

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 8, 2006

8:34 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. 206

"An Act relating to material witnesses; and amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure."

HEARD AND HELD

SENATE BILL NO. 222

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, and furnishing consumer credit header information; and amending Rule 60, Alaska Rules of Civil Procedure."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 92(JUD)

"An Act relating to the purchase of interests in nonprofit corporations by the University of Alaska."

MOVED SCS CSHB 92(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 206

SHORT TITLE: DETENTION OF MATERIAL WITNESSES

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
02/16/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/16/06 (S) Heard & Held
02/16/06 (S) MINUTE(JUD)
02/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/27/06 (S) Scheduled But Not Heard
03/08/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 92

SHORT TITLE: UNIV. OF ALASKA & NONPROFIT CORP STOCK
SPONSOR(S): REPRESENTATIVE(S) KELLY

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) EDU, HES
04/05/05 (H) EDU AT 11:00 AM CAPITOL 106
04/05/05 (H) Heard & Held
04/05/05 (H) MINUTE(EDU)
04/06/05 (H) HES REFERRAL WAIVED
04/06/05 (H) JUD REFERRAL ADDED AFTER EDU
04/07/05 (H) EDU AT 11:00 AM CAPITOL 106
04/07/05 (H) -- Meeting Canceled --
04/12/05 (H) EDU AT 11:00 AM CAPITOL 106
04/12/05 (H) Moved CSHB 92(EDU) Out of Committee
04/12/05 (H) MINUTE(EDU)
04/14/05 (H) EDU AT 11:00 AM CAPITOL 106
04/14/05 (H) -- Meeting Canceled --
04/18/05 (H) EDU RPT CS(EDU) NT 1DP 5NR
04/18/05 (H) DP: LYNN;
04/18/05 (H) NR: THOMAS, WILSON, GATTO, SALMON,
NEUMAN
04/18/05 (H) JUD AT 1:00 PM CAPITOL 120
04/18/05 (H) Scheduled But Not Heard
04/19/05 (H) JUD AT 1:00 PM CAPITOL 120
04/19/05 (H) Heard & Held
04/19/05 (H) MINUTE(JUD)
04/22/05 (H) JUD AT 1:00 PM CAPITOL 120
04/22/05 (H) Moved CSHB 92(JUD) Out of Committee
04/22/05 (H) MINUTE(JUD)
04/26/05 (H) JUD RPT CS(JUD) NT 1DP 6NR
04/26/05 (H) DP: MCGUIRE;
04/26/05 (H) NR: KOTT, GRUENBERG, ANDERSON,
DAHLSTROM, COGHILL, GARA
04/28/05 (H) TRANSMITTED TO (S)
04/28/05 (H) VERSION: CSHB 92(JUD)
05/01/05 (S) READ THE FIRST TIME - REFERRALS
05/01/05 (S) HES
02/09/06 (S) HES REFERRAL WAIVED

02/09/06 (S) JUD REFERRAL ADDED
03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/02/06 (S) Heard & Held
03/02/06 (S) MINUTE(JUD)
03/08/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 206

Lauren Rice, Legislative Aide
Staff to Senator Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions related to SB 206

Dean Guaneli, Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 206

Derek Miller, Legislative Aide
Staff to Representative Mike Kelly
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions regarding HB 92

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:34:56 AM](#). Present were Senators Hollis French, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

SB 206-DETENTION OF MATERIAL WITNESSES

[8:35:09 AM](#)

CHAIR RALPH SEEKINS announced SB 206 to be up for consideration.

SENATOR CHARLIE HUGGINS moved to adopt version G as the working document before the committee. Hearing no objections, the motion carried.

SENATOR CON BUNDE explained that the impetus of the bill was derived from instances such as gang violence where witnesses, including victims, refused to talk to the police during the investigation. The bill would promote the rights of law-abiding citizens and the need to control crime.

[8:38:12 AM](#)

It would allow for temporary detention and identification of people who police have reason to believe have committed or are about to commit a crime, or have witnessed a crime. The person who is temporarily detained shall permit one or more photographs to be taken, shall verify their identity, and shall submit to fingerprinting. People would still retain their Miranda Rights and not have to answer any questions, he stated.

[8:40:49 AM](#)

LAUREN RICE, Staff to Senator Bunde, advised committee members that staff worked with the Department of Law (DOL) to create the committee substitute (CS). She highlighted the phrase "is about to commit a crime" and recognized that might make lawmakers nervous but said there is case law established that supports and defines that phrase.

[8:42:15 AM](#)

SENATOR GRETCHEN GUESS asked whether a person who is being temporarily detained has Miranda Rights.

SENATOR HOLLIS FRENCH explained Miranda Rights pertains to custodial interrogation.

SENATOR BUNDE said he might have been overbroad when saying that Miranda Rights would be intact. He suggested everyone knows they are not required to answer questions without legal advice.

SENATOR FRENCH said the CS seemed much different from the original version and asked Senator Bunde to explain the evolution of the bill.

SENATOR BUNDE said the original bill was awkward and ineffective. Version G is designed to help law enforcement during investigations, yet it would keep in mind citizen's rights.

[8:46:42 AM](#)

CHAIR SEEKINS said he could see how the bill could be easily abused. He posed a hypothetical situation of a group at a hunting camp where a state trooper suspects poaching and asks to take photographs and fingerprints. He said some people would have a real problem with that.

SENATOR BUNDE countered that the bill is tailored toward commission of a felony crime toward a person or property so that situation would not apply.

CHAIR SEEKINS said he did not agree that most people know when their legal rights kick in. He also expressed concern about people in the vicinity of a crime getting corralled into a crime scene and detained at length.

[8:51:02 AM](#)

SENATOR BUNDE countered a person could look at the Second Amendment in the same way. "We have to put up with a few idiots in order that the rest of us have rights," he said.

DEAN GUANELI, Chief Assistant Attorney General, Department of Law (DOL), explained the process of how the CS came about. He said the original version brought about questions as to how far the police should be able to go to collect witnesses. Anchorage Chief of Police Walt Monegan testified that the bill was a bit broader than necessary and that all they wanted was the ability to talk to people about crimes that had been committed. Mr. Guaneli assisted in revising the bill.

[8:53:57 AM](#)

MR. GUANELI referenced what he termed a "landmark decision" by the United States Supreme Court in the case *Terry versus Ohio*. The law gives police authority to temporarily detain a person who they have reasonable suspicion to believe has committed a crime. Police are trained and they know when they are allowed to make a "Terry Stop" where they stop someone in order to ask questions. Over the years the courts have placed restrictions on what police are allowed to do in a Terry Stop yet recently they have loosened up some of those restrictions. For example, Nevada has recently made it a crime for a person, during a Terry Stop, to refuse to give their name to the police.

[8:57:11 AM](#)

In Alaska it was once the law that the police could make a Terry Stop for a person they believed posed a significant danger to the public. More recently the Alaska Court of Appeals has

loosened up on that and specified that the detention must be brief. The detention must also be at the vicinity where the person is detained.

[8:59:13 AM](#)

SENATOR BUNDE excused himself to another committee.

SENATOR FRENCH clarified for the committee that the Terry Stop evolved due to the need for police to pat down suspects to ensure that they did not possess a weapon.

MR. GUANELI agreed but said it also allowed for the police to obtain names.

SENATOR FRENCH noted it was easy for police to confuse suspects with innocent bystanders. He cautioned Mr. Guaneli to be aware not to expand the concepts embedded in current law.

[9:02:01 AM](#)

MR. GUANELI said he was trying to keep the two groups distinct. He continued by advising the committee of the American Law Institute, a group that adopts model laws and their "model penal code" was adopted in Alaska in 1980 as the criminal code. They are a well-respected legal think tank and they have another model law of pre-arraignment procedure, which governs arrests and stops. One of the provisions in that model law permits police to stop witnesses of a crime. That model law has been cited by the criminal courts in Alaska with approval. "That is what this bill adopts," he said.

[9:05:30 AM](#)

MR. GUANELI referenced page 2(a)(1-2) and continued the reason he included law regarding suspects and witnesses is because when police come upon a gang shooting, they come across many people, some of whom are involved and some that are not. He said it was important that both provisions be set out.

[9:07:01 AM](#)

The primary concept of the two provisions is that for a crime against a person or a felony property crime where a person may have information that would aide in the investigation of that crime that the temporary detention is necessary to obtain or verify identification of the person.

[9:09:00 AM](#)

CHAIR SEEKINS asked whether the Section 2 provisions were all "ors."

MR. GUANELI said the section would be clearer if the provisions were set out in subparagraphs but they are all separate provisions.

CHAIR SEEKINS suggested that the bill needed to be drafted more clearly. He asked Mr. Guaneli for an example of "exigent circumstances."

MR. GUANELI deferred to Senator French.

9:11:02 AM

SENATOR FRENCH said he had the model code definition and it says that the model code supports requiring exigent circumstances for the stop of a witness. It takes the position that an officer may detain a witness only when a serious crime occurred recently; the officer reasonably believes that the witness's information will materially assist in the investigation, and the detention is necessary.

MR. GUANELI added subsection (d) tells the police what they can do in connection with a detainee. The bill would allow police to constitutionally verify the person's identification by viewing a governmental identification or by obtaining fingerprints.

9:14:45 AM

CHAIR SEEKINS said he understood the bill to be drafted so that it is not restricted or limited to crimes against a person or felony crime. Section 2 paragraph (1) ends with an "or" and so suggests that the law could be enacted for any crime.

MR. GUANELI agreed that the provision under (a)(1) does apply to any crime. However the provision under (a)(2) would apply only to crimes against persons or a serious crime against property.

9:17:57 AM

CHAIR SEEKINS said in effect, beyond the material witness side of things, the bill is casting a much wider loop.

MR. GUANELI said he does not believe the bill would allow police to detain any additional suspects of crimes that they are not currently able to detain.

CHAIR SEEKINS countered that it does add to the threat. If a person does not comply with the police they could charge that person with interfering with an officer of the law, even if there were no crime committed.

MR. GUANELI agreed.

9:19:33 AM

SENATOR FRENCH said the subject was troubling to consider but on the other hand he agreed it was wrong for people to be able to leave the scene of a crime when they have information. He suggested that officers snap pictures of the area and surrounding public in order to aid in the investigation.

9:22:57 AM

CHAIR SEEKINS opined federal officers sometimes use intimidation to force people outside of their constitutional rights. He said the committee would want to make sure they don't set people up in escapable situations.

MR. GUANELI promised to keep working on the bill.

9:25:38 AM

CHAIR SEEKINS referred to subsection (a)(2) and suggested it could be drafted more clearly.

MR. GUANELI agreed. He continued explaining the CS and said subsection (c) tells police what they can do in respect to witnesses of crimes. It would give an officer the chance to identify the person for future investigatory needs. Ultimately it is the obligation of every citizen to provide testimony in court unless they have a legal privilege not to.

9:28:46 AM

MR. GUANELI continued subsection (c) expands on the notion of the ability of the police to issue a subpoena even if the police do not know who the person is.

9:29:22 AM

CHAIR SEEKINS asked whether there was a difference between serving a subpoena and issuing a subpoena.

MR. GUANELI explained that serving a subpoena is where a designated official actually hands it to the person. Issuing a subpoena is something that the courts do.

CHAIR SEEKINS noted a police officer is not an employee of the court. He questioned who would issue the subpoena when a police officer serves it.

MR. GUANELI said subpoenas are issued by the court but are generally available to any party to serve.

[9:34:33 AM](#)

SENATOR FRENCH said there are times when simply identifying oneself could be incriminating. He said the issue was "an area of minefields."

MR. GUANELI did not agree. He said requiring someone to speak their name does not pose an infraction of rights.

[9:38:16 AM](#)

SENATOR FRENCH said that the US Supreme Court pointed out that there could be a case where furnishing identity at the time of the stop would give police a link in a chain of evidence needed to convict the individual of a separate offense.

[9:40:01 AM](#)

MR. GUANELI summarized his discussion of the bill and said Section 1 would be a change in statute in regards to contempt of court. He said it has been in need of amendment for years. With respect to violating a subpoena, the midlevel misdemeanor offense is appropriate.

[9:42:44 AM](#)

CHAIR SEEKINS said he has a construction problem with how the bill flowed and suggested that it needed re-drafting. He held SB 206 in committee.

CHAIR SEEKINS announced a brief recess at [9:46:32 AM](#).

HB 92-UNIV. OF ALASKA & NONPROFIT CORP STOCK

[9:54:45 AM](#)

CHAIR RALPH SEEKINS announced SCS CSHB 92(JUD) to be up for consideration.

DEREK MILLER, Staff to Representative Mike Kelly, advised the committee that the concerns of the previous meeting had been addressed.

[9:56:39 AM](#)

SENATOR FRENCH reported that Ms. Green of the University Council sent him a memo about the piercing of the corporate veil. He did not get an answer to his concern of whether other states have adopted the same model.

MR. MILLER indicated the bill was modeled after legislation from other states.

CHAIR SEEKINS closed public testimony.

SENATOR HUGGINS moved SCS CSHB 92(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

[9:58:53 AM](#) at ease [9:59:46 AM](#)

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:00:36 AM](#).