGAINST UNBORN CHILDREN

[8:39:00 AM](#)

CHAIR SEEKINS announced SB 20 to be up for consideration.

SENATOR FRED DYSON presented a committee substitute (CS) for the committee.

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

MR. WES KELLER, staff to Senator Dyson, explained the CS. The primary difference in Version \P is added second-degree assault language. The paragraph that allowed for a conviction on the standard of a person acting recklessly, causing serious physical injury has been eliminated. Any situation where a pregnant woman unintentionally harms an unborn child has been removed. Any reference to alcohol consumption has been removed from the definition section.

[8:41:04 AM](#)

CHAIR SEEKINS asked whether the sponsor was saying a child born with the presence of cocaine or with fetal alcohol syndrome (FAS) is of no concern.

MR. KELLER responded SB 20 would not enable prosecution for those situations. In the interest of moving SB 20 forward, future legislation would have to address drug and alcohol abuse.

CHAIR SEEKINS commented he is not willing to accept that premise. He stated FAS is child abuse.

SENATOR DYSON agreed.

CHAIR SEEKINS advised it was his intent is to make it illegal to harm unborn children with either legal substances or illegal substances.

8:42:33 AM

SENATOR GRETCHEN GUESS asked Mr. Keller to explain whether the definition of "serious physical injury" has to accompany a premature birth or would SB 20 alter AS 11.81.900 to include premature birth.

MR. KELLER preferred to let the Department of Law (DOL) answer the question.

8:43:57 AM

MS. ANNE CARPENETI, criminal division, Department of Law (DOL), said the definition of "serious physical injury" is already in AS 11.81.900 and it includes the additional definition, which is low birth weight.

SENATOR GUESS asked Ms. Carpeneti to explain how the law could hold someone accountable if the woman has only one fetus but not if there are multiple fetuses.

MS. CARPENETI said the purpose for adding the fix to the definition is that multiple births will always have a lower birth rate.

8:45:36 AM

SENATOR HOLLIS FRENCH asked Ms. Carpeneti the typical weight of a set of twins.

MS. CARPENETI replied most are less than 5 pounds each.

Senator Gene Therriault joined the committee.

CHAIR SEEKINS commented low birth weight is a symptom but criminal causation would have to be proven.

MS. CARPENETI replied in order to prosecute under SB 20; one would have to prove the other elements of the offense. Under the proposed AS 11.41.282 (a) (2), one would have to prove a person recklessly caused serious physical injury to an unborn child by repeated assaults even if each individual assault did not cause serious physical injury.

CHAIR SEEKINS asserted reckless behavior has to first be shown.

MS. CARPENETI agreed. She said there are other alternatives to define serious physical injury. There could be evidence that serious physical injury occurred without holding low birth weight as signature proof.

CHAIR SEEKINS asked Ms. Carpeneti whether it was reasonable to assume that low birth weight is a symptom of serious physical injury.

[8:48:26 AM](#)

MS. CARPENETI agreed low birth weight would be evidence of serious physical injury.

CHAIR SEEKINS asked Senator Dyson whether that was his intent.

SENATOR DYSON stated evidence shows being born early works against a healthy life. Activities that assault an unborn child are what SB 20 is attempting to criminalize.

[8:50:28 AM](#)

CHAIR SEEKINS mentioned there are many things that would cause an early birth. He was hesitant to make the assumption low birth weight would be proof of reckless behavior.

MS. CARPENETI clarified low birth weight is defined as serious physical injury in SB 20. Alternatives would have to be discussed with the sponsor.

Chair Seekins announced a brief at ease at [8:53:07 AM](#).

Chair Seekins reconvened the meeting at [9:05:52 AM](#).

CHAIR SEEKINS explained the reason for going off the record was to allow the public audience to comment. He asked Ms. Carpeneti how to word SB 20 to reflect low birth weight as a symptom and not proof of serious physical injury.

MS. CARPENETI commented the discussion off record was the possibility of changing SB 20 from defining serious physical injury to holding low birth weight as prima fascia evidence.

SENATOR DYSON agreed.

CHAIR SEEKINS:

I think it is very important that we try to say the intent was the reckless part of it, plus the action was part of it and the result was serious physical injury. Low birth weight is a measurement of serious

physical injury and isn't triggered without the criminal conduct. If we can conceptually amend this and have the DOL and the sponsor work together to word it that way, the Chairman would offer it as a conceptual amendment to Page 4, the Sections contained in line 3 through line 6. Is there discussion or objection to that conceptual amendment? Seeing none, we've adopted that as **Amendment 1**.

SENATOR DYSON:

For the record let me state it is not our intention a mother be charged because of a premature birth or a low birth weight child. It is our intentions that someone is charged if they have the criminal intent or reckless disregard and an assault on the woman precipitates a premature birth.

[9:08:54 AM](#)

SENATOR FRENCH shared the concern of the committee Chair with FAS and FAE children. He said Page 3, lines 22-24 almost perfectly defines how a woman would cause FAE/FAS through consumption of alcohol. Each individual drink may not result in profound change to the fetus but accumulatively it does.

CHAIR SEEKINS commented repeated testimony shows an FAS child costs the state over \$1 million dollars.

[9:11:27 AM](#)

SENATOR DYSON said SB 20 addresses human rights and protecting individuals against assault.

[9:14:28 AM](#)

SENATOR DYSON added the medical community advocates pregnant women to abstain from alcohol. He has choose to steer away from the alcohol and drug factor in SB 20 because there is no current medical evidence to show when those substances become a factor in the development of a fetus.

SENATOR GUESS asked Ms. Carpeneti whether a pregnant woman who stays in a domestic violence situation, which results in serious physical injury to her fetus, would be charged with a crime.

MS. CARPENETI stated the law school definition describes conduct. The circumstances described would not qualify.

[9:17:02 AM](#)

SENATOR GUESS commented it might be up to a jury to decide whether or not the woman should have left.

MS. CARPENETI responded the behavior of the woman would have to be extremely reckless.

CHAIR SEEKINS commented a judge would instruct a jury as to the standards which apply.

MS. CARPENETI agreed.

SENATOR DYSON commented the word "extreme" is a very high standard.

[9:18:45 AM](#)

SENATOR DYSON reiterated SB 20 attempts to give protection when there is clearly reckless behavior.

SENATOR FRENCH asked Ms. Carpeneti to respond to his earlier example of repeated assaults with regard to FAE/FAS.

MS. CARPENETI advised SB 20 as currently written does not address alcohol. The repeated assaults section is talking about assaults against the law and drinking alcohol is not against the law.

SENATOR GUESS said SB 20 is deciding a new class of crimes. She voiced distrust of the way society treats women in domestic violence situations.

[9:21:36 AM](#)

SENATOR GUESS referred to Page 3 lines 2-3 and asked for clarification on the type of medical treatment referenced. Medical treatment could be the reason for a person to file a lawsuit.

[9:23:35 AM](#)

CHAIR SEEKINS stated his interpretation was a miscarriage caused by visiting a doctor or dentist would not indicate a criminal act by the pregnant woman.

[9:25:01 AM](#)

SENATOR FRENCH reminded the committee members of his proposed amendment identified as Version \X.5.

SENATOR FRENCH moved Amendment 2.

24-LS0197\X.5

A M E N D M E N T 2

OFFERED IN THE SENATE
TO: CSSB 20(STA)

BY SENATOR FRENCH

Page 1, line 1:

Delete all material and insert:

"An Act enhancing penalties for crimes committed against pregnant women."

Page 1, line 3 through page 7, line 8:

Delete all material and insert:

"* Section 1. AS 11 is amended by adding a new chapter to read:

Chapter 32. Enhanced Penalties.

Sec. 11.32.100. Penalties for crimes committed against pregnant women.

(a) Notwithstanding another provision of this title or AS 12, if a person commits a crime defined in this title against a pregnant woman who the person knew or should have known to be pregnant that results in a miscarriage or stillbirth, the crime shall be punished in the following manner:

(1) a crime defined as murder in the first degree under AS 11.41.100 shall be punished by a sentence of 30 - 99 years;

(2) a crime defined as murder in the second degree under AS 11.41.110 shall be punished by a sentence of 20 - 99 years;

(3) a crime defined in this title as a class A felony shall be punished as an unclassified felony in the manner provided for unclassified felonies in AS 12.55.125;

(4) a crime defined in this title as a class B felony shall be punished as a class A felony in the manner provided for class A felonies in AS 12.55.125;

(5) a crime defined in this title as a class C felony shall be punished as a class B felony in the manner provided for class B felonies in AS 12.55.125;

(6) a crime defined in this title as a class A misdemeanor shall be punished as a class C felony in the manner provided for class C felonies in AS 12.55.125;

(7) a crime defined in this title as a class B misdemeanor shall be punished as a class A misdemeanor in the manner provided for class A misdemeanors in AS 12.55.135.

(b) The penalties in (a) of this section do not apply to acts committed

(1) during a legal abortion to which the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, consented;

(2) during any medical treatment of the pregnant woman or the fetus; or

(3) by a pregnant woman against herself.

(c) In this section,

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth or by an induced abortion, resulting in the complete expulsion or extraction of the fetus from a pregnant woman;

(2) "stillbirth" means the death of a fetus before the complete expulsion or extraction from a woman, other than by an induced abortion, irrespective of the duration of the pregnancy.

* **Sec. 2.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. **A defendant convicted of murder in the first degree enhanced under AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at least 30 years but not more than 99 years.** A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

* **Sec. 3.** AS 12.55.125(b) is amended to read:

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree **or a class A felony enhanced under AS 11.32.100(a)(3)** shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when **the sentence is enhanced under AS 11.32.100(a)(2) or when** the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a) and (b), as amended by secs. 2 and 3 of this Act, apply to crimes committed on or after the effective date of this Act."

CHAIR SEEKINS objected for the purpose of discussion.

SENATOR FRENCH explained his amendment severely penalizes people who hurt women who they knew or should have known were pregnant. The approach of the amendment makes it an enhanced penalty to commit a crime against a pregnant woman.

[9:28:56 AM](#)

CHAIR SEEKINS noted the amendment looks more like a competing bill. He said he had never seen an amendment that struck the whole bill and inserted a new one.

SENATOR DYSON claimed the proposed amendment strips out a key provision, which establishes a new victim, the wanted unborn child. He expressed unwillingness to give up establishing a new category of victims.

[9:31:29 AM](#)

Roll call proved the amendment failed 3-2 with Senators Huggins, Therriault and Chair Seekins dissenting.

SENATOR GUESS asked Senator Dyson to affirm SB 20 would not seek to prosecute women who are victims of domestic violence.

SENATOR DYSON affirmed.

SENATOR HUGGINS moved CSSB 20(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 [9:33:21 AM](#).

Chair Seekins reconvened the meeting at [9:49:39 AM](#).

SB 106-SALE OF METHAMPHETAMINE AND PRECURSORS

[9:49:45 AM](#)

SENATOR GUESS advised the committee she researched questions posed in previous hearings, which she intended to answer first, and she offered to walk through her amendments individually.

[9:50:24 AM](#)

SENATOR GUESS answered the first question regarding ease of getting government identifications. There are 34 DMV offices and 2,800 communities and most people need a state license. Regarding mail order, the Drug Enforcement Agency (DEA) oversees international and intrastate mailings. There is nothing the Legislature can do about that other than to rely on the DEA to do their job.

[9:52:03 AM](#)

SENATOR GUESS introduced Amendment 1.

24-LS0588\I.1
Luckhaupt

A M E N D M E N T 1

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 106(), Draft Version "I"

Page 6, line 16:

Delete "A violation of (a), (b), or (c) of this section is"

Insert "A person who knowingly violates (a), (b), or (c) of this section is guilty of"

SENATOR GUESS explained it insures that "knowingly" applies to any of the provisions on page 5. Hearing no objections, Amendment 1 was adopted.

[9:54:38 AM](#)

SENATOR GUESS introduced Amendment 2.

24-LS0588\I.3
Luckhaupt

A M E N D M E N T 2

OFFERED IN THE SENATE BY SENATOR GUESS
TO: CSSB 106(), Draft Version "I"

Page 5, line 7, following "retrievable":
Insert "for inspection by law enforcement officers"

Page 5, lines 9 - 10:
Delete "and must allow for in-person inspection of the records by law enforcement officers"

SENATOR GUESS explained it was the drafter's suggestion as a way to clean up the section dealing with out of state licensure. Hearing no objections, Amendment 2 was adopted.

SENATOR GUESS introduced Amendment 3.

24-LS0588\I.5
Luckhaupt

A M E N D M E N T 3

OFFERED IN THE SENATE BY SENATOR GUESS
TO: CSSB 106(), Draft Version "I"

Page 5, line 19, following "request":
Insert "The log and the information entered into the log is confidential. The retailer may not allow access to the log or release information contained within the log except to the Department of Public Safety or other law enforcement officers."

SENATOR GUESS explained it ensures keeping the log information confidential.

SENATOR FRENCH asked the consequence if the log is not kept confidential.

[9:58:29 AM](#)

SENATOR GUESS explained the violations on Page 6, line 16 pertain to all of the sections on page 5.

SENATOR FRENCH said it seems like the consequence for not keeping the log confidential should be a violation and not a misdemeanor.

[10:03:04 AM](#)

SENATOR GUESS suggested changing the language in Amendment 3 to say, "the retailer may not allow access."

Amendment 3 was tabled.

[10:05:36 AM](#)

SENATOR GUESS moved Amendment 4.

24-LS0588\I.6
Luckhaupt

A M E N D M E N T 4

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 106(), Draft Version "I"

Page 5, lines 21 - 22:

Delete "ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, iodine, or crystal iodine"

Insert "iodine or crystal iodine, contains as the sole active ingredient ephedrine, pseudoephedrine, or phenypropanolamine, or, when required by the department by regulation, contains any amount of ephedrine, pseudoephedrine, or phenypropanolamine in any combination,"

SENATOR GUESS explained the sole active ingredient critical chemicals would be placed behind the pharmacy counter.

[10:10:26 AM](#)

Amendment 4 was tabled.

SENATOR GUESS introduced Amendment 5.

24-LS0588\I.11
Luckhaupt

A M E N D M E N T 5

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 106(), Draft Version "I"

Page 5, line 9:

Delete "three years"

Insert "one year or a shorter period of time established by the department by regulation"

SENATOR GUESS explained it changes the holding time of the log to one year.

Amendment 5 was tabled.

SENATOR GUESS introduced Amendment 6.

24-LS0588\I.13
Luckhaupt

A M E N D M E N T 6

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 106(), Draft Version "I"

Page 5, lines 15 - 17:

Delete "requires the purchaser to sign a written log completed by the retailer showing the date of the transaction, name of the purchaser, type of identification and the identification number, and the amount dispensed"

Insert "keeps a log listing information required by the Department of Public Safety by regulation"

SENATOR GUESS explained it puts the log into regulation to ensure law enforcement has the information they need.

[10:14:51 AM](#)

CHAIR SEEKINS asked whether Senator Guess would consider an amendment to Amendment 6, which proposes to keep the log on a form provided by the Department of Public Safety.

SENATOR GUESS preferred to keep the option of electronic forms.

Amendment 6 was adopted.

SENATOR GUESS introduced Amendment 7.

24-LS0588\I.14
Luckhaupt

A M E N D M E N T 7

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 106(), Draft Version "I"

Page 6, following line 15:

Insert new subsections to read:

"(f) A person has a duty to exercise that degree of care that a reasonable person would observe to ensure that the requirements of (b) and (c) of this section are complied with. This duty of the person includes ensuring the compliance by agents or employees with this section, including acting with reasonable diligence to determine that agents or employees are advised of the provisions of this section, either by securing the agent's or employee's written acknowledgment of posted instructions or otherwise. A person may neither knowingly allow agents or employees to violate this section nor recklessly or with criminal negligence fail to act in accordance with the duty prescribed under this subsection with the result that an agent or employee of the licensee violates a provision of this section.

(g) It is an affirmative defense to a prosecution of a person that the person exercised that degree of care specified in (f) of this section and did not knowingly allow a violation of this section or recklessly or with criminal negligence fail to act as required by this section."

Renumber the following subsection accordingly.

Page 6, line 19:

Delete "knowingly" has"

Insert "knowingly," "recklessly," and "criminal negligence" have"

Page 6, line 20:

Delete "meaning"

Insert "meanings"

SENATOR GUESS explained it would add a new subsection mirrored after the structure of selling alcohol. Hearing no objections Amendment 7 was adopted.

[10:17:38 AM](#)

SENATOR GUESS asked the committee for help with language on the issue of people who purchase large amounts of Sudafed for legal purposes.

[10:20:34 AM](#)

CHAIR SEEKINS agreed SB 106 should make sure something other than just possession is a reason for suspicion.

[10:22:40 AM](#)

SENATOR HUGGINS expressed concern that SB 106 would keep honest people from buying cold medicine.

CHAIR SEEKINS urged the committee to craft one bill out of SB 70, SB 106, and HB 149.

[10:24:32 AM](#)

CHAIR SEEKINS held SB 106 in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:26:09 AM](#).