

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 31, 2006
9:38 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

Confirmation Hearing: Regina Chennault, Violent Crimes
Compensation Board
CONFIRMATION ADVANCED

SENATE BILL NO. 237

"An Act increasing the number of superior court judges designated for the third judicial district, to provide additional superior court judges at Anchorage, Palmer, and Kenai; and providing for an effective date."

BILL HEARING POSTPONED

CS FOR HOUSE BILL NO. 41(FIN)

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school or certain contractors of school districts who were engaged in the performance of school duties at the time of the assault."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 41

SHORT TITLE: ASSAULT ON SCHOOL EMPLOYEES/BUS DRIVERS

SPONSOR(s): REPRESENTATIVE(s) LYNN, MCGUIRE

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	JUD, FIN

01/19/05 (H) JUD AT 1:00 PM CAPITOL 120
 01/19/05 (H) Heard & Held
 01/19/05 (H) MINUTE(JUD)
 01/26/05 (H) JUD AT 1:00 PM CAPITOL 120
 01/26/05 (H) -- Meeting Canceled --
 02/02/05 (H) JUD AT 1:00 PM CAPITOL 120
 02/02/05 (H) <Bill Hearing Postponed to Fri. 2/4/05>
 02/04/05 (H) JUD AT 1:00 PM CAPITOL 120
 02/04/05 (H) -- Rescheduled from Wed. 2/2/05 --
 02/07/05 (H) JUD AT 1:00 PM CAPITOL 120
 02/07/05 (H) Moved CSHB 41(JUD) Out of Committee
 02/07/05 (H) MINUTE(JUD)
 02/09/05 (H) JUD RPT CS(JUD) 2DP 4NR
 02/09/05 (H) DP: ANDERSON, MCGUIRE;
 02/09/05 (H) NR: GRUENBERG, GARA, COGHILL, DAHLSTROM
 03/30/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/30/05 (H) <Bill Hearing Postponed>
 04/04/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/04/05 (H) Moved CSHB 41(FIN) Out of Committee
 04/04/05 (H) MINUTE(FIN)
 04/06/05 (H) FIN RPT CS(FIN) NT 2DP 6NR 1AM
 04/06/05 (H) DP: WEYHRAUCH, FOSTER;
 04/06/05 (H) NR: HOLM, STOLTZE, MOSES, KELLY, MEYER,
 CHENAULT;
 04/06/05 (H) AM: HAWKER
 04/13/05 (H) ENGROSSED
 04/14/05 (H) TRANSMITTED TO (S)
 04/14/05 (H) VERSION: CSHB 41(FIN)
 04/15/05 (S) READ THE FIRST TIME - REFERRALS
 04/15/05 (S) JUD, FIN
 01/31/06 (S) JUD AT 9:30 AM BUTROVICH 205

WITNESS REGISTER

Dr. Regina Chennault, Physician
 PO Box 1129
 Soldotna, AK 99669

POSITION STATEMENT: Confirmation Candidate

Representative Bob Lynn
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 41

Anne Carpeneti, Assistant Attorney General
 Criminal Division
 Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Commented on HB 41

Toni Hartley, Secretary

Pioneer Peak Elementary

MatSu Valley, AK

POSITION STATEMENT: Testified in support of HB 41

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:38:07 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

Confirmation: Regina Chennault - Violent Crimes Compensation Board

[9:40:20 AM](#)

CHAIR RALPH SEEKINS announced the first order of business to be the confirmation hearing of Dr. Regina Chennault. He asked Dr. Chennault to introduce herself.

DR. REGINA CHENNAULT described herself as a general surgeon in Soldotna and the vice chair for the State of Alaska for the National Committee on Trauma.

[9:41:55 AM](#)

CHAIR SEEKINS asked Dr. Chennault whether she has ever served on a board similar to the Violent Crimes Compensation Board.

DR. CHENNAULT said no. She has served on many different boards but not one related to violent crimes.

CHAIR SEEKINS asked the reason she desires to serve on the Board.

DR. CHENNAULT said during the course of her work she sees many victims of violent crimes and she cares about helping these people in methods other than surgery.

CHAIR SEEKINS asked the amount of time she has been a trauma surgeon.

DR. CHENNAULT responded seven years.

SENATOR HOLLIS FRENCH thanked Dr. Chennault for volunteering to serve the community. He asked her whether she has attended any meetings of the Violent Crimes Compensation Board.

DR. CHENNAULT said she has not, due to scheduling conflicts. She plans on attending the next meeting.

SENATOR FRENCH asked how this particular Board came to her attention.

DR. CHENNAULT responded she wanted to volunteer in the community and was directed to a couple of choices. She felt she would be best qualified to serve on the Violent Crimes Compensation Board.

SENATOR FRENCH asked whether she was doing other community service.

DR. CHENNAULT informed the committee she is also on the Kenai Peninsula College Advisory Board for Education for Emergency Medicine Workers.

[9:44:01 AM](#)

CHAIR SEEKINS informed Dr. Chennault that her recommendation would be forwarded to the President of the Senate. This does not reflect any intent of any members of The Senate Judiciary Standing Committee to vote for or against the individual during any further session.

Senator Gene Therriault joined the meeting.

SENATOR CHARLIE HUGGINS moved to forward Dr. Chennault's name to the Senate President for consideration during a joint session for confirmations. Hearing no objection, the motion carried.

CHAIR SEEKINS announced a brief recess at [9:45:27 AM](#).

HB 41-ASSAULT ON SCHOOL EMPLOYEES/BUS DRIVERS

[9:46:55 AM](#)

CHAIR RALPH SEEKINS announced HB 41 to be up for consideration.

REPRESENTATIVE BOB LYNN, bill sponsor, introduced the bill. HB 41 passed unanimously in the House at the end of the previous session. HB 41 establishes a mandatory minimum term of 60 days for anyone convicted of a misdemeanor assault of a school employee during official performance of duties. It would provide

the same level of protection to teachers and other school employees as currently held to protect police officers, firefighters, and other emergency responders. The bill is complimentary to Governor Frank Murkowski's HB 88, which was recently signed into law.

Misdemeanor assaults on teachers or employees are not the same as with individual private citizens. It is an assault of an official representative of the government. The job of a school employee can be dangerous as a result of unruly parents and others.

[9:51:12 AM](#)

SENATOR GRETCHEN GUESS asked the reason the class of employees was not simply included under AS 12.55.135(d)(1).

REPRESENTATIVE LYNN said the drafters felt it should be listed under its own subparagraph.

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL), explained HB 41 was drafted by legislative affairs and school employees were noted separately for clarification purposes. Also the bill has been amended and so the caveat at the end would only apply to mandatory minimums for school employees.

SENATOR HOLLIS FRENCH noted the reason punishment is stronger for people who assault police officers, firefighters and emergency responders is because they occupy a uniquely dangerous job. Dozens of police officers have lost their lives performing their duty. He asked Representative Lynn the rationale for making an assault on a school employee exactly the same as an assault on a police officer.

[9:54:21 AM](#)

REPRESENTATIVE LYNN advised he is a former police officer and recognizes it is a dangerous job. School employees protect children and society must protect them. He maintained that testimony would prove HB 41 was necessary. The Alaska Chiefs of Police endorse the bill.

[9:56:20 AM](#)

SENATOR FRENCH asked Representative Lynn whether he believed that school teaching was as dangerous an occupation as being a police officer.

REPRESENTATIVE LYNN said perhaps not. But, he said, children are a precious asset. He asserted the need to provide safety in the schools.

SENATOR FRENCH agreed safety in the schools was a problem but admitted he was struggling with some of the implications. One thing to realize is that the same assault would get handled differently when it happens on school grounds. He worried about the "bandwagon effect". Prosecutors also perform a dangerous job, putting bad people in jail for a long time in a confrontational way. He recognized there are many people who perform a variety of dangerous jobs but do not receive special protection from the law. He said judges are able to sort out cases and provide the appropriate punishment to the offender.

[9:59:09 AM](#)

SENATOR FRENCH continued HB 41 would allow a defendant who has been found guilty of assault to propose a mitigator, which is rarely used in misdemeanor sentencing. Mitigator 6 says in a conviction for assault, under AS 11.41.200-220, the defendant acted with serious provocation from the victim. He noted the assault statute (AS 11.41.230) was not listed. He asked Ms. Carpeneti whether a change should be made in mitigator number 6 to make it clear to the court that the mitigator would be available.

[10:00:41 AM](#)

MS. CARPENETI said it would be a big change in sentencing law. At this point prosecutors can argue aggravating factors just because they make sense. It is not mandatory like it is with felonies and it is not something the courts make findings on like they do with felonies. It's also a different burden of proof. The DOL was not a part of the addendum and are also concerned about it. She said Senator French was correct in cautioning the committee to consider the implications. If the Legislature would want the mitigator to apply, they would have to change it. Ms. Carpeneti said she would not advocate for it though.

[10:02:34 AM](#)

SENATOR FRENCH referred to an assault at Clark Middle School where the assault was basically a belly bumping between an angry parent and a school administrator during an evening get-together. It was minor but was technically an assault. This would be the kind of issue that the courts would have to face. He expressed unease that HB 41 would require the person to go to jail for 60 days.

REPRESENTATIVE LYNN pointed out that the prosecutor retains discretion on how to proceed with the case.

SENATOR FRENCH asserted by leaving it up to a judge it would allow for that judge to look at the big picture and make the ruling fit the crime.

[10:04:49 AM](#)

SENATOR CHARLIE HUGGINS expressed support for the bill.

SENATOR GENE THERRIAULT referred to page 2, line 4 and asked whether a middle school would be covered.

MS. CARPENETI said she would check to make sure.

SENATOR THERRIAULT asked whether a parent who volunteers at the school would be covered.

MS. CARPENETI believed that subject was discussed on the House side and they would not be covered because they are not school employees.

SENATOR THERRIAULT asked whether a sports official would be covered.

MS. CARPENETI did not know whether sports officials were technically hired as employees.

[10:09:25 AM](#)

REPRESENTATIVE LYNN speculated that student teachers were under a contract even if they are not paid.

SENATOR THERRIAULT said they would not be covered because they were not employees by definition. Last year with the passage of HB 88, the Senate Judiciary Standing Committee inserted language that dealt with administrative offices. He asked how HB 41 would apply to administrative offices.

[10:11:16 AM](#)

MS. CARPENETI stated the DOL supports the bill and believes it works complimentary to HB 88. The concern is with the mitigating factors. There are mandatory minimums for many things such as drunk driving, driving without a license, and other types of assaults. Currently aggravating and mitigating factors allow a court to go above and beyond in certain circumstances. They don't have the kind of effect in misdemeanors that they do in

felonies. A big concern would be how HB 41 would affect drunk driving laws. In terms of "at the administrative office", the language is not in the bill and so it would have to be added if the provision is desired.

SENATOR GUESS asked whether a teacher walking out to the parking lot would be covered.

MS. CARPENETI said it would depend on the circumstances.

[10:14:23 AM](#)

CHAIR SEEKINS asked whether somebody assaulting a student would fall under HB 41.

MS. CARPENETI responded the bill did not currently cover that situation.

CHAIR SEEKINS said he believes the primary person who needs protection is the student. He asked Senator Therriault to look up the language on HB 88.

REPRESENTATIVE LYNN said he did not have a problem strengthening the bill.

CHAIR SEEKINS said the Senate Judiciary Standing Committee modified HB 88 last year by adding that a fourth degree assault on another person while on school property would get the aggravator.

[10:16:32 AM](#)

SENATOR THERRIAULT affirmed that is how the bill left the committee.

CHAIR SEEKINS asked Representative Lynn whether he would object to amending the bill to include all persons if the offense happened on school property.

REPRESENTATIVE LYNN reported he would not object and would be pleased.

MS. CARPENETI said she could not think of any reason to object at the time. She pointed out the bill would not apply to children assaulting other children. Ms. Carpeneti read the description of fourth degree assault as "if the person recklessly causes physical injury to another person or with criminal negligence, causes physical injury to another person by means of a dangerous instrument."

[10:18:44 AM](#)

CHAIR SEEKINS noted the definition of "dangerous instrument" is broad. He said he would consider a conceptual amendment to include covering anyone on school property.

[10:20:14 AM](#)

CHAIR SEEKINS asked Representative Lynn to take that concept to the drafters and get back to the committee. He asked Senator French to comment on the mitigating factors.

SENATOR FRENCH said he does not want mitigators to apply to misdemeanors because of the bandwagon effect. He also expressed concern that a minor dispute, out of view of any children, would automatically get a term of 60 days in prison, which is the same for anyone who assaults a police officer.

[10:21:49 AM](#)

SENATOR FRENCH noted the committee should clarify the types of schools the bill would apply to.

[10:24:14 AM](#)

REPRESENTATIVE LYNN offered to circulate a memo of explanation.

MS. CARPENETI said the bill would apply to private schools but not to preschools.

SENATOR GUESS asked for clarification on home schools.

SENATOR THERRIAULT asked Representative Lynn whether there was a pattern of weak sentences being handed down for assaults on school employees.

REPRESENTATIVE LYNN asserted the bill addressed future assaults on school grounds and would serve to ensure the incident is dealt with appropriately. He said not only is it a local problem but it is a national problem.

SENATOR THERRIAULT asked Ms. Carpeneti to comment in regards to additional prison costs to the state.

[10:27:12 AM](#)

MS. CARPENETI said the few cases she knows of the judges have dealt out punishment that was satisfactory to the prosecution.

SENATOR GUESS requested Representative Lynn to add a fiscal note from the court system to the bill packet.

[10:28:58 AM](#)

MS. TONI HARTLEY, Secretary, Pioneer Peak Elementary, expressed full support for HB 41. She testified she was assaulted on May 6, 2005 by an angry parent while on school grounds. She sustained several punches to the head and was thrown to the ground. She asserted that safety at her school is now being widely questioned. The parent who assaulted her was served with a restraining order, which she then violated - demonstrating a lack of respect for the law. Ms. Hartley has had continuing doctor visits and physical therapy as a result of the attack. The medical bills have amounted to over \$11,000. She questioned whether anger management classes would serve the assailant any good.

[10:33:38 AM](#)

MS. HARTLEY continued her assailant was not handcuffed or escorted off the school grounds on the day the assault occurred. At Pioneer Peak Elementary the principal has also been verbally attacked and threatened by parents and a nurse was chased down the hallway by a parent who learned they were reported to the Office of Children's Services. A convicted sexual offender violated a restraining order and refused to leave a school classroom. Recently a middle-school student was attacked on a school bus. School district employees need legal recourse and protection. She urged the committee to pass HB 41.

[10:35:39 AM](#)

REPRESENTATIVE LYNN asked Ms. Hartley the sentence her assailant received.

MS. HARTLEY responded a conviction for assault in the fourth degree, anger management classes, and a letter of apology to Ms. Hartley. All fines and jail sentences were suspended.

[10:36:38 AM](#)

CHAIR SEEKINS held HB 41 in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:37:15 AM](#).