

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 14, 2006

9:34 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

SENATE BILL NO. 10

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

MOVED CSSB 10(JUD) OUT OF COMMITTEE

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

CS FOR HOUSE BILL NO. 107(FIN)

"An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

HEARD AND HELD

HOUSE BILL NO. 269

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

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
02/08/06 (S) Heard & Held
02/08/06 (S) MINUTE(JUD)
02/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/09/06 (S) Heard & Held
02/09/06 (S) MINUTE(JUD)
02/14/06 (S) JUD AT 9:00 AM BUTROVICH 205

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
 01/31/06 (S) Heard & Held
 01/31/06 (S) MINUTE(JUD)
 02/08/06 (S) JUD AT 8:30 AM BUTROVICH 205
 02/08/06 (S) Scheduled But Not Heard
 02/14/06 (S) JUD AT 9:00 AM BUTROVICH 205

BILL: HB 107

SHORT TITLE: INTERFERENCE WITH FISH & GAME ACTIVITIES
 SPONSOR(s): REPRESENTATIVE(s) RAMRAS

01/24/05 (H) READ THE FIRST TIME - REFERRALS
 01/24/05 (H) RES, JUD
 02/02/05 (H) RES AT 1:00 PM CAPITOL 124
 02/02/05 (H) Heard & Held
 02/02/05 (H) MINUTE(RES)
 02/09/05 (H) RES AT 1:00 PM CAPITOL 124

02/09/05 (H) Heard & Held
 02/09/05 (H) MINUTE(RES)
 02/16/05 (H) RES AT 1:00 PM CAPITOL 124
 02/16/05 (H) Moved CSHB 107(RES) Out of Committee
 02/16/05 (H) MINUTE(RES)
 02/18/05 (H) RES RPT CS(RES) NT 3DP 1DNP 4NR
 02/18/05 (H) DP: OLSON, ELKINS, RAMRAS;
 02/18/05 (H) DNP: SEATON;
 02/18/05 (H) NR: GATTO, LEDOUX, CRAWFORD, KAPSNER
 02/18/05 (H) FIN REFERRAL ADDED AFTER JUD
 03/02/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/02/05 (H) Heard & Held
 03/02/05 (H) MINUTE(JUD)
 03/04/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/04/05 (H) Moved CSHB 107(JUD) Out of Committee
 03/04/05 (H) MINUTE(JUD)
 03/07/05 (H) JUD RPT CS(JUD) NT 3DP 3NR
 03/07/05 (H) DP: GRUENBERG, ANDERSON, MCGUIRE;
 03/07/05 (H) NR: DAHLSTROM, COGHILL, GARA
 03/15/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/15/05 (H) Moved CSHB 107(FIN) Out of Committee
 03/15/05 (H) MINUTE(FIN)
 03/16/05 (H) FIN RPT CS(FIN) NT 2DP 6NR
 03/16/05 (H) DP: HAWKER, STOLTZE;
 03/16/05 (H) NR: WEYHRAUCH, CROFT, MOSES, KELLY,
 MEYER, CHENAULT
 05/08/05 (H) TRANSMITTED TO (S)
 05/08/05 (H) VERSION: CSHB 107(FIN)
 05/09/05 (S) READ THE FIRST TIME - REFERRALS
 05/09/05 (S) RES, JUD
 01/23/06 (S) RES AT 3:30 PM BUTROVICH 205
 01/23/06 (S) Heard & Held
 01/23/06 (S) MINUTE(RES)
 01/30/06 (S) RES AT 3:30 PM BUTROVICH 205
 01/30/06 (S) Moved SCS CSHB 107(RES) Out of
 Committee
 01/30/06 (S) MINUTE(RES)
 02/01/06 (S) RES RPT SCS 3DP 4NR SAME TITLE
 02/01/06 (S) DP: WAGONER, DYSON, STEVENS B
 02/01/06 (S) NR: ELTON, KOOKESH, SEEKINS, STEDMAN
 02/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
 02/09/06 (S) Scheduled But Not Heard
 02/14/06 (S) JUD AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

Senator Gretchen Guess

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 10

Anne Carpeneti, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on HB 41

Representative Bob Lynn
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 41

John Alcantra, Political Organizer
Government Relations
NEA Alaska
4100 Spenard Road
Anchorage, AK 99517
POSITION STATEMENT: Testified in support of HB 41

Jim Pound, Legislative Aide
Representative Jay Ramras office
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 107 for the sponsor

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:34:10 AM](#). Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

SB 10-PARENTAL LIABILITY FOR CHILD'S DAMAGE

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

[9:34:22 AM](#)

SENATOR GRETCHEN GUESS, bill sponsor, moved CSSB 10 version \K as the working document before the committee. Hearing no objections, the motion carried.

CHAIR SEEKINS noted no one was signed up to testify on the current version of the bill and so he closed public testimony.

SENATOR HOLLIS FRENCH moved CSSB 10(JUD) version \K out of committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

Chair Seekins announced a brief recess at [9:36:07 AM](#).

CSHB 41(FIN)-ASSAULT ON SCHOOL EMPLOYEES/BUS DRIVERS

[9:43:55 AM](#)

CHAIR RALPH SEEKINS announced CSHB 41(FIN) to be up for consideration.

REPRESENTATIVE BOB LYNN, bill sponsor, introduced himself for the record.

CHAIR SEEKINS said:

I have some concern about establishing in statute for the first time that I can find a mitigator on a misdemeanor. I understand, Representative Lynn, that was added in the House Judiciary [Standing] Committee, is that correct?

Representative Lynn said:

I think so. I'm not sure.

CHAIR SEEKINS asked Anne Carpeneti whether that was her recollection.

ANNE CARPENETI, Assistant Attorney General, Department of Law (DOL), said that was her recollection.

CHAIR SEEKINS said:

My concern is that we just don't have mitigators in misdemeanors.

MS. CARPENETI advised the committee that she looked through the minutes and saw an amendment that was added by Representative [Bruce] Weyhrauch. She was not certain whether it was added in the House Judiciary Standing Committee or whether it was added on the House Floor.

[9:45:58 AM](#)

SENATOR CHARLIE HUGGINS moved Amendment 1. Page 2, line 5, after the final "the"; eliminate the language through line 8 at the first semicolon. Hearing no objection, Amendment 1 was adopted.

SENATOR HOLLIS FRENCH moved Amendment 2. Page 2, line 5; reduce the term of imprisonment down to 30 days.

CHAIR SEEKINS objected.

SENATOR FRENCH explained the reasoning. Amendment 1 has taken out the mitigator, which did need to come out. He speculated the reason the mitigator went in was because some of the committee members on the House side were concerned about a possible punitive effect in the case of a "de minimus" assault, which is an assault that just barely qualifies under the statutory terms of an assault that occurred on school grounds. He insisted that a 60-day term of imprisonment was a long stretch of time in jail. This is the same term in prison that a person would get for a third DUI conviction.

[9:49:45 AM](#)

SENATOR FRENCH summarized by comparing the generally minimal assaults that occur on school grounds to those that happen against police officers. He suggested there should be a difference in penalty due to the striking difference between the two assaults, comparatively speaking.

SENATOR GRETCHEN GUESS asked Senator French whether the minimum penalty would be 30 days and if it were a more egregious assault, more time could be given.

SENATOR FRENCH advised the law would allow a judge to impose up to a year in jail. He reminded the committee that sometimes it is not the assault that determines the sentence so much as the offender.

SENATOR GUESS asked the current minimum for an assault conviction.

SENATOR FRENCH replied there is currently no statutory minimum.

[9:51:28 AM](#)

SENATOR GUESS asked Representative Lynn whether the minimum proposed by HB 41 would be 60 days for any assault that occurred on school grounds, even if it were unrelated to a school event and did not include a school employee.

REPRESENTATIVE LYNN said originally the bill specified the school employee. The committee substitute changed the language to "school grounds." He suggested the committee could add specified hours.

SENATOR GUESS spoke in favor of Amendment 2. She said the intent of HB 41 was good but given the breadth of the bill she worried that something the committee did not intend for to have a penalty of 60 days, in fact, would.

REPRESENTATIVE LYNN responded he would support a penalty of up to a year in prison. He asked committee members to maintain the 60-day minimum penalty.

[9:53:34 AM](#)

CHAIR SEEKINS asked Ms. Carpeneti to advise the committee on AS 11.41.230(a)(1-2).

[9:55:27 AM](#)

MS. CARPENETI read the statute:

Sec. 11.41.230. Assault in the fourth degree.

(a) A person commits the crime of assault in the fourth degree if

(1) that person recklessly causes physical injury to another person;

(2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument;

CHAIR SEEKINS noted under the statute, a casual shoving incident would not qualify.

MS. CARPENETI said the term "serious physical injury" is broadly defined in Alaska statutes.

CHAIR SEEKINS asked Ms. Carpeneti her experience of how the courts have interpreted physical injury.

MS. CARPENETI said very broadly.

CHAIR SEEKINS asked whether a person who slapped another person on school grounds could go to jail for 60 days.

MS. CARPENETI responded under HB 41, yes.

[9:57:07 AM](#)

SENATOR HUGGINS asked whether a student over 18 years of age would be subject to the penalties under the bill.

MS. CARPENETI said as the bill is currently drafted, yes.

CHAIR SEEKINS agreed with Senator French that people who interfere with policeman, paramedics, and firefighters doing their jobs are also interfering with a bigger mission and they should be penalized more strictly.

[9:58:38 AM](#)

REPRESENTATIVE LYNN retorted that he is a retired schoolteacher but has also been a policeman.

Roll call proved Amendment 2 failed 2-2 with Senators French and Guess voting yea and Senator Huggins and Chair Seekins voting nay.

CHAIR SEEKINS asked committee members whether the intent was to remove incidents that have nothing to do with school activities.

[10:00:22 AM](#)

SENATOR GUESS asked for a definition of school activity.

CHAIR SEEKINS speculated the intent was to cover school employees while on the way to and from the school grounds and while on the school grounds.

SENATOR GUESS read the definition of school grounds as listed in statute as "a building, structure, athletic playing field, playground, parking area or land contained within the real property boundary line of a public or private preschool, elementary school, or secondary school."

[10:02:23 AM](#)

CHAIR SEEKINS assumed it was anything that was school property. He said conceptually speaking someone could work with the drafter and eliminate activities that might take place that have no connection to a school activity.

SENATOR GUESS asked whether the idea was protection for when students were around.

CHAIR SEEKINS said it could be a parent-teacher association (PTA) meeting also.

REPRESENTATIVE LYNN said they are now known as PTSA or parent, teacher, student association and generally students are at those meetings.

[10:04:00 AM](#)

SENATOR FRENCH said the thrust is to impose special penalties for assaults taking place on school grounds. What the committee hasn't flushed out is when that happens. A fight that occurs between two adults in the middle of the night should not be considered under the bill. He suggested there be some limiting factor to say the assault would have to take place during normal business hours or during a school sponsored function.

CHAIR SEEKINS proposed a conceptual amendment to encompass the discussion and exclude an assault that is not connected with a school activity.

SENATOR HUGGINS moved Amendment 3. Exclude assaults not connected with school activities. Hearing no objections, Amendment 3 was adopted.

[10:05:29 AM](#)

CHAIR SEEKINS advised Representative Lynn that the committee liked the bill. He suggested that staff clean it up and return the following scheduled hearing.

[10:08:01 AM](#)

JOHN ALCANTRA, government relations, NEA Alaska testified in support of the bill. Formerly he ran the 911-dispatch center for the Kenai Peninsula Borough and said that first responders are advised of much information before reaching the scene of incident. Schoolteachers do not have that advantage, he noted.

[10:10:43 AM](#)

CHAIR SEEKINS closed public testimony and held HB 41 in committee.

CHAIR SEEKINS announced a brief recess at [10:11:13 AM](#).

HB 107-HUNTING/FISHING INTERFERENCE

[10:11:48 AM](#)

CHAIR RALPH SEEKINS announced CSHB 107(FIN) to be up for consideration.

JIM POUND, Legislative Aide to Representative Jay Ramras, introduced the bill for the sponsor. He informed the committee they would be hearing SCS CSHB 107(RES). Currently a person who purposefully interrupts another person from hunting, fishing, trapping, or viewing wildlife in Alaska can be charged with a crime but the courts are not permitted to grant damages for the actual attorney fees. The bill would correct that error and

would send a message to those who attempt to prevent people from earning a living off of the wilderness of Alaska.

MR. POUND urged the committee to support the bill and offered to answer questions.

10:13:29 AM

SENATOR GRETCHEN GUESS asked Mr. Pound for some examples in relation to page 2, lines 4-5.

MR. POUND informed the committee that it is existing language in the statutes.

CHAIR SEEKINS stated AS 11.81.900(a)(1) defines intention. He read from the statute.

- (1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

He said this refers to a person intentionally, not accidentally doing the act.

SENATOR GUESS posed the situation of combat fishing. She asked whether it was the intent of the bill to charge someone with a crime if they step in front of a person in order to catch a fish.

MR. POUND said no. The intent is to prevent people from intentionally interrupting the viewing opportunity of a photographer or the hunting opportunity of a hunter.

10:16:22 AM

CHAIR SEEKINS noted some examples of the intent would be a person stealing traps or destroying a viewing platform.

SENATOR CHARLIE HUGGINS said he has heard of organized groups of people with loud speakers and bells interrupting others from lawfully viewing or hunting wildlife. He asked Mr. Pound whether that often occurs in Alaska.

MR. POUND could not cite a case of that happening.

SENATOR HUGGINS opined about anti-war demonstrations in cemeteries.

[10:18:27 AM](#)

CHAIR SEEKINS mentioned that trappers who place their traps closer to urban areas frequently find their traps rendered ineffective by others. Under HB 107 it would be a violation of law, he stated.

MR. POUND corrected him and said that was already against the law. HB 107 adds language to current statute for recouping full attorney fees and reasonable associated costs.

[10:19:14 AM](#)

SENATOR FRENCH asked whether there were other instances in Alaska law that allow for full recovery of attorney fees.

MR. POUND said eminent domain allows for full recovery of reasonable fees.

SENATOR FRENCH countered in the normal course of law it would be an exception.

MR. POUND agreed.

SENATOR FRENCH asked Mr. Pound whether he was concerned about encouraging people to sue one another over incidental disturbances of wildlife.

MR. POUND said the issues would grow as the state experiences population growth. The bill is an opportunity to nip the behavior in the bud.

[10:20:45 AM](#)

CHAIR SEEKINS clarified the bill addresses specific intentional acts and does not refer to the incidental.

SENATOR FRENCH asked whether one combat fisherman who stepped in front of another fisherman to land a salmon on the Russian River would be intentionally interfering with that other fisherman.

MR. POUND said he did not believe that the bill would be taken to that extreme.

SENATOR FRENCH begged to differ.

[10:22:25 AM](#)

SENATOR FRENCH said there are instances that are trivial and should never go forward as lawsuits but they do. Combat fisherman do purposefully and intentionally step in front of others to land their fish. He expressed concern that the allowance of full attorney fees and reasonable costs would encourage people to file trivial lawsuits.

MR. POUND advised the committee of a case in Fairbanks where a superior court judge awarded Eugene Johnson punitive damages on his claim that another individual broke state law by freeing an injured wolf in a trap line. The decision awarded Mr. Johnson close to \$200,000.

[10:24:15 AM](#)

CHAIR SEEKINS said he was familiar with the case. A member of Friends of Animals clipped off a snare and allowed the wolf to escape. It was a deliberate intervention in a legal activity.

SENATOR GUESS observed that Alaskans take combat fishing to another level. She added that a commercial fisherman moving a boat into another fisherman's area could initiate a lawsuit as well. She wondered whether the bill would open up that type of situation.

MR. POUND responded the bill is referring to language already in existing statute. There is not a trend of that happening in commercial or sport fishing. HB 107 intends to change court rule and allow the judge to give full restitution when the case comes to civil court.

[10:25:58 AM](#)

SENATOR GUESS countered page 2 line 4 does not speak about the court. It adds a paragraph relating to the intentional act.

MR. POUND said he would interpret "physically interfering" as a person actually doing something physical. He speculated that a fisherman cutting off another fishing boat would not qualify under a definition of "physical."

SENATOR GUESS asked to get a clarification from legal.

SENATOR HUGGINS expressed support for the bill.

[10:28:33 AM](#)

MR. POUND noted the definition of "physical" is "pertaining to the body as distinguished from the mind" according to Ballentines Dictionary.

SENATOR FRENCH said the committee understands that HB 107 is a good idea but Senator Guess brings up a good point. He expressed interest in hearing an opinion from the United Fisherman of Alaska and from the legislative legal department before the bill leaves committee.

[10:31:20 AM](#)

CHAIR SEEKINS also expressed an interest in hearing an opinion from the legislative legal department.

SENATOR GUESS spoke for the record that she supports the bill. She maintained that she had concerns over some of the wording.

CHAIR SEEKINS held HB 107 in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:33:38 AM](#).