

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 19, 2006

8:54 a.m.

MEMBERS PRESENT

Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

Senator Ralph Seekins, Chair

COMMITTEE CALENDAR

SENATE BILL NO. 200

"An Act relating to defense of self, other persons, and property."

HEARD AND HELD

SENATE BILL NO. 218

"An Act relating to periodic polygraph examinations for sex offenders released on probation or parole and to sentencing for sex offenders and habitual criminals."

HEARD AND HELD

SENATE BILL NO. 10

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 200

SHORT TITLE: USE OF FORCE TO PROTECT SELF/HOME

SPONSOR(s): SENATOR(s) THERRIAULT

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|----------|-----|---------------------------------|
| 05/10/05 | (S) | READ THE FIRST TIME - REFERRALS |
| 05/10/05 | (S) | JUD |
| 01/19/06 | (S) | JUD AT 8:30 AM BUTROVICH 205 |

BILL: SB 218

SHORT TITLE: CRIMINAL SENTENCING AND POLYGRAPHS

SPONSOR(s): SENATOR(s) BUNDE

01/09/06 (S) PREFILE RELEASED 12/30/05
01/09/06 (S) READ THE FIRST TIME - REFERRALS
01/09/06 (S) JUD, FIN
01/19/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 200

Mr. Brian Judy
Alaska National Rifle Association
POSITION STATEMENT: Testified in support of SB 200

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 218

Ms. Anna Fairclough, Executive Director
Standing Together Against Rape
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 218

Ms. Susan Parkes, Deputy Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 200 and SB 218

Ms. Portia Parker, Deputy Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801
POSITION STATEMENT: Commented on SB 218

ACTION NARRATIVE

VICE-CHAIR CHARLIE HUGGINS called the Senate Judiciary Standing Committee meeting to order at [8:54:20 AM](#). Present were Senators Hollis French, Gene Therriault, Gretchen Guess, and Vice-Chair Charlie Huggins.

[8:55:05 AM](#)

VICE-CHAIR CHARLIE HUGGINS announced that Senator Ralph Seekins would not be in attendance today. He explained there was no intent to move any bills heard but that introduction and testimony would be held.

SB 200-USE OF FORCE TO PROTECT SELF/HOME

VICE-CHAIR CHARLIE HUGGINS announced SB 200 to be up for consideration.

[8:55:24 AM](#)

SENATOR GENE THERRIAULT, bill sponsor, presented SB 200, which he said was introduced at the end of session last year. A similar law was enacted in Florida through overwhelming bipartisan support. He expressed interest in hearing from the Department of Law any concerns or comments they might have. SB 200 is not intended to promote undue force but to establish as a baseline the right of a person to stand their ground wherever they have a legal right to be and use whatever force necessary to protect themselves or, in certain cases, others. It is not the intent of the bill to cause lawlessness among the populace.

[8:58:37 AM](#)

VICE-CHAIR HUGGINS called the first witness.

[8:59:38 AM](#)

MR. BRIAN JUDY, representing the Alaska members of the National Rifle Association, testified in support of SB 200, which he believes is based on the "Castle Doctrine" from the Bible. It basically says that a person's home is their castle and they have every right to protect it. The principle of having no guilt for injuring or killing an intruder is found in the Old Testament in Exodus 22:2. Essentially people have a right to be as safe in their homes as a king in his castle and may use all manner of force including deadly force to protect the home and its inhabitants from attack. He said under existing Alaska law there is already a provision of no duty to retreat if a person is on the premises, which the person owns, or leases. SB 200 would extend that to any place where the person has a right to be.

[9:01:27 AM](#)

Under SB 200 a person does not have to retreat and can fight using force against force. SB 200 would not give carte blanche authority to shoot someone for a minor offense or attack. Another component of SB 200 is the provision of immunity for

victims who have used lawful defensive force to prevent an attack. Criminals and their families would be prohibited from suing the victims for injuries incurred by the attacker. Mr. Judy recommended adding "or another person" to Page 2 line 6 after the words "for self defense" as a possible amendment. Also, in addition to removing the duty to retreat and providing immunity from civil liability, provide an absolute presumption that anyone who unlawfully and forcefully enters a person's dwelling, residence, or occupied vehicle is there to do harm and therefore any manner of force can be used against that person without fear of prosecution or civil suit. He said the Florida Times Union, a mainstream newspaper, is in full support of the similar law that their Legislature recently passed.

[9:05:36 AM](#)

MR. JUDY closed by urging support for the bill.

VICE-CHAIR HUGGINS asked Mr. Judy whether there have been instances where the new law in Florida has been invoked.

MR. JUDY said he has not heard of any. He said SB 200 would only change what would happen after the fact. It would prevent law-abiding citizens from being victims a second time.

SENATOR THERRIAULT asked about current legislative action around the country since the Florida law passed.

[9:07:27 AM](#)

MR. JUDY stated that many sessions are just beginning now, such as Alaska, but that many states are introducing similar legislation.

[9:08:46 AM](#)

SENATOR GRETCHEN GUESS referred to Page 2 lines 9-15 and asked whether a person would be liable for whatever damage occurred while shooting towards a person who was shooting at them.

SENATOR THERRIAULT responded the bill would not remove the duty to take care not to harm others while defending oneself against an aggressor.

SENATOR HOLLIS FRENCH asked Mr. Judy to explain the places that a person has a right to be.

SENATOR THERRIAULT explained obvious places such as a person's own home or car. However, there are also ordinances where police could exempt people from being in places they are normally

welcome but SB 200 would operate within the bounds of many other laws.

9:12:05 AM

VICE-CHAIR HUGGINS aired the concerns of some of his constituents in that they believe a degree of protection for defending oneself is needed. He expressed support for the bill.

SENATOR THERRIAULT clarified a person would have no right to harm a law enforcement officer in the course of duty.

SENATOR GUESS referred to Page 2 line 10 where "to a certainty" was inserted. She asked for an explanation of the phrase.

SENATOR THERRIAULT deferred the question to the Department of Law but said that it was a very high standard.

9:14:20 AM

VICE-CHAIR HUGGINS asked for a representative from the Department of Law.

9:14:39 AM

MS. SUSAN PARKES, Deputy Attorney General, Criminal Division, Department of Law (DOL) said she met with Senator Therriault's staff to address some concerns about the bill. "To a certainty" was one of the issues discussed. The phrase is a higher standard than what is currently the law. The concern is the prosecution already has the obligation to disprove self-defense beyond a reasonable doubt. Adding that phrase makes it an almost impossible standard, however it is not defined and it would need to be when giving instruction to jurors.

9:16:39 AM

SENATOR THERRIAULT asked Ms. Parkes to speak more about gang scenarios and how the bill would affect that.

MS. PARKES said two years ago with the Governor's crime bill they carved out areas where self-defense could not be used as an excuse for violence. When engaged in a felony drug transaction or when promoting a gang objective, self-defense cannot be claimed. The DOL supports giving lawful rights to citizens to defend their families however, she expressed concern that SB 200 would protect criminals as well.

9:18:31 AM

SENATOR FRENCH commented the right to self-defense pre-dates government. He asked Ms. Parkes whether she has had

conversations with prosecution agencies in Florida to see whether the new law was working as intended.

MS. PARKES responded the DOL intends to contact Florida to check whether the law is working or if it has created problems.

SENATOR FRENCH said SB 200 is perceived by at least one high profile criminal defense lawyer as an avenue to make it more difficult for the state to prosecute gun crimes. It is currently very difficult to get over the self-defense hurdle. The flip side is that citizens should feel entitled to defend themselves. He solicited examples from anyone in the room or online instances of citizens having failed to defend themselves when they should have and/or citizens being prosecuted for defending themselves when they should not have been prosecuted.

[9:21:49 AM](#)

MS. PARKES commented currently a person has the right to use deadly force in a public place or anywhere under a lot of circumstances. That is already protected under current law. The biggest concern is the innocent bystander issue that Senator Guess raised. The law does not have the requirement that people be a "good shot."

[9:23:47 AM](#)

VICE-CHAIR HUGGINS asked Ms. Parkes the impact of civil liability in regards to the bill.

MS. PARKES informed the chairman that Section 1 gives immunity if self-defense was properly used. The DOL has no concerns regarding Section 1.

[9:26:28 AM](#)

MS. PARKES continued by noting much public support for people who want to protect their homes and businesses. Therefore the DOL is looking forward to working on the bill with Senator Therriault's staff. Representative Coghill has drafted an identical bill as well.

VICE-CHAIR HUGGINS asked for further testimony. Seeing none he announced the committee would set SB 200 aside.

SB 218-CRIMINAL SENTENCING AND POLYGRAPHS

[9:35:12 AM](#)

VICE-CHAIR CHARLIE HUGGINS announced SB 218 to be up for consideration.

SENATOR CON BUNDE, bill sponsor, introduced SB 218 with a short summary of the bill. SB 218 would increase the minimum sentence for the most egregious unclassified and Class A sexual felonies to a minimum of 25 years. It proposes to restructure and increase sentencing in Class C and Class B sexual offenses. It would require periodic polygraph testing for repeat sexual offenders who are on probation or parole and it would implement changes in the sex offender registry.

Alaska has the reputation of having the highest per capita sexual abuse rate in the nation. Reported cases are the tip of the iceberg since many offenses go unreported. Current laws are not working and serious changes must be made.

[9:39:14 AM](#)

SENATOR BUNDE advised the committee that the bill would be expensive for the state but a necessary cost. The polygraph is not admissible in court but other states have found it to work well at reducing recidivism rates. He indicated a report in the bill packet that shows treatment does not achieve the desired results and does very little to reduce re-offending. He thanked Senator Guess for her work on the bill.

[9:42:17 AM](#)

SENATOR GUESS moved to adopt a committee substitute (CS) for SB 218, version I. Hearing no objection, the motion carried.

SENATOR THERRIAULT asked for an explanation of the amendment that accompanied the CS.

VICE-CHAIR HUGGINS ordered committee members to hold off on the amendment process but asked Senator Guess to explain the proposed amendment.

SENATOR GUESS explained the amendment in the packet would be Amendment 1 at some point. It moves sexual assault of a minor 3 (SAM3) that has to do with sexual penetration to SAM2. It says that in Alaska sexual assault of a minor with penetration will be either a SAM1 or SAM2 offense. Also, an attempt at sexual penetration of a minor would result in a SAM3 charge. Current law says that an attempt would be a misdemeanor so the amendment would deem anything that has to do with sexual penetration of a minor to be an automatic felony.

[9:44:34 AM](#)

SENATOR THERRIAULT asked the outcome of a case that was pled down.

SENATOR GUESS deferred to Ms. Parkes except to say there were two areas: sexual penetration and sexual contact. The amendment deals specifically with penetration, which has a definition in statute. Sexual contact can be pled down to a misdemeanor.

[9:45:50 AM](#)

SENATOR BUNDE added the impact on the minor mentally and physically is far more egregious than the punishment doled out to the offender. SB 218 would prove that the state shows serious concern for the victims.

VICE-CHAIR HUGGINS called Anna Fairclough to testify.

[9:47:52 AM](#)

MS. ANNA FAIRCLOUGH, Executive Director, Standing Together Against Rape (STAR), testified their organization supports SB 218. Alaskans need to institute harsher and longer sentencing for better protection of its citizens. She claimed that as men age they become less likely to perpetrate so longer sentences would serve to help eliminate re-offenses.

[9:53:53 AM](#)

SENATOR FRENCH commented the use of a polygraph exposes far more victims than people are aware of. An Alaska Judicial Council report of 2004 said 91 percent of sexual assault in the first degree charges resulted in reduced charges. 79 percent of SAM1 and 83 percent of SAM2 cases ended up with reduced or dismissed charges. He expressed concern regarding the pressure within the system to reduce charges for expediency purposes.

[9:57:35 AM](#)

SENATOR BUNDE said that since all the sentences would be ratcheted up, there would still be substantially more time served even if the person were to plead down. However, he would rather the perpetrator be prosecuted to the fullest extent.

SENATOR GUESS referred to page 5 section 6 and highlighted the importance of the polygraph section as being a tool for protecting the public.

SENATOR THERRIAULT agreed with the polygraph section of the bill but expressed concern over the accompanying fiscal notes.

[10:01:45 AM](#)

VICE-CHAIR HUGGINS asked Senator Bunde whether the polygraph responsibility would lie with the Department of Corrections.

SENATOR BUNDE said yes but that the offender would have to bear some of the cost. He added that perpetrators are generally in a state of denial and the polygraph would help stem the deceit.

VICE-CHAIR HUGGINS called for representatives from the Department of Law (DOL) and the Department of Corrections (DOC) to testify.

10:04:47 AM

MS. SUSAN PARKES, Deputy Attorney General, Criminal Division, Department of Law (DOL) and MS. PORTIA PARKER, Deputy Commissioner, Department of Corrections (DOC) introduced themselves.

MS. PARKES advised the committee that the department fully support the bill. It targets sex offenders and sends a message throughout the state that this type of behavior will not be tolerated. The DOL normally operates in a reactive mode in response to re-offenders but the polygraph section would work as an active, important, pro-active tool. The department anticipates that there would be additional costs to the court system.

Plea-bargaining would continue to occur simply because sex abuse cases are difficult to prosecute. Often victims are found not competent to testify, and sometimes parents plead not to put the child on the stand. The system cannot allow every case to go to trial. She said four percent of all felony cases go to trial yet despite that, there is a backlog in the system. There has been a bill introduced by the Governor to increase the number of superior court judges around the state to deal specifically with the criminal backlog.

10:09:42 AM

On the average there are approximately 300 felony trials waiting for trial, and that includes homicide. Overall, despite plea-bargaining, SB 218 would still put sex offenders behind bars and once they are out they will be polygraphed. SB 218 also recognizes that there are people who should never get out of prison.

10:11:12 AM

SENATOR THERRIault asked Ms. Parkes whether the DOL has considered just using the polygraph system to keep perpetrators

from re-offending rather than also upping sentencing, which adds great costs to the state.

MS. PARKES said extending the sentences for repeat offenders is appropriate. In terms of the new ranges, they are higher for victims under 13 years of age, so that is a target area. Testimony shows there would be more victims were the sentences to remain lighter.

[10:13:30 AM](#)

MS. PARKER elaborated the US Department of Justice training shows using the polygraph is best practices, yet even with the best possible supervision, there are still re-offenders. The polygraph provides more information and results in better offender management and so it does allow for better supervision. When the full model is implemented, offenders tend to be more successful. Longer sentences should be dealt to repeat offenders and/or psychopaths for the safety of the public.

[10:17:17 AM](#)

Relapse is always a risk with sex offenders. The best thing about the polygraph is it gives a lot of information that can be shared with the treatment provider and with the supervising officer. It results in preventing crimes and provides for quicker intervention.

[10:19:12 AM](#)

SENATOR THERRIAULT wondered whether it made more sense to impose longer probation instead of longer sentences. He said since the polygraph has been proven to work in keeping sex offenders on the right path, would it be more cost effective to try longer probation with polygraph. He also asked the experience of other states that have used polygraph extensively.

MS. PARKER stated there was success when used with treatment and supervision with the polygraph. What offenders say is it is like having a constant leash. The polygraph test is usually given quarterly. Other states have lifetime probation for certain level sex offenders depending on risk. Incarceration is the only way to make sure the offenders are not out causing more victims.

[10:22:55 AM](#)

SENATOR THERRIAULT asked whether Alaska was obligated under the Interstate Compact Act to accept sex offenders from other states.

MS. PARKER said due to the Interstate Compact Guidelines interstate travel is easier for sex offenders. However, under certain conditions Alaska has the ability to disallow sex offenders from entering the state.

SENATOR THERRIAULT asked whether Alaska would be able to impose a polygraph on someone who was convicted on a sex offense under a jurisdiction that did not have the polygraph testing.

MS. PARKER said absolutely.

10:24:08 AM

SENATOR FRENCH asked Ms. Parker whether polygraph testing could be instituted for the people who were already in prison serving their sentences for a sex abuse crime.

MS. PARKER informed members there is a current project for sex offenders on parole to get a special condition added that allows for the polygraph but they currently are limited to the number of offenders they can polygraph due to a shortage of examiners. The DOC is specifically asking to add the polygraph for high-risk offenders as a condition of their parole.

10:26:29 AM

SENATOR FRENCH asked whether probation officers would be trained to administer polygraphs and how the examiners would cover the state.

MS. PARKER advised that the DOC does not currently have corrections officers run polygraphs. They use a sex offender specific provider. Colorado first started in 1989 by requiring that all sex offenders be subject to polygraph testing as a condition to parole and they went from using two to using 33 polygraph examiners. She recommended that Alaska have more than one provider in the case of disputes. The contractor would travel to remote locations. There are providers who desire to come to Alaska but have not yet as there currently is not enough work.

10:29:54 AM

SENATOR FRENCH asked whether the DOL expects a court challenge to the law regarding extended sentences. He expressed concern that the proposed sentence ranges are stiffer than murder in the second degree.

MS. PARKES admitted that is a concern, which has been discussed. The bill proposes a dramatic jump on the sentence range. She

encouraged the Legislature to put on the record the findings behind why the changes are being made. A letter of intent or appropriate justification would be in order to pro-actively address any such challenges.

[10:32:02 AM](#)

SENATOR GUESS mentioned she and Senator Bunde were aware of the findings requested by the DOL.

SENATOR THERRIAULT asked whether a letter of intent would be enough or whether findings were necessary.

MS. PARKES stated actual findings would give the basis and the facts the Legislature relied to reach their conclusion.

SENATOR GUESS asked whether a polygraph could be added to probation conditions for people who were currently in prison.

[10:34:45 AM](#)

MS. PARKES responded people who have already been sentenced with conditions already set by a judge probably could not have additional conditions added.

MS. PARKER added with parole there is no supervision unless the person already has probation.

SENATOR THERRIAULT mentioned one of the fiscal notes was signed by the director of the Office of Public Advocacy and asked whether that was a technical issue.

Vice-Chair Huggins held SB 218 in committee.

There being no further business to come before the committee, Vice-Chair Huggins adjourned the meeting at [10:36:55 AM](#).