

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

April 25, 2005

8:39 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. 101

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

MOVED CSSB 101(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 54(FIN)

"An Act relating to bail review; relating to petitions for review by crime victims where the defendant has received a sentence below the sentencing range for the crime; relating to the qualifications of certain members of the Violent Crimes Compensation Board; relating to the introduction of the victim and the defendant or minor to the jury; amending Rule 27, Alaska Rules of Criminal Procedures, and Rule 21, Alaska Delinquency Rules; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 219(FIN)

"An Act relating to the definition of 'dangerous instrument' as applied within the criminal code."

MOVED CSHB 219(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 116(JUD)

"An Act relating to the liability of certain persons for certain violations of alcoholic beverages laws."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 101

SHORT TITLE: REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/14/05 (S) READ THE FIRST TIME - REFERRALS  
02/14/05 (S) STA, JUD  
02/24/05 (S) STA AT 3:30 PM BELTZ 211  
02/24/05 (S) Heard & Held  
02/24/05 (S) MINUTE(STA)  
03/01/05 (S) STA AT 3:30 PM BELTZ 211  
03/01/05 (S) Moved CSSB 101(STA) Out of Committee  
03/01/05 (S) MINUTE(STA)  
03/03/05 (S) STA RPT CS 3DP 1NR SAME TITLE  
03/03/05 (S) DP: THERRIAULT, WAGONER, HUGGINS  
03/03/05 (S) NR: ELTON  
04/25/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 54

SHORT TITLE: BAIL REVIEW

SPONSOR(s): REPRESENTATIVE(s) SAMUELS, STOLTZE

01/10/05 (H) PREFILE RELEASED 1/7/05  
01/10/05 (H) READ THE FIRST TIME - REFERRALS  
01/10/05 (H) JUD, FIN  
03/30/05 (H) JUD AT 1:00 PM CAPITOL 120  
03/30/05 (H) Heard & Held  
03/30/05 (H) MINUTE(JUD)  
04/01/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/01/05 (H) Moved CSHB 54(JUD) Out of Committee  
04/01/05 (H) MINUTE(JUD)  
04/05/05 (H) JUD RPT CS(JUD) NT 4DP  
04/05/05 (H) DP: ANDERSON, DAHLSTROM, COGHILL,  
MCGUIRE  
04/12/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/12/05 (H) Bill Postponed To 4/13  
04/13/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/13/05 (H) Moved CSHB 54(FIN) Out of Committee  
04/13/05 (H) MINUTE(FIN)  
04/14/05 (H) FIN RPT CS(FIN) NT 6DP 3NR  
04/14/05 (H) DP: HAWKER, CROFT, HOLM, MOSES, FOSTER,  
MEYER;  
04/14/05 (H) NR: WEYHRAUCH, KELLY, CHENAULT

04/19/05 (H) TRANSMITTED TO (S)  
 04/19/05 (H) VERSION: CSHB 54(FIN)  
 04/20/05 (S) READ THE FIRST TIME - REFERRALS  
 04/20/05 (S) JUD, FIN  
 04/25/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 219

SHORT TITLE: STRANGULATION CRIMES  
 SPONSOR(S): REPRESENTATIVE(S) HAWKER

03/15/05 (H) READ THE FIRST TIME - REFERRALS  
 03/15/05 (H) JUD, FIN  
 03/23/05 (H) JUD RPT 5DP  
 03/23/05 (H) DP: GRUENBERG, KOTT, GARA, DAHLSTROM,  
 MCGUIRE  
 03/23/05 (H) JUD AT 8:00 AM CAPITOL 120  
 03/23/05 (H) Moved Out of Committee  
 03/23/05 (H) MINUTE(JUD)  
 04/11/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 04/11/05 (H) Moved CSHB 219(FIN) Out of Committee  
 04/11/05 (H) MINUTE(FIN)  
 04/12/05 (H) FIN RPT CS(FIN) NT 8DP 2NR  
 04/12/05 (H) DP: HAWKER, HOLM, FOSTER, CROFT,  
 WEYHRAUCH, MOSES, MEYER, CHENAULT;  
 04/12/05 (H) NR: STOLTZE, KELLY  
 04/14/05 (H) TRANSMITTED TO (S)  
 04/14/05 (H) VERSION: CSHB 219(FIN)  
 04/15/05 (S) READ THE FIRST TIME - REFERRALS  
 04/15/05 (S) JUD  
 04/25/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 116

SHORT TITLE: LIABILITY FOR ALCOHOL LAW VIOLATIONS  
 SPONSOR(S): REPRESENTATIVE(S) MEYER

01/28/05 (H) READ THE FIRST TIME - REFERRALS  
 01/28/05 (H) STA, JUD  
 03/01/05 (H) STA AT 8:00 AM CAPITOL 106  
 03/01/05 (H) Moved CSHB 116(STA) Out of Committee  
 03/01/05 (H) MINUTE(STA)  
 03/02/05 (H) STA RPT CS(STA) NT 3DP 2DNP 1AM  
 03/02/05 (H) DP: GARDNER, GATTO, SEATON;  
 03/02/05 (H) DNP: RAMRAS, ELKINS;  
 03/02/05 (H) AM: GRUENBERG  
 03/21/05 (H) JUD AT 1:00 PM CAPITOL 120  
 03/21/05 (H) Moved CSHB 116(JUD) Out of Committee  
 03/21/05 (H) MINUTE(JUD)

03/22/05 (H) JUD RPT CS(JUD) NT 7DP  
03/22/05 (H) DP: GRUENBERG, ANDERSON, KOTT,  
DAHLSTROM, COGHILL, GARA, MCGUIRE  
04/01/05 (H) TRANSMITTED TO (S)  
04/01/05 (H) VERSION: CSHB 116(JUD)  
04/04/05 (S) READ THE FIRST TIME - REFERRALS  
04/04/05 (S) STA, JUD  
04/14/05 (S) STA AT 3:30 PM BELTZ 211  
04/14/05 (S) Moved CSHB 116(JUD) Out of Committee  
04/14/05 (S) MINUTE(STA)  
04/15/05 (S) STA RPT 4DP  
04/15/05 (S) DP: THERRIAULT, ELTON, HUGGINS, DAVIS  
04/25/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Mr. James Crawford, Assistant Revisor  
Legislative Legal and Research Services Division  
Legislative Affairs Agency  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced SB 101

Representative Ralph Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 54

Mr. Dean Guaneli, Chief Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Commented on HB 54, HB 219, and HB 116

Ms. Julie Lucky  
Staff to Representative Mike Hawker  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 219

Ms. Tara Henry, Forensic Nurse  
Anchorage, AK  
**POSITION STATEMENT:** Testified in support of HB 219

Representative Mike Hawker  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on HB 219

Mr. Mike Pawlowski  
Staff to Representative Kevin Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 116

Mr. Doug Griffin, Director  
Alcohol Beverage Control Board  
550 W 7<sup>th</sup> Ave., Suite 540  
Anchorage, AK 99501-3510

**POSITION STATEMENT:** Testified in support of HB 116

Ms. Cindy Cashen, Former Executive Director  
Mothers Against Drunk Driving  
Juneau, AK

**POSITION STATEMENT:** Testified in support of HB 116

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:39:48 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

#### **SB 101-REVISOR'S BILL**

Chair Ralph Seekins announced SB 101 to be up for consideration.

[8:40:01 AM](#)

Senator Gene Therriault joined the committee.

MR. JAMES CRAWFORD, assistant reviser, Legislative Legal and Research Services Division, Legislative Affairs Agency, advised the Revisers Bill is generated annually under the authority of AS 01.05.036. It commands the revisor to make corrections to the Alaska Statutes. The corrections fall into three general categories. They improve the form or substance of the statutes, they update obsolete provisions, and they correct oversights.

[8:43:00 AM](#)

Mr. Crawford directed the committee's attention to Section 94, which is the Repealer. Two sections being repealed are AS 44.66.020 and 44.66.030 relating to program budgeting. These sections stopped being used in the late 1970s. However there is one sentence in one of the sections that has continuing

potential applicability. In order to preserve the piece of that section the revisors have to pull that part out of the section.

[8:46:11 AM](#)

MR. CRAWFORD offered an amendment for the committee's review that solves the problem.

[8:46:47 AM](#)

SENATOR THERRIAULT moved Amendment 1.

24-LS0195\Y.1  
Crawford  
03/08/05

**A M E N D M E N T 1**

OFFERED IN THE SENATE  
TO: CSSB 101(STA)

BY SENATOR THERRIAULT

Page 21, lines 1 - 31:  
Delete all material.

Renumber the following bill sections accordingly.

Page 29, line 1, through page 31, line 30:  
Delete all material.

Renumber the following bill sections accordingly.

Page 46, line 19:  
Delete "AS 44.66.020, 44.66.030;"

CHAIR SEEKINS objected for explanation.

SENATOR THERRIAULT stated Mr. Crawford indicated the auditor has cleaned up the statutes. The Revisor's Bill should only contain the items that everyone has agreed is pure cleanup.

CHAIR SEEKINS withdrew his objection. There being no further objections, Amendment 1 was adopted.

SENATOR THERRIAULT moved CSSB 101(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 [8:50:35 AM](#).

**CSHB 54(FIN)-BAIL REVIEW/ CRIME VICTIMS**

[8:51:27 AM](#)

CHAIR RALPH SEEKINS announced HB 54 to be up for consideration.

REPRESENTATIVE RALPH SAMUELS introduced HB 54. Currently a person charged with an unclassified crime or a class A felony may apply for a bail hearing every 24 hours. HB 54 proposes to change the timeframe to every 48 hours in order to give victims time to attend the hearing. The bill would also allow for a victim to be introduced during the opening statement at a trial or at jury selection.

[8:53:59 AM](#)

The bill cleans up language in the Violent Crimes Compensation Board statute to allow a retired attorney or physician to serve on the Board. The bill also allows a crime victim the ability to petition for a review of a defendant's sentence if it falls below the sentencing range. Convicted criminals have a right to appeal sentences. Victims should also have that right.

[8:57:48 AM](#)

SENATOR HOLLIS FRENCH asked whether it was after the arraignment in district court that HB 54 would kick in.

REPRESENTATIVE SAMUELS said yes, unless there has been a change in conditions.

Senator Gretchen Guess joined the committee.

SENATOR FRENCH clarified by the time lawyers get the facts, it would be 48 hours before the bail review.

REPRESENTATIVE SAMUELS answered correct.

[9:00:31 AM](#)

SENATOR CHARLIE HUGGINS asked whether the introduction provision was for the family.

REPRESENTATIVE SAMUELS advised "victim" is defined in the statutes. The intent is to have either a representative or the actual victim being introduced.

CHAIR RALPH SEEKINS asserted the term "victim" could include a corporation.

[9:02:28 AM](#)

CHAIR SEEKINS communicated a petition of review paid for by the victim could have other ramifications.

REPRESENTATIVE SAMUELS agreed and said if a person were to lose that appeal there would be case law backing it. It would produce the opposite result from which the victim aspired.

[9:06:49 AM](#)

MR. DEAN GUANELI, chief assistant attorney general, Department of Law (DOL) expressed support for HB 54. It is difficult to keep victims notified of all the defendant's court proceedings. HB 54 would allow the defendant a bail review hearing every 48 hours. This provides an opportunity for the defendant to see the judge and to acquire an attorney. It also accommodates the victims and allows them time to attend the bail review hearing. Additionally, it makes sense to require the defendants to submit new information that the court has not considered in order to request another bail review.

[9:09:41 AM](#)

MR. GUANELI continued this is intended to stop the daily bail review request.

Chair Seekins announced a brief recess at [9:13:12 AM](#).

Chair Seekins reconvened the meeting at [9:15:13 AM](#).

[9:15:13 AM](#)

MR. GUANELI continued he is concerned with regards to Section 4, which allows for the victim to file a petition for a sentencing review. If a lenient sentence were to be upheld it sets a precedent. Other judges may look at that opinion and adopt a lower sentencing pattern.

[9:18:17 AM](#)

There would be very little for a victim to gain by petitioning for a sentencing review, but there is potentially much to be lost. The concern is whether the state wants to allow a private party to challenge sentences.

[9:21:54 AM](#)

REPRESENTATIVE SAMUELS maintained his preference to keep Section 4 in HB 54.

SENATOR CHARLIE HUGGINS asked the alternative to ensure proper sentencing by the judge.

[9:23:45 AM](#)

MR. GUANELI detailed under the existing system, judges stand for reelection and very few judges have not been retained. The

process the Legislature did this year in looking at the Blakely vs. Washington decision was a good exercise in examining sentencing ranges.

9:25:40 AM

CHAIR SEEKINS asked Mr. Guaneli whether it was possible for a sentence to be passed without a trial.

MR. GUANELI responded 95 percent of sentences are imposed without trial. Prosecutors are not involved in setting sentences.

CHAIR SEEKINS asked whether prosecutors discuss mitigators with the defendant's attorney.

MR. GUANELI said yes. Aggravators are discussed as well.

SENATOR FRENCH asked whether the provision would apply to misdemeanor sentences.

REPRESENTATIVE SAMUELS replied that was not the intent.

SENATOR FRENCH asked whether it was standard for the state to petition for a review when they felt the sentence handed down was inadequate.

MR. GUANELI said yes. The state has a right to appeal the sentence, which forces the court of appeals to issue an opinion.

SENATOR FRENCH posed a scenario of a class C felony assault with a maximum of five years where the judge imposed 6 months. If the state were to appeal the sentence and the court of appeals were to agree, he asked how the re-sentencing would occur.

9:28:45 AM

MR. GUANELI responded the sentence would be disapproved as too lenient. The opinion would be written and published. There is no re-sentencing due to the double jeopardy clause.

9:30:33 AM

CHAIR SEEKINS asked Mr. Guaneli to estimate the cost of a review by the appellate court.

MR. GUANELI estimated 20-30 attorney hours at \$150 an hour.

9:33:43 AM

CHAIR SEEKINS held HB 54 in committee.

Chair Seekins announced a brief recess at [9:33:53 AM](#).  
Chair Seekins reconvened the meeting at [9:44:45 AM](#).

**CSHB 219(FIN)-STRANGULATION & SUFFOCATION CRIMES**

[9:44:45 AM](#)

CHAIR RALPH SEEKINS announced HB 219 to be up for consideration.

MS. JULI LUCKY, staff to Representative Mike Hawker, introduced HB 219. Currently strangulation assaults cannot be prosecuted as a felony due to a bar set in statutes that says in order to be prosecuted as a felony, an assault must have provable serious physical injury. Often strangulation assaults leave no physical marks.

[9:46:50 AM](#)

MS. TARA HENRY, forensic nurse, testified she has years of examining strangulation assaults. Perpetrators use strangulation as a means to control their victims. Strangulation is treated as a misdemeanor in Alaska. HB 219 would provide the appropriate language required to allow all strangulation cases to be prosecuted as felonies.

[9:51:58 AM](#)

MR. DEAN GUANELI concurred the intent of HB 219 is to ensure strangulation assaults are prosecuted as felonies. Injuries that are created by strangulation can evolve into long term physical problems for the victim.

[9:54:11 AM](#)

CHAIR SEEKINS asked Mr. Guaneli whether the court might consider that hands are not deadly weapons.

MR. GUANELI stated there is case law in Alaska where hands and feet have been found to be deadly weapons, based on the manner in which they were used.

CHAIR SEEKINS asked whether the use of hands in beating or threatening someone would be considered a dangerous weapon.

[9:56:56 AM](#)

MR. GUANELI answered yes. Hands and feet can be characterized as a dangerous weapon under AS 11.81.900 (b)(15)(A).

CHAIR SEEKINS said it is the intent of the Senate Standing Judiciary Committee that by including definition (B) under

"dangerous instrument" (AS 11.81.900) that hands can be dangerous instruments under many circumstances.

MR. GUANELI agreed.

SENATOR HOLLIS FRENCH read the definition of "deadly weapon":

"Any firearm or anything designed for and capable of causing death or serious physical injury, including an knife, and ax, a club, metal knuckles, or an explosive."

[9:59:08 AM](#)

MR. GUANELI explained the current code defines "deadly weapon" exactly as Senator French read. The courts would rule that hands and feet could be dangerous instruments.

[10:01:49 AM](#)

CHAIR SEEKINS asked the reason Page 1, line 8 does not read "and" rather than "or".

MR. GUANELI detailed the reason for the separate subsection is due to experience in trials.

REPRESENTATIVE MIKE HAWKER offered a response to the use of the word "or." The word may be construed either inclusively or exclusively.

[10:07:30 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR CHARLIE HUGGINS moved CSHB 219(FIN) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

**CSHB 116(JUD)-LIABILITY FOR ALCOHOL LAW VIOLATIONS**

[10:11:46 AM](#)

CHAIR RALPH SEEKINS announced HB 116 to be up for consideration.

MR. MICHAEL PAWLOWSKI introduced HB 116. Under current statutes, persons under 21 years of age can be sued by license holders for assisting law enforcement officers in investigating and enforcing compliance with the state's alcoholic beverage laws. HB 116 adds protection for a young person to the statutes.

SENATOR GRETCHEN GUESS asked the difference between peace officer and law enforcement officer.

MR. PAWLOWSKI voiced he is not certain.

CHAIR RALPH SEEKINS stated peace officers could be members of the Department of Fish and Game. Police officers have to reach certain standards.

SENATOR HOLLIS FRENCH read the definition of peace officer:

"A public servant vested by law with a duty to maintain public order or to make arrests whether the duty extends to all offenses or is limited to a specific class of offenses or offenders."

[10:16:26 AM](#)

SENATOR FRENCH asked whether anyone has been sued.

MR. PAWLOWSKI said yes.

CHAIR SEEKINS asked the reason HB 116 does not have a retroactive clause.

MR. PAWLOWSKI explained passing legislation retroactively is problematic.

[10:18:54 AM](#)

SENATOR GENE THERRIAULT commented if the case were still pending while the law is changed it would nullify the case.

SENATOR FRENCH commented an immediate effective date would shut any active case down.

SENATOR GUESS asked the statute of limitations.

MR. PAWLOWSKI did not know.

[10:20:52 AM](#)

CHAIR SEEKINS expressed concern regarding tying up pending cases.

SENATOR THERRIAULT suggested the committee put the question to the drafter.

CHAIR SEEKINS suggested the committee further research options.

[10:25:21 AM](#)

SENATOR THERRIAULT asked for a witness to inform the committee regarding the lawsuit pending.

MR. DOUG GRIFFIN, director, Alcohol Beverage Control Board, advised the case pending is in Fairbanks. He could not recall the establishment but the primary licensee is a Mr. Lambert who owns several businesses with liquor licenses in Fairbanks.

[10:28:17 AM](#)

CHAIR SEEKINS asked the number of persons in jeopardy of a lawsuit if the bill is not made retroactive.

MR. GUANELI could not determine.

[10:30:46 AM](#)

MS. CINDY CASHEN, past executive director, Mothers Against Drunk Driving, testified in support of HB 116. She advised a majority of their young people volunteer to work with law enforcement officers to raise awareness of underage drinking and minors purchasing alcohol. While the compliance check rate has gone up the establishment owners have developed a phone tree and they alert other business owners when there is an operation in effect. In Juneau there are 5 to 6 people who volunteer on compliance checks. Statewide there are close to 25.

[10:33:04 AM](#)

MS. CASHEN detailed the pending case of the teenager in Fairbanks. The compliance operation was a planned event. Some business owners found a loophole to challenge the sting. Two of them in Fairbanks fully intend to take the teenager to court.

CHAIR SEEKINS suggested the committee research to see whether HB 116 could be retroactive. He held HB 116 in committee.

[10:34:49 AM](#)

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:35:19 AM](#).