

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 8, 2006

8:48 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. 10

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

HEARD AND HELD

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."

HEARD AND HELD

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."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 10

SHORT TITLE: PARENTAL LIABILITY FOR CHILD'S DAMAGE

SPONSOR(s): SENATOR(s) GUESS, DYSON

01/11/05 (S) PREFILE RELEASED 12/30/04

01/11/05 (S) READ THE FIRST TIME - REFERRALS

01/11/05 (S) HES, JUD
 01/19/05 (H) HES AT 1:30 PM SENATE FINANCE 532
 01/19/05 (S) Heard & Held
 01/19/05 (S) MINUTE(HES)
 01/26/05 (S) HES AT 1:30 PM BUTROVICH 205
 01/26/05 (S) -- Meeting Canceled --
 04/04/05 (S) HES AT 1:30 PM BUTROVICH 205
 04/04/05 (S) Heard & Held
 04/04/05 (S) MINUTE(HES)
 04/06/05 (S) HES AT 1:30 PM BUTROVICH 205
 04/06/05 (S) Scheduled But Not Heard
 04/11/05 (S) HES AT 1:45 PM BUTROVICH 205
 04/11/05 (S) Moved CSSB 10(HES) Out of Committee
 04/11/05 (S) MINUTE(HES)
 04/12/05 (S) HES RPT CS FORTHCOMING 2DP 3NR
 04/12/05 (S) DP: DYSON, OLSON
 04/12/05 (S) NR: WILKEN, ELTON, GREEN
 04/13/05 (S) HES CS RECEIVED NEW TITLE
 01/19/06 (S) JUD AT 8:30 AM BUTROVICH 205
 01/19/06 (S) Scheduled But Not Heard
 01/24/06 (S) JUD AT 8:30 AM BUTROVICH 205
 01/24/06 (S) Scheduled But Not Heard
 01/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 01/25/06 (S) Heard & Held
 01/25/06 (S) MINUTE(JUD)
 02/01/06 (S) JUD AT 8:30 AM BUTROVICH 205
 02/01/06 (S) Heard & Held
 02/01/06 (S) MINUTE(JUD)
 02/08/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 237

SHORT TITLE: ADDITIONAL JUDGES FOR THIRD DISTRICT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/13/06 (S) READ THE FIRST TIME - REFERRALS
 01/13/06 (S) JUD, FIN
 01/31/06 (S) JUD AT 9:30 AM BUTROVICH 205
 01/31/06 (S) <Bill Hearing Postponed>
 02/08/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Gretchen Guess
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 10

Gail Voitlander, Chief Assistant Attorney General
Tort's and Worker's Compensation Section
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 10

Tony Newman, Program Officer
Department of Juvenile Justice
Department of Health & Social Services
PO Box 110601
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POSITION STATEMENT: Commented on SB 10

Anne Carpeneti, Assistant Attorney General
Department of Law
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Brad Thompson, Director
Division of Risk Management
Department of Administration
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POSITION STATEMENT: Commented on SB 10

Susan Parkes, Deputy Attorney General
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PO Box 110300
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POSITION STATEMENT: Introduced SB 237

Chris Christianson, Deputy Administrative Director
Alaska Court System
303 K St.
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POSITION STATEMENT: Commented on SB 237

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:48:03 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

SB 10-PARENTAL LIABILITY FOR CHILD'S DAMAGE

[At the beginning of this meeting of the Senate Judiciary Standing Committee, the computer running the recording software suddenly rebooted. This caused the recording of the first seven minutes of the meeting to be lost. A backup recording can be found by following the link provided below. The minutes do reflect the meeting in its entirety.]

<http://old-mp.legis.state.ak.us/mpweb/scripts/mpx.dll>

08:49:00

CHAIR RALPH SEEKINS announced SB 10 to be up for consideration.

SENATOR GRETCHEN GUESS, sponsor, moved to adopt CSSB 10(JUD) version \0 as the working document before the committee. Hearing no objections, the motion carried. She said during the last bill hearing the committee made the decision to hold the state liable in the same manner the bill holds parents liable for acts of vandalism committed by their children. The key problem phrase is "state's custody," which has brought about some concern from the Department of Law. She said her intent was that the state should be held liable only once parental rights have been terminated. She advised the committee that she brought three different amendments for members to consider and would introduce them at the proper time.

Senator Gene Therriault joined the committee.

ANNE CARPENETI, Assistant Attorney General, Department of Law (DOL), advised the committee that the State of Alaska does have concerns regarding SB 10, which would hold the state responsible for children in its custody in the same manner that parents would be held responsible for children in their custody. She explained that the state is not in the same position as a parent since the state takes custody of children who commit delinquent acts and also children who have suffered long-term abusive situations.

The state takes custody of children due to many instances and, she maintained, these children are in no way similar to the average child who is under parental care. The state generally focuses on putting children in the least restrictive setting in order to help them recover from whatever has brought them to the state's custody. The concern is that if the state is held liable for acts of the children somewhere somebody will be thinking in terms of liability.

TONY NEWMAN, Program Officer, Division of Juvenile Justice (DJJ), said the impact of the state's liability would be mostly of personal liability, which is an issue with the torts section. He offered to answer questions.

[8:48:21 AM](#)

GAIL VOITLANDER, Chief Assistant Attorney General, Torts and Worker's Compensation Section, Civil Division, Department of Law (DOL), advised the committee the division has serious concerns about the scope of liability that SB 10 would impose under the sponsor's current and proposed amendments. She said:

The policy conflict has to deal with statutes affecting children who are adjudicated delinquent as well as those having to do with children in need of aide. The law is looking toward placement in the least restrictive setting in order to further rehabilitation for those who are adjudicated delinquents and to help best rehabilitate children who are in need of aide who have been removed from oftentimes incredibly damaging atmospheres at home.

MS. VOITLANDER continued the term "state's custody" includes a number of situations, such as children who have been initially removed from their home under federal law and have to be returned to the home under a trial setting with supervision. Although they are in state's custody, they are also in the day-to-day custody of the parents. They may also be in the custody of relatives or in foster care, both of which are technically under state's custody. They may be children in group homes or private institutions or in a state facility. The term includes a wide variety of situations.

There are approximately 2,500 children currently in state's custody. As currently written, the bill would expose the state to potential liability up to \$15,000 in property damage for each of the 2,500 children.

[8:52:02 AM](#)

In addition to the state responding directly to third-party claims, the potential amendment labeled 24-LS0115\0.1 would allow the following situation: There could be payments that are made by insurance companies on behalf of the insured parents who then would attempt to recoup the monies that they paid on the homeowner's policy from the state. The potential amendment labeled 24-LS0115\0.2 would affect up to 250 children and would still create issues of insurers seeking to recoup the monies they have paid from the state.

The potential amendment labeled 24-LS0115\0.3 would remove the amendment imposed on the bill the week prior and take the bill back to status quo in terms of the state, which means that victims of property damage look to the children, the parents, and their insurance for compensation.

8:55:46 AM

The fiscal impact to the state, even with a conservative estimate that only five to ten percent of the children would generate a claim, would still mean very serious money that the state would be liable for. Concerns over the previous fiscal note submitted by the DOL have been addressed and the note was corrected. The previous fiscal note was operating on the premise that the state was being made liable for restitution in juvenile adjudication cases for crimes against persons and that conflicted with certain state's immunities and put the DOL in conflict situations. Since that was never the intent of the sponsor, the department submitted a replacement fiscal note.

8:58:19 AM

MS. VOITLANDER offered to answer questions.

SENATOR GUESS clarified in the case of a child in state's custody with parental rights intact, the parents would still have liability. It is not the case that if parental rights have been terminated that the parents would have a liability. In the case of property damage, if parental rights have been terminated, the \$15,000 cannot be recouped from the parents or the juvenile for equal protection reasons.

The potential amendment labeled 24-LS0115\0.1 would clean up the previous amendment to the bill. The potential amendment labeled 24-LS0115\0.2 reflects the state's liability but only termination of parental rights. The potential amendment labeled 24-LS0115\0.3 would remove all the state liability.

SENATOR GUESS said those are the three potential amendments before the committee and she and Senator Dyson trust the Senate Judiciary Committee to make a good decision.

9:00:48 AM

CHAIR SEEKINS recognized that the state prefers to put minors in the least restrictive setting but he questioned the potential impact to society. Counselors have suggested that is the best way for the child to head toward normalcy. On the other hand, a problematic child could cause considerable damage to other

people or property. He said it appears that in the case of a runaway child there would be no responsibility on the part of the parents.

9:02:47 AM

SENATOR GUESS advised the committee that the runaway situation was language that was worked out four years ago with Senator Dyson in the Senate Health, Education and Social Services Standing Committee. The bill sponsors made the decision not to change it. It was a policy call at that time by the Legislature to not hold parents liable for runaway children.

MR. NEWMAN said he thought it would be constructive to provide the committee with a description of the types of damages that occur for children in state's custody. In fiscal year 2005 the Office of Children's Services (OCS) and the DJJ had approximately 2,500 juveniles in state's custody. Twenty-four of those children caused approximately \$21,000 worth of damages while in state's custody; \$10,000 of which was done in juvenile facilities and \$11,000 was done on the outside by the OCS placement kids. Not one individual bit of damage was over \$5,000. Most of them were in the hundreds of dollars range. The state typically paid for the damages and the youth was brought to court and ordered to pay the restitution. In addition, the juveniles are routinely required to work off the damages in community service.

MR. NEWMAN expressed concern over the bill and said if the juvenile were held responsible for restitution and s/he is incarcerated, it would take longer for the restitution to be repaid overall.

9:06:22 AM

SENATOR GUESS responded the victim, in this case the State of Alaska, would always have the ability to waive restitution and come up with an alternative plan. Under SB 10, instead of having the state or the court make that judgment, the victim would be allowed to waive restitution. The DJJ would not change the way it handles cases.

MR. NEWMAN wondered what the process would be in the case of when the state is both the victim and the prosecutor. He said it would set up a conflict.

9:07:39 AM

SENATOR FRENCH noted Mr. Newman informed the committee that one percent of the children in state's custody caused damage in

fiscal year 2005 yet Ms. Voitlander testified that the vandalism rate was 10 percent. He asked Ms. Voitlander to respond.

[9:09:02 AM](#)

MS. VOITLANDER responded Mr. Newman was speaking about one very small component of the exposure that SB 10 makes. He was confining his numbers to DJJ kids in a youth facility and only the claims that are brought informally by a foster parent. There is a regulation that caps the property damage that foster parents can request at \$5,000 and that includes several limitations. For example if the homeowner has an insurance policy they must file a claim with them. Under regulations the homeowner has to get the property damage covered by their insurance.

Mr. Newman's numbers also do not reflect third-party claims such as claims by a school district or a neighbor. His \$21,000 number is reflective of the very narrow group of those locked down in DJJ custody and those in state custody through OCS in a foster home where the juvenile did damage to the foster home and the foster parent has asked the state to pay restitution up to the \$5,000 regulation. The difference is that exposure for third party claims would create a far greater liability than Mr. Newman's \$21,000 number.

[9:12:43 AM](#)

SENATOR FRENCH asked Ms. Voitlander how she came up with her vandalism rate estimate for the 2,500 juveniles in state's custody.

MS. VOITLANDER said it was a conservative estimate based on Ms. Carpeneti's previous testimony. Juvenile delinquents and child in need of aide (CINA) children tend to have serious behavioral issues.

SENATOR FRENCH said he could appreciate that they were talking about a population at risk but he remained speculative about the data that she was citing.

MS. VOITLANDER responded she was making a rough estimate based on familiarity with the population and working with risk management.

[9:15:34 AM](#)

CHAIR SEEKINS expressed concern over the differing estimates of potential liability and said he has not previously been aware that there is as high a potential as Ms. Voitlander suggests.

MS. VOITLANDER responded most of the losses are traditionally covered by insurance, such as car insurance when a juvenile steals a car or homeowner insurance when a juvenile damages a home. State claims managers would be able to testify to those losses.

[9:17:39 AM](#)

CHAIR SEEKINS asked for discussion among the committee members.

SENATOR HUGGINS expressed concern that the state could be vulnerable for exploitation.

CHAIR SEEKINS asked Ms. Carpeneti whether foster parents are required to obtain and maintain a liability policy on the actions of a foster child.

MS. CARPENETI said she did not know.

MS. VOITLANDER responded that OCS has not required foster parents to have a homeowner policy nor a liability policy because it is already difficult to recruit foster parents and they don't always own homes. Homeowners are required by the mortgage company to hold a homeowners policy and many of them cover not only the asset but also general liability and negligent acts that result in personal injury.

[9:22:32 AM](#)

CHAIR SEEKINS said the intent of the bill is to find a good balance for the liability.

SENATOR HUGGINS asked for clarification over who would be liable in the case of the foster parent.

SENATOR GUESS explained it would depend on whether the case was adjudicated in criminal court or went through civil court. Under 24-LS0115\0.1 it would be the state's liability. Under 24-LS0115\0.2 it would be the responsibility of the natural parents if the parental rights were not terminated.

SENATOR FRENCH posed a hypothetical situation of a child living in a foster home and burns down a house. The child is responsible for the first \$5,000, the natural parent is responsible for the next \$15,000 and the child is responsible for the rest.

SENATOR GUESS said that would be the case under 24-LS0115\0.2. The logic is that in the situation where families are trying to get back together, the parent would still have the responsibility even if that child had been taken away.

[9:26:13 AM](#)

SENATOR HUGGINS said he was struggling with holding the parent responsible when the child is out of their direct control.

MS. VOITLANDER referred the committee to AS 34.50.020(a) and said:

Damages for which parents are liable should be apportioned by the court without regard to legal custody but with due consideration for the actual care and custody provided by the parent. That is a factor that the court considers.

For example, she continued, there could be a situation where the parents are in the process of divorce and one parent has physical care and custody of the teenager and the other parent resides elsewhere. While that parent still has parental rights, they do not have day-to-day custody and the court would consider that fact.

[9:28:21 AM](#)

SENATOR FRENCH said nevertheless the parents would still be liable for \$15,000 worth of the damages.

MS. VOITLANDER asserted the court would take all of that into account and determine whether either parent was liable.

[9:29:39 AM](#)

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration (DOA), informed the committee that the statute was revised in 1995 to clarify that the actual care and custody of the minor was required for the parent to be held strictly liable. Thus far the state has no claim history because of the protection of the third party claim. In the administrative code, there is a method for the foster parent to come to the Department of Health and Social Services (DHSS) for reimbursement. Mr. Thompson read from the administrative code and said, "Modest damages and lost costs are normal in the care of children and are included in the standard rate, however the division will in its discretion reimburse a foster parent for damages and loss up to \$5,000 under [certain] circumstances." The agency has been making that remedy to the foster parent as

an additional benefit to them because of the services they perform.

[9:32:10 AM](#)

SENATOR FRENCH clarified that remedy is for when a foster child damages the property of the foster parent. He asked the remedy for when a foster child damages a neighbor's property.

MR. THOMPSON replied there is no remedy. As proposed in the bill, the state would be responsible for damages for some things that currently are protected by insurance. He said in a situation where a group of juveniles cause property damage and one of them is in state's custody, that is the one that the insurer would go after to recover the damages.

[9:34:03 AM](#)

CHAIR SEEKINS asked Mr. Thompson his experience on losses where claims are made.

MR. THOMPSON said the state has had notices of incidences but due to the existing statute they do not have to respond to them. The agency did recently pay the \$5,000 limit under the administrative code on an incident of vandalism to an uninsured building.

CHAIR SEEKINS announced a brief recess at [9:35:05 AM](#).

[9:47:34 AM](#)

CHAIR SEEKINS announced that the committee would continue on the bill the following day. He held SB 10 in committee.

SB 237-ADDITIONAL JUDGES FOR THIRD DISTRICT

[9:48:09 AM](#)

CHAIR RALPH SEEKINS announced SB 237 to be up for consideration.

SUSAN PARKES, Deputy Attorney General, Department of Law (DOL), informed the committee that Attorney General David Marquez had hoped to testify and take responsibility for the bill but was not available this morning. She spoke in his behalf. Due to his recent appointment as attorney general, Mr. Marquez has been traveling around Alaska and meeting with all the judges. SB 237 was prompted by his recognition of the heavy caseloads, particularly in the criminal division, and the case backlog.

[9:50:16 AM](#)

The purpose and intent of the bill is to alleviate the case backlog in the Alaska court system. She expressed support for the bill and said after 20 years with the DOL she could testify that cases are more complex and the system is more complex than in the past. For example, deoxyribonucleic acid (DNA) is now a part of many cases and not just sexual assault cases. Waiting for lab results, expert testimony notifications, and the increased use of technology slows cases down. Everything is becoming more technical and even expert testimony and qualifications are being litigated now.

[9:53:42 AM](#)

Complex cases today involve white-collar crime, computer crime, and methamphetamine laboratory (meth lab) cases. The number of items taken into evidence and the complexity of how the evidence has to be bagged and tagged and dealt with in court increases the amount of time that it takes the case to get to trial.

Victim's rights have significantly impacted cases as well and slows them down. Prosecutors are now required to meet with the victim and talk to them about the case. This is definitely appropriate but it slows the process down.

[9:55:25 AM](#)

The Alaska State Legislature has created new felonies, which adds additional pressure on the court system. Since 1965 Alaska has seen a 65 percent increase in felony referrals and a 15 percent increase in misdemeanor referrals. Currently in superior court there are more cases than can be tried. This is known as a "trailing calendar." Petitions to revoke felony probation is up as well and those have to be handled by the superior court.

[9:57:37 AM](#)

Palmer is the number one priority for additional judges due to the population explosion and the accompanying crime explosion. The dramatic increase in felony referrals in the Palmer area shows in the numbers. In 2002 there were 595 felony referrals and in 2005 it was up to 869. Again, the complexity of the cases significantly impacts the caseload and takes significantly more time to process through the courts.

[9:59:42 AM](#)

Palmer's trailing calendar currently has 161 felony cases set for trial with only two superior court judges to try them. Keep in mind these two judges try criminal cases part time because they have the child in need of aide (CINA) caseload and the

civil caseload. They are so overloaded they are holding night court.

[10:00:47 AM](#)

SENATOR CHARLIE HUGGINS asked Ms. Parkes the number of judges in each section of the state.

MS. PARKES said Palmer and Kenai each have two superior court judges. She deferred the Anchorage total to Mr. Christianson.

[10:01:29 AM](#)

CHRIS CHRISTIANSON, Deputy Administrative Director, Alaska Court System said Anchorage currently sports 13 superior court judges.

MS. PARKES mentioned that the trailing calendar in Anchorage has over 300 cases pending trial and four judges to try them. The trailing calendar in Kenai is 167 cases pending trial with two judges.

[10:04:11 AM](#)

Another impact is the relationship within the Alaska Bar Association. There are rarely trials where the defense and prosecution work together. There is animosity, a different way of doing business, and cases don't resolve as quickly as they should. She urged the committee to support the bill.

[10:06:18 AM](#)

SENATOR HUGGINS asked whether the City of Palmer could accommodate more than one additional judge.

MS. PARKES indicated it could.

MR. CHRISTIANSON added the Palmer courthouse was originally built with three courtrooms. Two courtrooms were added on six years ago and last year the Legislature appropriated the money to add two more courtrooms but the work hasn't begun due to the current high price of steel. Population in the valley has increased dramatically and is moving away from Palmer and up the Parks Highway.

[10:09:18 AM](#)

Discussions with the DOL, the Department of Corrections, and the Department of Public Safety show that eventually the state will have to open a separate court in the Wasilla area.

SENATOR HUGGINS asked Mr. Christianson whether the Palmer system could support two additional judges.

MR. CHRISTIANSON said he was not sure there was the space.

[10:11:31 AM](#)

SENATOR GRETCHEN GUESS suggested the committee expand the bill to provide for a second additional judge in the Palmer area once the courtroom space becomes available.

MR. CHRISTIANSON said that it could be years before they have additional space.

SENATOR GUESS asked Mr. Christenson whether the increases with the bill would meet current needs.

MR. CHRISTIANSON said it would take care of Kenai and Anchorage but that Palmer, with its continued growth, would continue to have additional needs.

[10:14:30 AM](#)

SENATOR GUESS asked the condition of the Southeast Alaska area.

MR. CHRISTIANSON said the Southeast area has not experienced the population growth that the South Central area has. Also, while Juneau does show a high caseload, not that many go to trial.

MS. PARKES added that the feedback from the Southeast area indicates they are doing fine. Also there is a good working relationship between the prosecution and the defense. The caseloads have gone up but they are managing them.

[10:18:52 AM](#)

SENATOR GUESS asked Ms. Parkes whether the findings section of the bill was necessary.

MS. PARKES replied the purpose was to make clear the legislative intent.

[10:20:16 AM](#)

SENATOR HOLLIS FRENCH concurred that the Anchorage courthouses were extremely busy. He noted the fiscal note was quite large and he urged Ms. Parkes and Mr. Christianson to properly prepare for a possible challenge.

SENATOR GUESS moved Amendment 1. Remove Section 1. She suggested the committee draft a letter of intent to accompany the bill so that the intent is clear. Hearing no objections, Amendment 1 was adopted.

CHAIR SEEKINS moved Amendment 2. Add one additional superior court judge to the fourth judicial district of Fairbanks.

10:22:30 AM

Hearing no objections, Amendment 2 was adopted.

CHAIR SEEKINS advised the people who were waiting to testify that they were not needed. He held SB 237 in committee.

10:23:56 AM

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 10:24:12 AM.