

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 17, 2005

3:38 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Thomas Wagoner, Vice Chair
Senator Charlie Huggins
Senator Kim Elton

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 87

"An Act relating to motor vehicle safety belt violations."

MOVED SB 87 OUT OF COMMITTEE

SENATE BILL NO. 54

"An Act relating to notification to victims of sexual assault; relating to protective orders; and relating to arrests for crimes involving sexual assault, violation of protective orders, or violation of conditions of release."

HEARD AND HELD

SENATE BILL NO. 90

"An Act relating to Alaska Territorial Guard Day."

MOVED CSSB 90(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 87

SHORT TITLE: SEAT BELT VIOLATION AS PRIMARY OFFENSE

SPONSOR(S): SENATOR(S) BUNDE

02/02/05	(S)	READ THE FIRST TIME - REFERRALS
02/02/05	(S)	STA, JUD
02/17/05	(S)	STA AT 3:30 PM BELTZ 211

BILL: SB 54

SHORT TITLE: PROTECTIVE ORDERS FOR SEXUAL ASSAULT
SPONSOR(s): SENATOR(s) DYSON, GUESS

01/14/05 (S) READ THE FIRST TIME - REFERRALS
01/14/05 (S) STA, JUD
02/17/05 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 90

SHORT TITLE: ALASKA TERRITORIAL GUARD DAY
SPONSOR(s): SENATOR(s) HUGGINS

02/04/05 (S) READ THE FIRST TIME - REFERRALS
02/04/05 (S) STA
02/17/05 (S) STA AT 3:30 PM BELTZ 211

WITNESS REGISTER

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 87

Lauren Wickersham
Staff to Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions on SB 87

Kevin Quinlan
National Transportation Safety Board
POSITION STATEMENT: Testified in support of SB 87

Walt Monegan
Police Chief
Anchorage Police Department
P.O. Box 196650
Anchorage, AK 99519
POSITION STATEMENT: Testified in support of SB 87

Sergeant Dan Welborn
Fairbanks Police Department
911 Cushman Street
Fairbanks, AK 99701
POSITION STATEMENT: Testified in support of SB 87

Al Storey
Alaska State Troopers

Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
Department of Public Safety
POSITION STATEMENT: Stated support for SB 87

Don Smith
Administrator, Alaska Highway Safety Office
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Stated support for SB 87

Sergeant Dan Welborn
Fairbanks Police Department
POSITION STATEMENT: Stated support for SB 87

Don Roberts
Kodiak resident
POSITION STATEMENT: Stated support for SB 87

Joan Diamond
Anchorage Municipal Department of Health and Human Services
P.O. Box 196650
Anchorage, AK 99519
POSITION STATEMENT: Stated support for SB 87

Cindy Cashen
Executive Director MAAD Juneau Chapter
POSITION STATEMENT: Stated support for SB 87

CATHY McLeron
Emergency Medical Services Unit Manager
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Read a letter in support of SB 87

Senator Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Prime sponsor SB 54

Sergeant Dave Parker
Special Victims Unit

Anchorage Police Department

POSITION STATEMENT: Spoke in support of SB 54

Dean Guaneli

Chief Assistant Attorney General

Criminal Division

Department of Law

PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions on SB 54

Carie Robinson

Network on Domestic Violence & Sexual Assault

POSITION STATEMENT: Spoke in support of SB 54

Carey Robinson, Attorney

Network on Domestic Violence & Sexual Assault

POSITION STATEMENT: Spoke in support of SB 54

Ryan Moore

Staff to Senator Huggins

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 90

ACTION NARRATIVE

CHAIR GENE THERRIAULT called the Senate State Affairs Standing Committee meeting to order at [3:38:51 PM](#). Present were Senators Huggins, Wagoner, Elton, and Chair Therriault.

SB 87-SEAT BELT VIOLATION AS PRIMARY OFFENSE

SENATOR GENE THERRIAULT announced SB 87 to be up for consideration. He asked Senator Bunde to come forward.

SENATOR CON BUNDE, primary sponsor of SB 87, said the same bill was introduced last year and he's pleased that more people are viewing the bill realistically this year. He explained that it changes the current statute on seatbelts from a secondary law to a primary law. A secondary law means the police can't stop drivers that aren't using a seatbelt unless they have broken some other law.

Although the ultimate goal is to save lives, wearing seatbelts also saves money, he said. In conclusion he noted that according

to the Alaska Injury Prevention Center, about 67 percent of Alaskans would support a primary seatbelt law.

[3:45:53 PM](#)

CHAIR THERRIAULT recapped saying if a driver were stopped for another reason and wasn't wearing a seatbelt he or she could receive a citation and fine as a secondary offense. He asked if the same would apply if seatbelt use became a primary law.

SENATOR BUNDE said it wouldn't change. Fines assessed in municipalities are different than the state fine, but the bill isn't intended to be a revenue generator.

SENATOR THOMAS WAGONER questioned whether points would be assessed for failure to wear a seatbelt.

SENATOR BUNDE replied he didn't believe so.

SENATOR WAGONER remarked he supports the bill, but he can't understand why seatbelt use isn't required in school buses. He questioned whether this wouldn't bring more federal dollars to the state.

SENATOR BUNDE said it would bring more highway safety money. According to John Moffet with the National Highway Safety Institute seatbelts aren't installed in busses because of cost and because the egg crate theory is accepted. That theory says the high backed seats and padding in buses make it less likely that passengers will be thrown from the bus than from a passenger vehicle. The National Transportation Safety Board (NTSB) doesn't agree with that theory though so a federal recommendation may be coming before long. Cost isn't an excuse, he said.

[3:48:54 PM](#)

CHAIR THERRIAULT asked whether Kevin Quinlan was online and had any comments.

KEVIN QUINLAN, chief of safety advocacy with the National Transportation Safety Board (NTSB), identified himself and advised the committee that although he sent a written statement, he wanted to cover several points.

He made it clear that the NTSB investigates and does not regulate. The NTSB doesn't tell states what to do; it asks

states to do the right thing based on an investigation. It is known for scientific integrity and objectivity.

Seatbelt use is the most effective defense against motor vehicle injury and ninety percent of transportation fatalities happen on highways, he said. It's a fact that seatbelts prevent ejection and in fatal crashes, 30 percent of the occupants are ejected and 73 percent of those who are ejected die of their injuries. Also, belt use decreases with the severity of the crash, which means the highest risk drivers use seatbelts the least. Alcohol impaired drivers use seatbelts about 17 percent of the time and teen drivers have a 30 percent use rate.

Evidence shows that a primary use law does help to get more people to buckle up and even high-risk drivers do so more frequently. The bottom line is clear. "Primary belt [laws] save lives and reduce both governmental and non-governmental costs... You can expect about a ten percentage point increase in belt use among Alaskans if you pass this law." A primary seatbelt law is on the NTSB "most wanted list" because of the lifesaving potential.

He said he could answer the question about school bus crashes.

[3:52:48 PM](#)

CHAIR THERRIAULT questioned whether national research indicates that there is a dip in seatbelt use during the teenage years even if seatbelts were worn in earlier years.

MR. QUINLAN said there's a usage gap that starts at about age 12.

CHAIR THERRIAULT remarked his son would be 13 soon and he was curious what the statistics are regarding when he might become safety conscious again.

MR. QUINLAN replied he could expect that at about 25 years of age.

CHAIR THERRIAULT asked whether increased use is the trend or is belt use on a plateau.

MR. QUINLAN replied it's hard to answer the question because of recent enforcement mobilizations in primary and secondary law states. Alaska and other secondary law states have seen an increase in use, but it's likely just enforcement related. The

problem is that enforcement mobilization is expensive and can't be sustained over a long period of time. However, a primary law could be enforced episodically and would result in increased use at less cost.

CHAIR THERRIAULT said it's clear that the secondary law has had a good effect and his personal preference would be to let that grow.

MR. QUINLAN agreed that use is up, but he doesn't believe that will continue without expensive enforcement mobilizations. "If that premise is correct, we will probably stagnate and maybe fall back because that's the history of safety belt programs absent a primary safety belt law."

CHAIR THERRIAULT asked for questions.

SENATOR CHARLIE HUGGINS questioned whether auto insurance would be impacted if a primary law were passed.

MR. QUINLAN said he thinks the insurance companies would say they want to see the crash experience after which they would file submissions to the state insurance commission. Privately they would say primary laws increase use.

SENATOR HUGGINS asked whether any of the 22 primary states receive an insurance break.

MR. QUINLAN said he was sure that North Carolina drivers receive a break.

SENATOR HUGGINS questioned whether that's because it's statistically significant.

MR. QUINLAN said he wasn't sure, but he knows they have a very aggressive insurance commission.

SENATOR WAGONER said if the bill passes due diligence would suggest that correspondence with the insurance commission is in order to make sure they track the effect of the bill.

SENATOR KIM ELTON said Senator Huggins' question is important because in other jurisdictions insurance costs aren't based on accident history; they're based on credit history.

CHAIR THERRIAULT found no other questions and called on Walt Monegan.

4:00:34 PM

CHIEF WALT MONEGAN, Anchorage Police Department (APD), stated support for the bill and noted that he submitted a letter. The APD has made great effort to inform citizens about the importance of using a seatbelt because aside from money and insurance, families are affected.

He made the point that if people suspect a policeman is watching, they put their seatbelt on.

SENATOR BUNDE said a concern he hears is that the police would use this as a reason to search and arrest on unrelated issues.

4:03:36 PM

CHIEF MONEGAN said if the police wanted to go on a search and destroy mission, they wouldn't select seatbelts to make a legal traffic stop.

CHAIR THERRIAULT asked how the police would get someone on a seatbelt violation because it's so easy to slip the belt on as the driver pulls over.

CHIEF MONEGAN said you're able see someone buckle up if you're watching. Children are a different matter though so if you see an unbelted child you know they aren't secured and the stop is legitimate. In terms of cost, the fine in Anchorage \$60 if the driver is 16 and over and it carries no points. If a child isn't buckled though the infraction carries two points and a \$200 fine.

4:06:41 PM

CHAIR THERRIAULT questioned whether arguing that they took the seatbelt off to access their driver's license wouldn't cover a driver.

CHIEF MONEGAN said police officers watch carefully and would know that you took it off.

CHAIR THERRIAULT asked about success in court if someone contests the seatbelt ticket.

CHIEF MONEGAN said the court would decide and it would help the learning process even if the driver were to prevail.

SENATOR BUNDE added there would never be enough laws to keep some people from finding loopholes, but the average person will abide by the law.

CHIEF MONEGAN said young children monitor seatbelt use and that helps adults wear belts more often.

CHAIR THERRIAULT called Al Storey.

[4:10:45 PM](#)

CAPTAIN AL STOREY, Alaska State Trooper, stated the Department of Public Safety strongly supports SB 87 as a common sense approach. Since last session he kept track of the individuals who died because they weren't wearing seatbelts and it really brings the issue home.

CHAIR THERRIAULT called on Don Smith.

[4:13:25 PM](#)

DON SMITH, administrator, Alaska Highway Safety Office, spoke in favor of SB 87 and reported that in the last 40 years 3,782 Alaskans died on Alaska's highways. Current surveys indicated that 77 percent of the drivers on Alaska highways are wearing seatbelts. He urged the committee to pass the bill.

CHAIR THERRIAULT called on Sergeant Welborn.

[4:16:25 PM](#)

SERGEANT DAN WELBORN, Fairbanks Police Department, stated the police department supports the bill. He reported that over the years a number of the fatal accidents he has attended could have been prevented if a seatbelt had been worn.

[4:19:08 PM](#)

DON ROBERTS testified via teleconference from Kodiak and spoke in support of SB 87. He usually objects to government heavy handedness, but this is a small encroachment that is well worthwhile.

CHAIR THERRIAULT called on Joan Diamond.

[4:20:49 PM](#)

Joan Diamond, Anchorage Municipal Department of Health and Human Services representative, testified via teleconference in support of SB 87. It's a high priority for Anchorage, she said, and advised that she sent a letter outlining the reasons the department supports the bill.

CHAIR THERRIAULT asked Cindy Cashen to come forward.

[4:21:56 PM](#)

CINDY CASHEN, executive director MADD Juneau Chapter, spoke in support of SB 87. It's the best defense against a drunk driver, she said.

CHAIR THERRIAULT asked Cathy McLeron to come forward.

[4:22:52 PM](#)

CATHY McLERON, emergency medical services unit manager Department of Health and Social Services (DHSS), stated departmental support for SB 87 and read a summary of accident statistics in Alaska with the associated costs.

CHAIR THERRIAULT noted there was no further testimony and asked Senator Bunde to comment on the rural exemption that was added to the bill last year.

[4:25:24 PM](#)

SENATOR BUNDE had no comment.

CHAIR THERRIAULT asked for the will of the committee.

SENATOR WAGONER motioned to move SB 87 from committee with individual recommendations and the attached fiscal notes. There being no objection, it was so ordered.

SB 54-PROTECTIVE ORDERS/NOTICE TO VICTIMS

[4:26:02 PM](#)

CHAIR THERRIAULT announced SB 54 to be up for consideration and at the sponsor's request, the committee would take no action on the bill today.

SENATOR FRED DYSON, prime sponsor, explained that under current law a victim may get a restraining order for domestic violence and stalking, but it doesn't mention restraining orders if you've been a victim of sexual assault. SB 54 adds sexual assault to the list that a judge or magistrate may draw from to grant a restraining order. Although some judges do grant restraining orders to victims of sexual assault it's not clear in statute and some have refused to do so. SB 54 would make it clear to judges that they have that authority.

He noted that in drafting the bill, Legislative Legal elected to replicate the language from the domestic violence restraining orders. According to the Department of Law, it would have been better to have replicated the language in existing statutes related to stalking. Because of that opinion, he asked the committee to hold the bill to provide time to draft a committee substitute (CS).

[4:29:32 PM](#)

CHAIR THERRIAULT remarked he has heard criticism that the Legislature isn't always mindful of unintended consequences and he questioned whether the sponsor had received any cautions on that front.

SENATOR DYSON acknowledged that was the issue with the most recent changes related to child custody disputes.

CHAIR THERRIAULT agreed that was the issue and some constituents were very unhappy. He asked whether that was anticipated.

SENATOR DYSON said they would address that issue with the Department of Law and perhaps help rectify the unintended consequence of the earlier action.

CHAIR THERRIAULT asked Sergeant Parker to come forward.

[4:31:58 PM](#)

SERGEANT DAVE PARKER, special victims unit supervisor, Anchorage Police Department, said SB 54 would help the police protect victims of sexual assault. The problem has been that judges don't have clear direction. He described a case in which a neighbor raped a woman. When a detective took the victim to get a protective order the judge wouldn't issue the order because he said rape isn't a consensual sexual act.

SERGEANT PARKER emphasized no victim should be re-victimized with unwanted contact with the perpetrator and SB 54 will give sexual assault victims the same legal protection that domestic violence and stalking victims have now.

[4:34:28 PM](#)

SENATOR THOMAS WAGONER questioned what the judge was thinking that he didn't give protection to the victim.

MR. PARKER explained that in that case the detective accompanied the woman to get the protective order after the investigation began but before an arrest or conviction. For domestic violence and stalking restraining orders, the level of proof is probable cause rather than beyond a reasonable doubt. Because there hadn't been a domestic relationship or a dating relationship and stalking hadn't occurred, the judge didn't feel the law sufficiently covered the sexual assault situation. SB 54 would expand the category of individuals who could obtain restraining orders to include sexual assault victims.

CHAIR THERRIAULT asked whether anyone else wanted to testify.

[4:36:33 PM](#)

SENATOR DYSON said he would like to hear from Dean Guaneli regarding abuse of process.

DEAN GUANELI, criminal division, Department of Law, said that abuse of process in child custody is a difficult situation because divorces can become very emotional and acrimonious and an alleged domestic violence incident might be a viable option. We rely on the good judgment of judges, he said, and sometimes a judge might not know that a child custody action will be filed the next week. He acknowledged he hasn't seen the forms recently and is unsure whether they ask about pending civil actions, but when judges know the entire situation they're able to render a good judgment.

Certainly there are some divorces and child custody battles in which there's been domestic violence so protective orders are very appropriate. These are difficult situations and they can be difficult for a judge to sort out.

CHAIR THERRIAULT commented that with family law it's difficult to take all the ramifications into consideration.

4:39:33 PM

SENATOR KIM ELTON commented that if an attorney encouraged an abuse of process there must be legal and professional sanctions and he would hope they would be vigorously pursued.

MR. GUANELI agreed there are professional sanctions for abuse of process, but practically it's difficult to sort out so some sanctions might not be available.

CHAIR THERRIAULT said it's a difficult situation to determine "who is correctly availing themselves of the law and who is using the law as a tool."

MR. GUANELI remarked a sharp attorney might say, "If this in fact happened to you then this remedy would be available to you. And as a consequence of that we would of course bring that to the judge's attention in the child custody action and that action might be more in your favor."

He said he has heard anecdotally that this has happened and it's not a crime; it's an Alaska Bar Association grievance process.

CHAIR THERRIAULT asked if the mere allegation of domestic violence triggers a custody consequence.

MR. GUANELI replied he wasn't sure because he doesn't practice in that area. However, hearing that there was domestic violence would probably weigh heavily on a judge's mind because it's been shown that it has such a pernicious affect on children.

SENATOR DYSON asked Sergeant Parker whether he finds that he is pursuing a restraining order before charges are filed.

SERGEANT PARKER said yes and sometimes they can't prove beyond a reasonable doubt, but it's evident to the probable cause level that a sexual assault has occurred. In those instances a restraining order would be the only protection a victim would have.

SENATOR DYSON said he was wondering, "If we could start to solve this problem by requiring that if you're going to get a restraining order you'd have to file charges and certainly a sexual assault is always criminal and might be civil as well. And you're saying, no you'd need the restraining order before you've made the case sufficiently to file charges and look for a warrant."

SARGEANT PARKER said yes, it's similar to the domestic violence situation. There are times they can't prefer charges, but there is sufficient evidence for a judge to issue a domestic violence order.

CHAIR THERRIAULT asked Caren Robinson to come forward.

[4:45:25 PM](#)

CAREN ROBINSON, Network on Domestic Violence and Sexual Assault representative, stated support for the direction of SB 54, but the network would like to suggest changes to make the bill more similar to the stalking laws. They would be disheartened if the domestic violence protective order laws changed and would produce information related to custody disputes and domestic violence.

CHAIR THERRIAULT questioned what the allegation of domestic violence triggers and how immediate the trigger is in a custody hearing.

CAREN ROBINSON replied she would like Carey Robinson, the legal advocate for the network, to address the question.

CAREY ROBINSON, attorney for the Network on Domestic Violence and Sexual Assault, explained it's a presumption so the other side can overcome it when they show their own evidence. Also, it's not just one instance, it must be repeated.

CHAIR THERRIAULT said he would like to know what evidence could overturn the presumption before the bill was heard again.

CAREY ROBINSON replied she would provide information on the presumption law.

CHAIR THERRIAULT questioned whether that was the full scope of the bill that passed last year.

CAREY ROBINSON said she wasn't involved in the legislative aspect.

[4:49:00 PM](#)

CHAIR THERRIAULT announced he would hold SB 54 in committee until Senator Dyson indicated he was prepared for a second hearing.

SB 90-ALASKA TERRITORIAL GUARD DAY

CHAIR GENE THERRIAULT announced SB 90 to be up for consideration.

[4:49:32 PM](#)

SENATOR CHARLIE HUGGINS, sponsor of SB 90, stated Mr. Moore was prepared to introduce the bill.

RYAN MOORE, staff to Senator Huggins, explained the following about the Alaska Territorial Guard:

Right after the attack on Pearl Harbor, the Japanese seized the Islands of Attu and Kiska and bombed Dutch Harbor. After this happened, Governor Ernest Gruening was assigned two military aides to assist him in forming the Alaska Territorial Guard. The first one was Captain Carl Schneibner and he's responsible for organizing the Guard in the Interior. The second was Major Marvin 'Mucktuk' Marston and he was designated to organize the Guard on the Bering and the Arctic coast.

These two men's combined efforts resulted in 6,500 - predominantly Alaska Native men - signing up to protect the territory and the country.

The Alaska Territorial Guard was disbanded in 1947 though some [guardsmen] were included in the regular Alaska National Guard as scout battalion.

[4:51:33 PM](#)

SENATOR THOMAS WAGONER congratulated Mr. Moore on the work he did and said the history is very interesting.

SENATOR HUGGINS added this group of people wasn't recognized by the state and/or nation until recently. Less than 300 of the original guardsmen are living today one of which is Representative Carl Moses. There's a great deal of pride associated with having been a guardsman, he concluded.

CHAIR THERRIAULT asked Senator Huggins whether he would object to removing the finding section and drafting a letter of intent to accompany the bill.

SENATOR HUGGINS said that would be acceptable. The intent is to make sure that the essence of the effort is captured.

CHAIR THERRIAULT made the point that findings are the un-codified section of law and would not appear together.

SENATOR HUGGINS said he would defer to Mr. Moore since he was the author.

SENATOR KIM ELTON stated that most of the time he would agree that findings and intent add clutter to a bill. However, the points made in the findings are important and shouldn't be forgotten over time. It's awkward, he said, that he feels less amenable to removing the findings than the sponsor, but he wanted to put his feelings on record. "In this instance, I think a finding in law that tells why we're doing this makes sense."

CHAIR THERRIAULT replied he feels there needs to be compelling reason to have it included. Any interested party should go to the library to get the full history, he said.

SENATOR ELTON admitted he would agree 99 times out of 100.

CHAIR THERRIAULT asked Mr. Moore whether he had a comment.

MR. MOORE replied he did not.

CHAIR THERRIAULT said he would prefer to remove the findings and draft a letter of intent.

SENATOR ELTON said he would not object because the sponsor was agreeing to the change. "This one is just different for me," he said.

CHAIR THERRIAULT motioned to amend SB 90 by dropping Section 1 and said he would work with sponsor to write a letter of intent to replace the findings section. There being no objection, amendment one passed.

He noted there was a zero fiscal note then asked for the will of the committee.

SENATOR WAGONER motioned to move CSSB 90(STA) from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

There being no further business to come before the committee,
Chair Therriault adjourned the meeting at [4:58:30 PM](#).