

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 21, 2005

8:38 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

HOUSE BILL NO. 136

"An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

MOVED HB 136 OUT OF COMMITTEE

HOUSE BILL NO. 131

"An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

MOVED HB 131 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 132(JUD)

"An Act relating to certain crimes committed against the elderly; and providing for an effective date."

MOVED SCS CSHB 132(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 136

SHORT TITLE: DRUNK DRIVING TREATMENT PROGRAM

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

02/09/05 (H) READ THE FIRST TIME - REFERRALS
02/09/05 (H) JUD, FIN
03/21/05 (H) JUD AT 1:00 PM CAPITOL 120
03/21/05 (H) Moved Out of Committee
03/21/05 (H) MINUTE(JUD)
03/22/05 (H) JUD RPT 7DP
03/22/05 (H) DP: ANDERSON, GRUENBERG, KOTT,
DAHLSTROM, COGHILL, GARA, MCGUIRE
03/22/05 (H) LETTER OF INTENT WITH JUD REPORT
04/07/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/07/05 (H) Moved Out of Committee
04/07/05 (H) MINUTE(FIN)
04/08/05 (H) FIN RPT 9DP
04/08/05 (H) DP: HAWKER, HOLM, FOSTER, STOLTZE,
MOSES, WEYHRAUCH, KELLY, MEYER,
CHENAULT
04/08/05 (H) JUD LETTER OF INTENT WITH FIN REPORT
04/12/05 (H) TRANSMITTED TO (S)
04/12/05 (H) VERSION: HB 136
04/13/05 (S) READ THE FIRST TIME - REFERRALS
04/13/05 (S) JUD, FIN
04/20/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/20/05 (S) Scheduled But Not Heard

BILL: HB 131

SHORT TITLE: ACCESS DEVICE & I.D. DOCUMENT CRIMES

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

02/09/05 (H) READ THE FIRST TIME - REFERRALS
02/09/05 (H) JUD, FIN
02/23/05 (H) JUD AT 1:00 PM CAPITOL 120
02/23/05 (H) Scheduled But Not Heard
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120
03/02/05 (H) Heard & Held
03/02/05 (H) MINUTE(JUD)
03/18/05 (H) JUD AT 1:00 PM CAPITOL 120
03/18/05 (H) Moved Out of Committee
03/18/05 (H) MINUTE(JUD)
03/21/05 (H) JUD RPT 4DP 2NR
03/21/05 (H) DP: GRUENBERG, ANDERSON, COGHILL,
MCGUIRE;
03/21/05 (H) NR: KOTT, DAHLSTROM
04/01/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519

04/01/05 (H) <Bill Hearing Postponed to Mon 4/4/05>
 04/04/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/04/05 (H) Moved Out of Committee
 04/04/05 (H) MINUTE(FIN)
 04/05/05 (H) FIN RPT 5DP 2NR
 04/05/05 (H) DP: HAWKER, FOSTER, STOLTZE, KELLY,
 MEYER;
 04/05/05 (H) NR: HOLM, WEYHRAUCH
 04/13/05 (H) TRANSMITTED TO (S)
 04/13/05 (H) VERSION: HB 131
 04/14/05 (S) READ THE FIRST TIME - REFERRALS
 04/14/05 (S) JUD, FIN
 04/21/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 132

SHORT TITLE: CRIMES AGAINST ELDERLY
 SPONSOR(s): REPRESENTATIVE(s) STOLTZE

02/09/05 (H) READ THE FIRST TIME - REFERRALS
 02/09/05 (H) JUD, FIN
 02/23/05 (H) JUD AT 1:00 PM CAPITOL 120
 02/23/05 (H) Heard & Held
 02/23/05 (H) MINUTE(JUD)
 03/02/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/02/05 (H) Moved CSHB 132(JUD) Out of Committee
 03/02/05 (H) MINUTE(JUD)
 03/03/05 (H) JUD RPT CS(JUD) NT 4DP 1NR
 03/03/05 (H) DP: GRUENBERG, DAHLSTROM, GARA,
 MCGUIRE;
 03/03/05 (H) NR: COGHILL
 04/01/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/01/05 (H) <Bill Hearing Postponed to Mon 4/4/05>
 04/04/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/04/05 (H) Moved CSHB 132(JUD) Out of Committee
 04/04/05 (H) MINUTE(FIN)
 04/05/05 (H) FIN RPT CS(JUD) NT 6DP 1NR
 04/05/05 (H) DP: HAWKER, HOLM, STOLTZE, KELLY,
 FOSTER, MEYER;
 04/05/05 (H) NR: WEYHRAUCH
 04/12/05 (H) TRANSMITTED TO (S)
 04/12/05 (H) VERSION: CSHB 132(JUD)
 04/13/05 (S) READ THE FIRST TIME - REFERRALS
 04/13/05 (S) JUD, FIN
 04/21/05 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Ms. Heather Nobrega
Staff to Representative Rokeberg
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 136

Judge Jim Wanamaker
Anchorage District Court
PO Box 196650
Anchorage, AK 99519
POSITION STATEMENT: Testified in support of HB 136

Ms. Wendy Hamilton, Coordinator
Juneau Therapeutic Court
Juneau, AK 99801
POSITION STATEMENT: Testified in support of HB 136

Ms. Theresa Thompson, Community Development Manager
United Way Tanana Valley
POSITION STATEMENT: Testified in support of HB 136

Representative Bill Stoltze
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 131 and HB 132

Mr. Ben Logan
Staff to Representative Stoltz
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 132

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:38:14 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

HB 136-DRUNK DRIVING TREATMENT PROGRAM

[8:38:32 AM](#)

MS. HEATHER NOBREGA, staff to Representative Norman Rokeberg, introduced HB 136. She explained HB 136 clarifies minimum fines for the courts, it increases the amount of minimum fines that can be waived for successful graduates of therapeutic court, and it expands therapeutic courts for felony DUI cases.

[8:40:46 AM](#)

JUDGE JIM WANAMAKER testified HB 136 provides for therapeutic courts to be created by local initiatives. Anchorage has a municipal wellness court as well as a state wellness court. Ketchikan and Juneau will both be in operation by summer of 2005. If wellness courts could be extended to include felonies, it would help to create a workable volume of cases. HB 136 would be a benefit to addressing the population of addicted offenders. Wellness court is an ideal vehicle to getting sober.

[8:43:26 AM](#)

CHAIR SEEKINS asked Ms. Nobrega whether HB 136 would stop suspension of sentences.

MS. NOBREGA answered the courts often pose the 33 day fine and suspend 30 of them. Technically the hanging sentence is in case of probation violation. HB 136 would allow courts to levy larger fines but only suspend up to the minimum.

SENATOR FRENCH said the law we are considering changing would make certain everyone pays the minimum fine, but HB 136 proposes to suspend up to 75 percent of the minimum fine upon completion of the wellness court.

MS. NOBREGA advised the reason for suspension is a carrot for people as they go through the system. They have to pay for every aspect of the program so suspension of 75 percent of the fine is an incentive for them to fulfill the program.

[8:47:33 AM](#)

JUDGE WANAMAKER agreed. The defendant pleads guilty but the actual sentencing occurs later after graduation of the program.

SENATOR FRENCH asked whether a second driving while intoxicated (DWI) offense would be considered a second DWI or a second first DWI.

JUDGE WANAMAKER responded it would be considered a second DWI.

SENATOR FRENCH asked why HB 136 felt it necessary to strengthen the fine aspect.

JUDGE WANAMAKER said it was merely firming it up so offenders have to pay the minimum fine.

[8:49:58 AM](#)

SENATOR HUGGINS asked the process of people wanting to attend therapeutic court when they lack the means to pay for the program.

JUDGE WANAMAKER said the mechanism is a grant fund where a totally indigent person could obtain up to \$1,000.

SENATOR HUGGINS asked the total cost for the 18-month program.

JUDGE WANAMAKER replied it was \$7,000 and the defendant pays \$4,000 of it.

[8:51:49 AM](#)

MS. WENDY HAMILTON, Juneau Therapeutic Court coordinator, testified in support of HB 136. The National Council on Drug and Alcohol Dependents employs her. The Juneau therapeutic court will be a misdemeanor and felony court. It is often the felons who are most motivated to attend the program. It has been a common practice for judges to suspend the fine when they believe the defendant cannot afford to pay. People need incentives in order to attend wellness courts.

[8:53:43 AM](#)

SENATOR FRENCH offered the long-term consequences of completion of the program do not undo the conviction.

MS. HAMILTON agreed it would be on the person's record. She asserted chronic alcoholics get a chance to go into recovery and treatment for 18 months. Therapeutic courts combine the power of the court with the power of treatment. In the first six months the person gets sober and their life starts to change. People start getting self-esteem; families' reunite and they support each other through a support group. People change their lives and that is a benefit to the public.

[8:56:30 AM](#)

SENATOR HUGGINS mentioned DWI implications when traveling in Canada.

MS. HAMILTON said Canada is tightening up their borders. A person with a criminal record will have to contact the authorities and also pay a fine if allowed to travel through the country.

[9:02:21 AM](#)

MS. THERESA THOMPSON, community development manager, United Way Tanana Valley testified the United Way supports HB 136. The

community needs wellness courts. The United Way staged a campaign to reduce alcohol and drug abuse in Anchorage. They received a drug-free community support grant in the form of \$100,000 and hope to receive more. The grant will be used to create multiple strategies across multiple sectors to combat substance abuse.

[9:04:17 AM](#)

SENATOR HUGGINS asked Ms. Hamilton the timeline of the grant that was given to the Juneau Therapeutic Courts.

MS. HAMILTON explained the current grant is for three years. It is a National Highway Safety Transportation Administration (NHSTA) grant, which is also being used to start the Ketchikan and Fairbanks courts. There is a strong possibility for renewal for another three years. This is NHSTA's approach to fighting drunk driving. Therapeutic courts work.

JUDGE WANAMAKER added NHTSA is actively pushing federal money down to the states to help build therapeutic courts. There is a lot of money available in a discretionary account so it is an opportune time to get it going.

[9:08:09 AM](#)

CHAIR SEEKINS noted the DOL said this could lead to more trials, which could be a fiscal impact.

SENATOR FRENCH said it was a good bill but he was surprised to learn that judges were suspending the fines.

SENATOR HUGGINS moved HB 136 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

Chair Seekins announced a brief recess at [9:10:23 AM](#).

Chair Seekins reconvened the meeting at [9:13:57 AM](#).

HB 131-ACCESS DEVICE & I.D. DOCUMENT CRIMES

[9:13:57 AM](#)

CHAIR SEEKINS announced HB 131 to be up for consideration.

[9:14:19 AM](#)

REPRESENTATIVE BILL STOLZ introduced HB 131. He pointed out HB 131 works alongside HB 132 to protect Alaskan seniors from people who would target them through fraudulent means. HB 131 deals with access. There is a growing crime against seniors because of their vulnerability. Though the monetary loss is not

always substantial, the hassle of cleaning up damaged credit and the damage to a person's good name is time consuming. Having the crime increased to a felony increases the likelihood of prosecution.

[9:17:28 AM](#)

REPRESENTATIVE STOLTZE asserted protection of seniors implores a special elevation of protection. The Department of Law (DOL) supports both HB 131 and HB 132.

[9:21:47 AM](#)

SENATOR GUESS asked whether the State of Alaska has similar penalties for crimes against the mentally disabled.

REPRESENTATIVE STOLTZE said he did not know.

[9:22:53 AM](#)

MR. RANDY RUARO, attorney, DOL testified the criminal division supports HB 131. Identity theft is a growing problem in Alaska.

SENATOR GUESS asked Mr. Ruaro for a definition of "access device."

MR. RUARO answered it is defined in AS 11.81.900(b)(1).

[9:24:39 AM](#)

SENATOR GUESS noted there were zero fiscal notes and asked whether the DOL anticipated prosecuting more people.

MR. RUARO responded HB 131 elevates current crimes that are on the books. Resources are currently dedicated to the effort.

SENATOR FRENCH offered most cases a perpetrator has to cause \$500 minimum damage to qualify for felony. HB 131 sets the level at \$50. He asked Mr. Ruaro to comment.

MR. RUARO deferred the question to John Skidmore.

[9:26:42 AM](#)

MR. JOHN SKIDMORE, supervisor, felony property unit, Anchorage District Attorney's office, advised forgery in the second degree includes the identity crime of check stealing. The amount of the written check does not matter. It is still a felony. Fifty dollars is the median used by other states.

[9:30:03 AM](#)

MS. MICHELE LOGAN, detective, Anchorage Police Department, testified in support of HB 131. Identity theft reports have been increasing. Unauthorized use of credit cards is what police officers most commonly see. Many stores don't ask for identification to match the credit card. She feels that 1978 statutes are out of date with today's monetary transactions.

[9:35:22 AM](#)

SENATOR FRENCH asked Ms. Logan whether a bank check is an access device.

MS. LOGAN responded yes. A bank account number is an access device.

MR. SKIDMORE concurred.

[9:40:21 AM](#)

MS. MARIE DARLEN testified the AARP Capitol City Task Force fully supports HB 131. They operate an educational program on identity theft throughout the state.

CHAIR SEEKINS closed public testimony.

SENATOR HUGGINS moved HB 131 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

Chair Seekins announced a brief recess at [9:43:35 AM](#).

Chair Seekins reconvened the meeting at [9:49:36 AM](#).

CSHB 132(JUD)-CRIMES AGAINST ELDERLY

[9:49:36 AM](#)

CHAIR SEEKINS announced HB 132 to be up for consideration.

REPRESENTATIVE BILL STOLTZ introduced HB 132 and advised it increases fines for offenses against the elderly. Elderly is defined as 65 or older. It is meant for people who target seniors.

[9:49:49 AM](#)

MR. RANDY RUARO, attorney, Department of Law (DOL) expressed support for HB 132.

SENATOR GUESS asked Mr. Ruaro whether the State of Alaska has similar enhanced penalties for the mentally disabled.

MR. RUARO advised there is an aggravator in statute for people who are particularly vulnerable. He is not sure how routinely it is applied.

SENATOR GUESS asked the reason HB 132 is looking at enhanced penalties versus aggravators.

MR. RUARO admitted he found one case where the court ignored the aggravator and fashioned the sentence within the normal range. HB 132 elevates the attention of the court.

SENATOR FRENCH advised the aggravator for the "particularly vulnerable" singles out age and infirmity and possibly the mentally challenged. There are prongs in sex assault statute, which makes it a separate crime to rape a vulnerable victim.

[9:52:22 AM](#)

SENATOR FRENCH asked Mr. Ruaro how HB 132 ties into Blakely versus Washington. He asked whether the elements would have to be alleged in the complaint and proven to the jury.

MR. RUARO said yes.

SENATOR FRENCH noted the jury would have to find that the defendant either knew or should have known that the victim was over 65.

MR. RUARO agreed.

SENATOR FRENCH asked whether he paraphrased the mental element correctly.

MR. RUARO clarified the element was actually "recklessly disregard." He did not know whether that was equivalent to "known or should have known."

SENATOR FRENCH asked Mr. Ruaro to tell the committee how the court would define "recklessly disregard."

MR. RUARO said the definition of reckless conduct was in the statutes. The jury would be given an instruction and told they would have to find beyond a reasonable doubt that the defendant acted with that mental state in committing the crime.

[9:54:16 AM](#)

MR. BEN LOGAN, staff to Representative Stoltz read the definition for "recklessly disregard" under AS 11.81.900 (a) (3).

CHAIR SEEKINS noted there was no one slated to testify against HB 132. He closed public testimony.

SENATOR GUESS suggested the committee look at the intent and findings section. She noted Senator Therriault would normally strike the intent and findings section when not needed for legal reasons.

CHAIR SEEKINS agreed.

MR. RUARO admitted the intent and findings language in Section 1 was not a critical part of HB 132. However the courts in Alaska do look at intent and findings. In this case the findings are short and the judge looking back would see what legislature was concerned with.

SENATOR FRENCH said the people reviewing HB 132 would understand the Legislature's intent is to penalize more severely because elderly victims suffer disproportionately to the normal individual.

SENATOR GUESS moved Amendment 1.

Strike Section 1.

Hearing no objections, the motion carried.

[9:59:53 AM](#)

SENATOR HUGGINS moved SCS CSHB 132(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

There being no further business to come before the committee, he adjourned the meeting at [10:01:09 AM](#).