

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 12, 2006
8:37 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

CS FOR HOUSE BILL NO. 318(FIN) am
"An Act limiting the exercise of eminent domain."
MOVED SCS CSHB 318(JUD) OUT OF COMMITTEE

SENATE BILL NO. 134
"An Act relating to arrest; relating to investigation standards for police officers conducting criminal investigations and violations of those standards."
MOVED CSSB 134(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 441(FIN)
"An Act relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence; relating to court-ordered treatment programs for certain offenders and offenses; amending Rule 35, Alaska Rules of Criminal Procedure; and providing for an effective date."
MOVED SCS CSHB 441(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 318

SHORT TITLE: LIMITATION ON EMINENT DOMAIN

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, HOLM, HAWKER

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|----------|-----|---------------------------------|
| 01/09/06 | (H) | PREFILE RELEASED 12/30/05 |
| 01/09/06 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/09/06 | (H) | JUD, FIN |
| 01/11/06 | (H) | JUD AT 1:00 PM CAPITOL 120 |

01/11/06 (H) Heard & Held
01/11/06 (H) MINUTE(JUD)
01/25/06 (H) JUD AT 1:00 PM CAPITOL 120
01/25/06 (H) Heard & Held
01/25/06 (H) MINUTE(JUD)
02/01/06 (H) JUD AT 1:00 PM CAPITOL 120
02/01/06 (H) -- Meeting Canceled --
02/03/06 (H) JUD AT 1:00 PM CAPITOL 120
02/03/06 (H) Moved CSHB 318(JUD) Out of Committee
02/03/06 (H) MINUTE(JUD)
02/06/06 (H) JUD RPT CS(JUD) NT 3DP 1NR 2AM
02/06/06 (H) DP: WILSON, ANDERSON, MCGUIRE;
02/06/06 (H) NR: GRUENBERG;
02/06/06 (H) AM: GARA, KOTT
02/09/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/09/06 (H) Moved CSHB 318(FIN) Out of Committee
02/09/06 (H) MINUTE(FIN)
02/10/06 (H) FIN RPT CS(FIN) NT 2DP 3NR 3AM
02/10/06 (H) DP: HAWKER, MEYER;
02/10/06 (H) NR: KERTTULA, JOULE, WEYHRAUCH;
02/10/06 (H) AM: STOLTZE, HOLM, FOSTER
02/21/06 (H) TRANSMITTED TO (S)
02/21/06 (H) VERSION: CSHB 318(FIN) AM
02/22/06 (S) READ THE FIRST TIME - REFERRALS
02/22/06 (S) JUD, FIN
03/02/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/02/06 (S) Heard & Held
03/02/06 (S) MINUTE(JUD)
03/09/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/09/06 (S) Heard & Held
03/09/06 (S) MINUTE(JUD)
03/21/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/21/06 (S) Scheduled But Not Heard
03/22/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/22/06 (S) Heard & Held
03/22/06 (S) MINUTE(JUD)
03/28/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/28/06 (S) Heard & Held
03/28/06 (S) MINUTE(JUD)
03/30/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/30/06 (S) -- Meeting Canceled --
04/04/06 (S) JUD AT 8:30 AM BUTROVICH 205
04/04/06 (S) Heard & Held
04/04/06 (S) MINUTE(JUD)
04/06/06 (S) JUD AT 8:30 AM BUTROVICH 205
04/06/06 (S) Heard & Held
04/06/06 (S) MINUTE(JUD)

04/12/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 134

SHORT TITLE: POLICE INVESTIGATION STANDARDS/ARRESTS

SPONSOR(s): SENATOR(s) BUNDE

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) STA, JUD
03/17/05 (S) STA AT 3:30 PM BUTROVICH 205
03/17/05 (S) Heard & Held
03/17/05 (S) MINUTE(STA)
04/05/05 (S) STA AT 3:30 PM BELTZ 211
04/05/05 (S) Moved CSSB 134(STA) Out of Committee
04/05/05 (S) MINUTE(STA)
04/06/05 (S) STA RPT CS 1DP 4NR NEW TITLE
04/06/05 (S) NR: THERRIAULT, ELTON, HUGGINS, DAVIS
04/06/05 (S) DP: WAGONER
04/06/05 (S) FIN REFERRAL ADDED AFTER JUD
04/18/05 (S) JUD AT 8:30 AM BUTROVICH 205
04/18/05 (S) Scheduled But Not Heard
04/12/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 441

SHORT TITLE: THERAPEUTIC COURT FOR DUI

SPONSOR(s): REPRESENTATIVE(s) ROKEBERG

02/10/06 (H) READ THE FIRST TIME - REFERRALS
02/10/06 (H) JUD, FIN
02/24/06 (H) JUD AT 2:00 PM CAPITOL 120
02/24/06 (H) Moved Out of Committee
02/24/06 (H) MINUTE(JUD)
02/27/06 (H) JUD RPT 3DP 2NR
02/27/06 (H) DP: ANDERSON, GRUENBERG, MCGUIRE;
02/27/06 (H) NR: COGHILL, GARA
03/16/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/16/06 (H) Moved CSHB 441(FIN) Out of Committee
03/16/06 (H) MINUTE(FIN)
03/17/06 (H) FIN RPT CS(FIN) NT 9DP 1NR
03/17/06 (H) DP: FOSTER, KELLY, HOLM, MOSES, HAWKER,
JOULE, KERTTULA, MEYER, CHENAULT;
03/17/06 (H) NR: STOLTZE
03/30/06 (H) TRANSMITTED TO (S)
03/30/06 (H) VERSION: CSHB 441(FIN)
03/31/06 (S) READ THE FIRST TIME - REFERRALS
03/31/06 (S) JUD, FIN
04/12/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Craig Johnson, Legislative Aide
Staff to Representative Lesil McGuire
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 318

Dave Feekin, Realtor
Kenai, Alaska
POSITION STATEMENT: Testified in opposition to HB 318

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 134

Dean Guaneli, Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 134

Mary Anne Henry, Director
Office of Victim's Rights
1007 West 3rd Ave STE 205
Anchorage, AK 99501
POSITION STATEMENT: Commented on SB 134

Walter Monegan, Chief of Police
Anchorage Police Department
Anchorage, AK 99501
POSITION STATEMENT: Testified in support of SB 134

Representative Norman Rokeberg
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 441

Susan Parkes, Deputy Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions regarding HB 441

Doug Wooliver, Administrative Attorney

Alaska Court System
Juneau, AK 99801

POSITION STATEMENT: Answered questions regarding HB 441

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:09 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

HB 318-LIMITATION ON EMINENT DOMAIN

[8:38:14 AM](#)

CHAIR RALPH SEEKINS announced CSHB 318(FIN) AM to be up for consideration. The last bill hearing saw extensive amendments and so the drafters submitted a committee substitute (CS) for the committee's consideration.

CRAIG JOHNSON, Staff to Representative Lesil McGuire, introduced the CS. The staff and Peter Putzier from the Department of Law have reviewed the CS and feel that it appropriately reflects the intended changes. He advised that there need be one more change and that was on page 4, line 27 where the committee should remove the words "prior owner."

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

SENATOR HUGGINS moved Amendment 1. Page 4 line 27; strike the words "prior owner." Hearing no objections, Amendment 1 was adopted.

[8:40:17 AM](#)

CHAIR SEEKINS reminded the committee that he had previously closed public testimony but noting continuing public interest he opened public testimony on the bill.

[8:40:58 AM](#)

Senator Gretchen Guess joined the meeting.

DAVE FEEKIN, Alaska Association of Realtors, testified regarding the amendment that dealt with municipalities exercising power to acquire private property for the purpose of transferring title for economic development. He said the committee has essentially

allowed for the Kelo case to happen [*Kelo versus City of New London*].

Eminent domain is a national issue. For example, Florida has unanimously passed a constitutional amendment dealing with eminent domain for economic development on all properties including slums and blighted areas. There are currently 10,000 active cases of private property taking in the nation, which averages out to 200 per state. Alaska has none. The media has drawn attention to the point that the issue is now an election issue, he said. Passing the municipality amendment could restrict economic development money to blighted areas.

[8:44:23 AM](#)

MR. FEEKIN suggested that 50 years from now people would remember that the Legislature passed this bill.

SENATOR GUESS responded the Kelo case was different because the city council delegated authority to a non-profit entity and so it was not an elected body that made the decision. She asked Mr. Feekin whether the realtors have an opinion about the legislative language in the bill.

MR. FEEKIN said the discussion among realtors recognized that the New London city council delegated the authority but they also approved the action. The issue has gotten beyond the semantics of how New London did it, he said. The Alaska State Legislature is a more deliberate body and things don't move as fast and so the Association would rather see the authority left at a state level.

SENATOR GUESS said she appreciated the legislative process but noted that things can get put into a bill at the last minute and so she disputed his statement that legislative authority is better than local authority. Both local and legislative processes have pros and cons in this situation.

[8:47:53 AM](#)

MR. FEEKIN countered that eminent domain is not as large an issue in Alaska as it is in other states. Other states are going to extremes to protect private property and the Association believes that since it would take far more deliberative votes to decide the issue the authority should be left at the state level, especially noting that the decision would have to pass both legislative bodies.

SENATOR GUESS said she wanted to make it clear that it is not possible to determine whether local control or state control would benefit the community in consideration. It depends on the particular issue at hand and the politics of the day.

[8:51:49 AM](#)

CHAIR SEEKINS said that the committee perused legislation from other states and noted that they are all different. He surmised that the discussion would continue and the bill would change before it reached the Senate floor session.

SENATOR HUGGINS moved SCS CSHB 318(JUD) out of committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

At ease [8:54:32 AM](#)

SB 134-POLICE INVESTIGATION STANDARDS/ARRESTS

[8:56:35 AM](#)

CHAIR RALPH SEEKINS announced SB 134 to be up for consideration.

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

SENATOR CON BUNDE advised that the Office of Victim's Rights (OVR) supports the committee substitute (CS).

[8:58:15 AM](#)

SENATOR BUNDE said with a state as diverse as Alaska and the challenges of investigation, not all victims are treated with a high standard of investigation.

The bill was created at the request of the Department of Public Safety (DPS). The bill would charge the Alaska Police Standards Council (APSC) with creating standards and protocol for sexual assault investigations and would require that when an officer is privy to an admission of guilt that an arrest must be made at some point during the investigation.

Under current practices, crime victims and the public at large have no direct method to question the practices of police investigations or conduct. The bill would work to resolve that issue by relegating the office of the APSC the ability to take complaints and resolve issues.

[9:03:28 AM](#)

SENATOR GENE THERRIAULT asked Senator Bunde the reason the bill was tailored to crimes in the first degree since often there are plea bargains, which reduce the charges.

SENATOR BUNDE advised the plea-bargaining doesn't happen until after the charge. He wanted the bill to focus on the most serious crimes.

[9:05:20 AM](#)

WALTER MONEGAN, Anchorage Chief of Police, voiced support for SB 134. He said the Department intends to heighten professionalism during investigations.

SENATOR HOLLIS FRENCH shared Senator Bunde's concern that there might be many more cases than the public is aware of. He asked the number of cases that might apply wherein a sex assault has been investigated but not brought to charges. He said that is the person he sees who would go to OVR to file a complaint.

MR. MONEGAN said there are about 25 percent that the police department can do nothing with. That number represents the percentage of people who don't have much information but feel the need to report a possible case. He speculated that it was approximately 100-150 cases a year statewide.

[9:10:25 AM](#)

SENATOR BUNDE advised Senator French that the OVR would reserve the right to review the case to see if it warranted further investigation.

[9:12:51 AM](#)

SENATOR FRENCH voiced support for the bill but questioned the effective date and that the offense had to have occurred before July 10, 2003.

SENATOR BUNDE deferred the question to Dean Guaneli from the Department of Law.

CHAIR SEEKINS asked Senator Bunde to give the committee a brief summary of the CS.

SENATOR BUNDE said the CS is vastly different than the original bill. The original bill allowed that the APSC would develop universal standards and then enforce them. Law enforcement agencies disagreed with that concept.

CHAIR SEEKINS noted the fiscal notes have all been updated.

9:17:30 AM

MARY ANNE HENRY, Director, Office of Victim's Rights (OVR) voiced support for the bill but expressed concern regarding timely investigations. She has doubt that the OVR would garner the information that the bill sponsor is seeking. The reason is that the bill limits the OVR to only investigating and keeping statistics and complaints from a victim. That leaves a lot of sexual assaults that will be missed. Many victims do not complain to the OVR.

9:19:43 AM

MS. HENRY advised she has only been working for five weeks but has seen two cases where the victim did not come to OVR until it was too late so there was nothing they could do. The woman had originally advised the troopers about it but failed to follow up and the troopers admittedly "dropped the ball."

She cited another case where they noticed the investigation seemed to be taking too long. When she called to check into it she found out the investigating agency hadn't sent the DNA sample to the lab and nobody at the lab called looking for it.

She said she feared that if it is only limited to complaints from a victim that the office would not get the sexual assault cases the bill sponsor was trying to find. Once a victim has reported the assault and months go by, they give up and do not pursue it.

9:22:03 AM

MS. HENRY suggested having a requirement that all law enforcement agencies fax OVR a cover sheet whenever they take a rape complaint. The problem with tracking complaints versus investigations is that her jurisdiction is limited and she is only allowed to investigate when a victim complains.

9:24:36 AM

SENATOR FRENCH commended Ms. Henry for her work and said he envisioned a close relationship between OVR and APD. He suggested the two offices sit down on a quarterly basis and review the cases that are open and prosecutable.

MS. HENRY agreed that would be possible.

9:27:08 AM

SENATOR FRENCH asked whether the bill would give her the authority to review police reports and evidence.

MS. HENRY said yes.

SENATOR FRENCH asked whether she thought the effective date was acceptable. He noted that with new technology the testing of cold cases via DNA was seeing good results.

MS. HENRY said she wasn't involved in the effective date discussion.

9:31:58 AM

DEAN GUANELI, Chief Assistant Attorney General, Department of Law (DOL), explained the changes in the CS. He said although he appreciated the work on the bill, it wasn't clear that there was a systemic problem or whether it was the case of a particular officer needing additional training or whether it was something else.

9:36:00 AM

MR. GUANELI directed his comments to the question of the effective date. He said it was a reasonable date to choose to go back to because it would go back to a point where municipal agencies are still liable.

9:37:43 AM

The way the CS was drafted takes advantage of OVR's existing procedures and that means that OVR investigates only the complaints received from victims. They can request and review confidential records and work with the necessary agencies to resolve cases. He said it might be going too far to have law enforcement agencies reporting to the OVR because victims have a right to confidentiality even if it is being reported to an agency of the Legislature, which OVR is. Victim's rights statute limit how much information police can affirmatively divulge.

9:41:24 AM

MR. GUANELI said the existing procedures work well and he is comfortable with the CS as it stands. Commissioner Tandeske is satisfied as well, he said.

9:42:34 AM

CHAIR SEEKINS asked Mr. Guaneli whether investigatory agencies give out standardized information of service to victims.

MR. GUANELI said yes. The material varies from agency to agency.

CHAIR SEEKINS expressed an interest in reviewing the information that is provided to victims.

MS. HENRY advised the committee of the pamphlet given to victims. However it is very complicated and she is working on making it clearer.

[9:46:59 AM](#)

SENATOR GUESS asked how children and mentally disabled people are handled.

MS. HENRY said the legal guardian or parent generally files the complaint.

MR. GUANELI reminded the committee that the definition of victim for a child victim includes the parent.

[9:52:48 AM](#)

CHAIR SEEKINS asked Senator Bunde whether he approves of the bill as it is with the committee substitute.

SENATOR BUNDE said the CS was an adequate compromise.

CHAIR SEEKINS closed public testimony.

SENATOR GUESS moved CSSB 134(JUD) with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

At ease [9:54:24 AM](#)

HB 441-THERAPEUTIC COURT FOR DUI

[9:57:20 AM](#)

CHAIR RALPH SEEKINS announced CSHB 441(FIN) version to be up for consideration.

SENATOR GENE THERRIAULT moved to adopt version I as the working document before the committee. Hearing no objections, the motion carried.

REPRESENTATIVE NORMAN ROKEBERG introduced the bill and explained that it was a culmination of several years of effort to fund and organize wellness courts in the State of Alaska. Recently the Senate Judiciary Committee heard an overview from professionals around the country of how successful therapeutic courts were and Alaska should join the trend and get the courts up and running.

[10:02:57 AM](#)

SENATOR GRETCHEN GUESS referred to page 3 lines 11-13 and asked whether she was correct in her understanding that if a person has been to a therapeutic court more than twice that they can no longer participate in the program. She asked whether there were other court ordered programs that occurred in the person's distant past that would count them out of the wellness court.

REPRESENTATIVE ROKEBERG replied the intent was that if a person continually "messes up" then they wouldn't be allowed back into the program.

SENATOR GUESS asked whether it would count if they started the wellness court and dropped out.

REPRESENTATIVE ROKEBERG replied yes.

[10:04:36 AM](#)

SENATOR HOLLIS FRENCH asked the reason that the Anchorage ASAP program wouldn't count as a court-ordered treatment program.

[10:05:49 AM](#)

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, voiced support for the bill. To answer Senator French's question, that language refers to a court ordered treatment program under the new Section 28, which is limited to therapeutic court. Other failed attempts would not count toward the limit.

SENATOR FRENCH referred to page 4, subsection (c) and said it integrates the "no bail for convicts provision." He wanted to make sure there was no conflict between the two ideas.

MR. WOOLIVER responded there was no conflict because subsection (c) refers to people who have failed the program.

[10:08:30 AM](#)

SENATOR FRENCH said to be clear the person has pled guilty to the offense and so he was curious as to how they can justify in this case releasing the defendant to the court-ordered program and not to the Department of Corrections.

MR. WOOLIVER said this case would be meeting conditions of the bail because it is the judge-ordered continuation of the program.

SUSAN PARKES, Deputy Attorney General, Department of Law (DOL), agreed with Mr. Wooliver in that there was no conflict. The bail bill that Senator French was referring related to temporary releases and releasing someone for the purpose of attending a treatment program would be part of the bail conditions. The therapeutic court program is not a temporary program. If the person fails out of the program they would be remanded to new bail conditions.

[10:11:02 AM](#)

MR. WOOLIVER advised the committee that the program was already underway in many parts of the state and the DOL is currently developing other models.

SENATOR FRENCH asked whether the bill changed any DUI look-back provisions.

MR. WOOLIVER said no.

[10:14:06 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR GUESS moved SCS CSHB 441(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:17:31 AM](#).