

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 15, 2005

3:25 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 88

"An Act relating to the policy of the state regarding the source of funding used to cover a shortfall in general fund revenue."

MOVED SB 88 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."

MOVED CSSB 54(STA) OUT OF COMMITTEE

SENATE BILL NO. 20

"An Act relating to offenses against unborn children."

MOVED CSSB 20(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 88

SHORT TITLE: POLICY ON GENERAL FUND REVENUE SHORTFALL

SPONSOR(s): SENATOR(s) WILKEN

02/02/05	(S)	READ THE FIRST TIME - REFERRALS
02/02/05	(S)	STA, FIN
02/15/05	(S)	STA AT 3:30 PM BELTZ 211

02/15/05 (S) Heard & Held
02/15/05 (S) MINUTE(STA)

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
02/17/05 (S) Heard & Held
02/17/05 (S) MINUTE(STA)

BILL: SB 20

SHORT TITLE: OFFENSES AGAINST UNBORN CHILDREN

SPONSOR(s): SENATOR(s) DYSON

01/11/05 (S) PREFILE RELEASED 12/30/04
01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) STA, JUD
03/01/05 (S) STA AT 3:30 PM BELTZ 211
03/01/05 (S) Heard & Held
03/01/05 (S) MINUTE(STA)

WITNESS REGISTER

Senator Gary Wilken
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 88

SENATOR Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 54 and SB 20

Jason Hooley
Staff to Senator Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Answered questions related to SB 54

Annie Carpeneti
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Responded to questions related to SB 54 and SB 20

Wes Keller
Staff to Senator Fred Dyson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Responded to questions on SB 20

Rebecca Whitman
Family Violence Prevention Fund
No address provided

POSITION STATEMENT: Stated concern about SB 20

Molly McCammon
Planned Parenthood of Alaska
4001 Lake Otis Parkway
Anchorage, AK 99508

POSITION STATEMENT: Opposed SB 20

Cassandra Johnson
Victims of Domestic Violence
No address provided

POSITION STATEMENT: Opposed SB 20

Michael MacLeod-Ball
AkACLU
P.O. Box 201844
Anchorage, AK 99520

POSITION STATEMENT: Opposed SB 20

Carrie Robinson
Alaska Network on Domestic Violence and Sexual Assault
130 Seward Street, Suite 209
Juneau, AK 99801

POSITION STATEMENT: Opposed SB 20

Caren Robinson
Alaska Women's Lobby
P.O. Box 20891
Juneau, AK 99802-0891

POSITION STATEMENT: Opposed SB 20

ACTION NARRATIVE

CHAIR GENE THERRIAULT called the Senate State Affairs Standing Committee meeting to order at [3:38:24 PM](#). Present were Senators Wagoner, Huggins, Elton, Davis and Chair Therriault.

SB 88-POLICY ON GENERAL FUND REVENUE SHORTFALL

CHAIR GENE THERRIAULT announced SB 88 to be up for consideration. He asked Senator Wilken to come forward. He noted that the sponsor had asked that the committee forward the bill to the Finance Committee.

[3:41:37 PM](#)

SENATOR GARY WILKEN, sponsor, said he wanted to restate certain aspects of the chart that he explained during the previous hearing. He clarified that if you were to take \$250 million from the earnings reserve every year for ten years, the cumulative impact on the Permanent Fund Dividend would be \$436.

SENATOR KIM ELTON commented that this is a fairly dramatic proposal and he was interested in whether the sponsor would consider amending the proposal to make a draw from the Permanent Fund Earnings Reserve account contingent upon a vote of the people.

SENATOR WILKEN replied he didn't like the idea of putting the issue to a public vote in 1999 and he likes it less today. Legislators are elected to make this sort of decision and to understand the ramifications of using the state's assets. Furthermore, he said, the governor misspoke when he talked about using the earnings.

[3:46:10 PM](#)

SENATOR ELTON asked whether this might not be ultimately unsuccessful since the governor has veto powers.

SENATOR WILKEN said he hadn't discussed the bill with the governor, but he has worked with his staff to ensure that the numbers are accurate. He reminded members that this is policy and it could be ignored if the circumstances warranted. He suggested that this fiscal plan works and the one offered last year didn't.

He argued that by the time this policy becomes statute, the governor and others will understand the merit of using the

earnings and the Constitutional Budget Reserve until the state's natural resources are developed.

CHAIR THERRIAULT suggested that adding a requirement for a vote of the people is meaningless because legislators can exercise the constitutional power to use the Permanent Fund earnings anytime. In fact, that point also applies to this proposal; it's simply a restatement of that constitutional authority.

[3:49:30 PM](#)

SENATOR WILKEN offered the opinion that this is an effort to educate as much as it is legislation.

SENATOR CHARLIE HUGGINS said he views this as a conversation starter.

[3:52:55 PM](#)

CHAIR THERRIAULT noted he has heard about the issue from a number of people so the conversation is starting.

[3:53:26 PM](#)

SENATOR WAGNER motioned to report SB 88 and attached fiscal zero note from committee with individual recommendations.

SENATOR ELTON objected. Speaking to his objection he said he does appreciate the idea of continuing the conversation, but when he votes no it is because he is a proponent of the income tax to fill the gap. He favors that because it is based on a person's ability to pay.

[3:54:30 PM](#)

SENATOR HUGGINS announced he wants to go on record as not supporting any tax.

[3:55:27 PM](#)

CHAIR THERRIAULT asked for a roll call vote. The motion to report SB 88 from committee passed with Senators Wagoner, Huggins, Davis and Chair Therriault voting yea and Senator Elton voting nay.

SB 54-PROTECTIVE ORDERS FOR SEXUAL ASSAULT

3:55:36 PM

CHAIR GENE THERRIAULT announced SB 54 to be up for consideration. He noted the proposed committee substitute (CS).

3:56:38 PM

SENATOR FRED DYSON, sponsor, said the intent is to add sexual assault to the list of crimes on which a judge may issue a protective order. He noted that the original drafting copied the domestic violence statute and the proposed CS, version \S, copies the stalking laws. This is more appropriate because most sexual assault doesn't take place in the context of a domestic relationship.

JASON HOOLEY, staff to Senator Dyson, added the bill concerns restraining orders for victims of sexual assault that aren't already covered under domestic violence.

CHAIR THERRIAULT asked for a motion to adopt the \S version CS.

SENATOR THOMAS WAGONER motioned to adopt the \S version CS as the working document. There being no objection, it was so ordered.

3:59:19 PM

CHAIR THERRIAULT noted the drafter presented a technical amendment.

SENATOR DYSON said he'd like the Department of Law to speak to the amendment.

4:01:06 PM

ANNIE CARPENETI, Criminal Division, Department of Law (DOL), explained that when the domestic violence protective orders bill passed, the intention was to make it a crime to violate a protective order only if the violation was made in a most serious manner. The reasoning is that it doesn't make sense to make all kinds of protective order violations criminal.

Thus, the department suggested that for SB 54, violations of AS 18.66.105(c)(4) shouldn't be a crime. Those are possible orders for repayment to the victim and the catchall "other remedies".

She suggested the proposed language on page 2, lines 24-25 might not be clear enough.

4:03:32 PM

CHAIR THERRIAULT noted the proposed change on page 1, line 10 references "18.66.105(c)(1)-(3)" and she spoke to (c)(4), which isn't included.

MS. CARPENETI replied she assumes most stalking protective orders have one of the provisions in (c)(1)-(3) and what it would say is, "...containing a provision in (c)(1)-(3) attempts to commit an act in violation of the order so it might be the act that's in violation of (c)(4), which we want to make clear would not be a criminal act."

CHAIR THERRIAULT said he still didn't understand how you would get to (c)(4) if the limitation is (c)(1)-(3).

MS. CARPENETI acknowledged it's a minor drafting point.

SENATOR DYSON said 105(c)(4) allows the judge to order the perpetrator to reimburse the victim for assault bills. If that is deleted, he questioned the leverage a judge might have to force payment from the perpetrator.

MS. CARPENETI replied that remedy wouldn't be deleted; it just provides that it wouldn't be a crime if the perpetrator didn't pay the expenses the judge ordered to be paid. Other remedies exist and could be imposed because if a person violates a court order, the judge may hold the person in contempt.

CHAIR THERRIAULT asked Senator Dyson whether he had any comment on the modification of the amendment.

SENATOR DYSON replied he did not.

CHAIR THERRIAULT asked Ms. Carpeneti to restate the modification.

MS. CARPENETI explained it may be conceptual but the idea should be, "issued under AS 18.65.850, 18.65.855 or 18.65.860 and containing a provision listed in 18.65.850(c)(1)-(3) and knowingly commits an act in violation of the order issued under 18.65.850(c)(1)-(3)."

CHAIR THERRIAULT asked the members if they understood the impact of the suggestion.

SENATOR WAGONER stated his preference was for the amendment to be written out.

[4:07:55 PM](#)

CHAIR THERRIAULT set SB 54 aside.

SB 20-OFFENSES AGAINST UNBORN CHILDREN

[4:08:03 PM](#)

CHAIR GENE THERRIAULT announced SB 20 to be up for consideration and noted a proposed Senate State Affairs committee substitute (CS).

SENATOR FRED DYSON explained that the CS simplifies the bill in that it includes just two classifications of assault against an unborn child rather than four, which makes it consistent with other assault statutes and doesn't create new assault categories.

It makes it clear that criminal intent to assault is transferred to a second victim even if you are unaware that a second victim is present. In addition it addresses the inconsistency of exempting a mother who harms her unborn child.

[4:12:20 PM](#)

WES KELLER, staff to Senator Dyson, said he was available for questions.

Chair THERRIAULT asked for a motion to adopt the proposed CS.

SENATOR THOMAS WAGONER motioned to adopt \X version CS for SB 20 as the working document. There being no objection, it was so ordered.

CHAIR THERRIAULT said although he understands removing the sections related to a woman's self-inflicted destruction, it seems to be an entirely different policy debate. He questioned whether that would include drinking and taking drugs.

MR. KELLER said they removed the language because it potentially exempted the woman from criminal activity that harmed the unborn

child. However, if there is a way to specifically spell out the concerns regarding fetal alcohol syndrome (FAS) and/or fetal alcohol effect (FAE) he was sure that the sponsor would welcome any suggestions.

CHAIR THERRIAULT said he understands that excluding the mother might be illogical, but of greater concern is that the bill lacks clarity for how to respond to those issues.

SENATOR DYSON replied he intends to work on that issue in the Judiciary Committee in particular. He suggested that Ms. Carpeneti might help the committee determine what level of self-inflicted action might trigger a charge of assault on an unborn child.

CHAIR THERRIAULT restated the question for Ms. Carpeneti and informed members that the section under discussion was on page 3.

[4:16:55 PM](#)

ANNIE CARPENETI, Criminal Division, Department of Law (DOL), said she wasn't sure you could prove beyond a reasonable doubt that drinking too much during pregnancy would be a crime under assault in the second degree. You'd have to look at the definition of serious physical injury.

CHAIR THERRIAULT read from AS 11.81.900:

(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

He suggested that under (B) FAS/FAE might well qualify.

MS. CARPENETI replied it's a possible application if the person knew the risks of drinking and consciously disregarded them.

CHAIR THERRIAULT said warnings not to drink during pregnancy are posted in all drinking establishments so notice has been given

to the general public, but whether the person took notice could be a question.

SENATOR KIM ELTON referenced the language at the top of page 4 that gives another meaning to "serious physical injury" and "includes the birth of an unborn child before 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth."

If that provision is added to serious physical assault, you open all sorts of questions about whether or not the mother's behavior resulted in serious physical injury if that includes birth weight of less than 5.5 pounds.

MS. CARPENETI said that definition is quite specific and you'd probably want to get supporting medical evidence if the provision is included in the bill.

CHAIR THERRIAULT remarked he views the language in the CS as additive rather than limiting.

SENATOR ELTON said if you have 2,500 grams as an early birth standard, and if a pregnant woman is confined to bed on the advice of a medical doctor, and if the child is born early and weighs less than 2,500 grams, somebody would have to make a legal determination on whether the mother assaulted the child if she violated the doctor's bed rest order.

MS. CARPENETI said that could be a possibility. You'd still have to prove the culpable mental state and that would depend on the facts regarding how badly she disregarded the doctor's orders.

CHAIR THERRIAULT said the language exempting the mother was removed because of a question Senator Elton posed and to additionally remove this language brings on a number of policy calls that he wasn't sure the sponsor was prepared to take on at this time.

SENATOR ELTON replied he simply asked a series of questions that showed anomalies in the bill that would have legal ramifications. He was bothered by the notion that an action a mother might take pre-birth would be exempted from criminal statute yet the mother wouldn't be exempted post birth. Clearly the suggested fix brings up other legal issues and raises other questions.

[4:25:16 PM](#)

CHAIR THERRIAULT asked Ms. Carpeneti if she had anything else to add.

MS. CARPENETI said no, but it does require further study. She asked the sponsor to think about the fact that some defenses to murder are included in the bill, but she wasn't sure why several others weren't adopted in the bill. She told the sponsor the department would be happy to work with him and advised members that the administration supports the idea of the bill.

[4:26:59 PM](#)

MR. KELLER stated for the record that if you were to look at the definition in law of "knowing or reckless" it would be difficult to get a conviction for second degree assault if a pregnant woman violated a medical order for bed rest.

SENATOR ELTON referenced language on page 3, line 21 and pointed out that the language talks about "recklessly" but it doesn't connect it to "knowingly".

[4:28:27 PM](#)

MR. KELLER read the following from AS 11.81.900 into the record:

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

SENATOR ELTON responded if a person were to follow the precepts of her religion rather than the legal responsibilities that would accrue under the provisions of SB 20, it would be reckless behavior.

[4:30:16 PM](#)

MR. KELLER countered it would be an issue for the court to determine.

CHAIR THERRIAULT opened teleconference testimony.

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REBECCA WHITMAN said she works for the national non-profit, Family Violence Prevention Fund. She stated concern about the impact of SB 20 on victims of domestic violence.

CHAIR THERRIAULT asked how much of her concern would be mitigated by the fact that a woman cannot be forced to testify against her husband.

MS. WHITMAN replied a greater concern is that a woman might be afraid to seek medical care because of something that is happening in the relationship.

4:34:07 PM

MOLLY MCCAMMON, board chair, Planned Parenthood of Alaska, reported that Planned Parenthood agrees that the loss of a wanted pregnancy as a result of an act of violence is a tragic event and that the perpetrators of such crimes need to answer for the woman's loss. That being said, Planned Parenthood cannot support the bill as written. Specifically, the bill doesn't address the criminal penalties for violence against women - whether they are pregnant or not - yet it does threaten a woman's reproductive choice. She suggested a better approach would be to strengthen Alaska's laws against harming pregnant women rather than laying the foundation for giving separate legal rights to embryos and fetuses.

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CASSANDRA JOHNSON testified that between 1990-2002 she worked with victims of gender violence and that she could not support SB 20 or the changes made in the CS.

She reported that since the late 1970s Alaska has been in the top five states for reported sexual assaults and in 2002 Alaska led the nation in women killed by a significant other. Neither is a distinction that anyone wants to continue. She emphasized that injury to a fetus is first and foremost an injury to a pregnant woman and SB 20 doesn't deal with that issue.

Protecting pregnant women from violence is a serious problem that deserves to be elevated above political agendas and partisan politics, she concluded.

[4:40:12 PM](#)

MICHAEL MACLEOD-BALL, executive director, Alaska Civil Liberties Union (AkCLU), testified in opposition to SB 20. He noted that he just received a copy of the CS and wanted the committee to be aware that his comments are directed at the original draft. He looked forward to further discussion after he'd had an opportunity to review the proposed changes.

He reported that the AkCLU supports efforts to punish violent acts toward woman that may harm or terminate a wanted pregnancy. However, SB 20 would diminish the woman who is typically the intended victim of the violent act in question. Instead, AkCLU supports alternative approaches for cases in which a woman suffers harm to herself and to her pregnancy.

It's clear that domestic violence is a large problem that isn't going away and implicit in all the domestic violence statistics is the fact that the batterers intent is to harm the woman and not the zygote, embryo, or fetus. There is no evidence to suggest that the perpetrator typically intends to harm the embryo.

The solution to this national tragedy is to focus on prevention because punishment does nothing to solve the problem. Punishing the termination of the pregnancy is an empty gesture and SB 20 does nothing to help the woman who is the intended victim. Rather, the bill focuses on the embryo that is typically the unintended consequence of a violent act against a woman.

The AkCLU also opposes SB 20 because it would permit an individual to be convicted even if he or she had no knowledge of the pregnancy. Furthermore he took issue with the definition offered for "unborn child" and warned that a number of problems were associated with the interpretation.

Enacting the bill would have unforeseen fiscal impacts on enforcement agencies because it creates a new class of crime and investigation of such crimes would require sophisticated testing procedures not currently used for similar crimes.

In conclusion he asked the committee to consider the impact of diverting resources from investigations of violence against

women and offered his help in drafting legislation that contemplates enhanced punishment for crimes against women that also harms a pregnancy. Keep the focus on the woman, the real victim, he urged.

CHAIR THERRIAULT commented that the ongoing theme has been to focus on assaults against women and that type of crime is already addressed in current statutes whether they are pregnant or not. What the sponsor is suggesting is additive so he didn't understand the conclusion that the other crimes are diminished. The perpetrator would still be guilty of the assault on the woman whether she was pregnant or not.

Furthermore he suggested the testimony jumped between strengthening the laws on assault against women and the suggestion to focus on prevention.

MR. MACLEOD-BALL replied it might have seemed as though his testimony jumped around because he was attempting to accommodate his testimony to the earlier discussion. The point is that SB 20 would divert attention from the primary problem of domestic violence against women. Allocating resources to a separate event would take resources away from the primary event, which is the attack against the woman. There is nothing to suggest that the attack is against the embryo because it's an attack against the woman.

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CHAIR THERRIAULT further challenged the premise that the fetus is a woman's property right.

MR. MACLEOD-BALL clarified that he did not use the word property and he certainly wouldn't characterize an embryo as property. Rather, an embryo is a part of a woman's body. He thought there were statutes in Alaska or elsewhere where the severity of harm to the individual could be treated as an enhancement, which would result in stiffer penalties to the perpetrator. Certainly, the AkCLU would favor legislation to enhance punishment for violent acts against women that also happen to harm the woman's pregnancy.

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CARRIE ROBINSON, attorney, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), reported that the network fully supports efforts to prevent violent acts toward women. It agrees

with the sponsor statement that the law needs to protect victims. Certainly acts of violence against pregnant women are appalling and response to such acts should be strong and decisive. That being said, SB 20 isn't the proper response and won't protect victims of domestic violence.

The Alaska Pregnancy Risk Assessment Study shows that about 13 percent of Alaska women are physically abused at the time of pregnancy and the incidence of violence against teens that are either pregnant or new mothers climbs to 25 percent. SB 20 ignores the impact of violent crimes against women and puts victims of domestic violence at further risk.

She said the network is concerned that victims would be reluctant to seek medical care or to report abuse if they know that a partner could be charged with homicide under the bill. Even more alarming is that with the recent change, a woman herself could be charged with a crime, which increases the likelihood that a woman wouldn't seek medical care when she needs it most.

The American College of Obstetricians and Gynecologists opposed similar legislation at the federal level and domestic violence organizations at the national level have opposed this type of legislation. The network suggests that Alaska could lead the nation in making it clear that a batterer cannot hurt a fetus without hurting a woman. Keep the focus on women and make crimes of violence against women during pregnancy an aggravator.

[4:54:54 PM](#)

CAREN ROBINSON, Alaska Women's Lobby (AWL), stated appreciation for the public policy discussions that SB 20 brings forward. That being said, AWL could not support the bill as currently written; shifting the focus from the woman to the fetus is wrong, she emphasized.

If SB 20 moves forward, focus on the danger to a pregnant woman because keeping her safe will keep the fetus safe. She suggested that the North Carolina law would be a good pattern for Alaska. That law states that a person that knowingly causes injury to a pregnant woman during the commission of a felony will be guilty of one class higher than the felony committed if the injury to the woman results in the miscarriage of the fetus or a stillborn.

There was no further public testimony.

CHAIR THERRIAULT noted that the \X version CS was before the committee and that Senator Elton had an amendment for members to consider.

SENATOR ELTON motioned to adopt amendment 1.

CHAIR THERRIAULT labeled the Crawford 3/15/05 amendment as Amendment 1 and objected for discussion purposes.

SENATOR ELTON introduced his comments by stating that he too applauds the sponsor for his history of championing vulnerable people and that he shares that objective. However, he was struggling with some of the legal issues associated with the approach the sponsor has taken. For instance, it's troublesome that a driver in a carpool could be charged with an enhanced crime if an accident occurred and a pregnant woman and her fetus were harmed. Furthermore, he questioned what might happen in the event of repetitive assaults or if a child were born with FAS or FAE.

Pointing out that experts in the field tend to support the notion that an aggravator approach rather than the one proposed in SB 20, he explained that Amendment \F.1 includes a comprehensive list of the aggravators the courts may consider. Aggravators include: cruelty; multiple party offenses; vulnerable victims; prior felonies; paid for offenses; offenses against law enforcement officers; court employees; emergency responders; crimes in which the perpetrator obtains substantial benefit; domestic violence; extensive criminal history; crimes committed because of sex, color, creed, ethnicity; crimes that involve distribution of drugs; and crimes against witnesses. He said that comprehensive list leads to the meat of the amendment found on page 4.

He told members that after struggling with the issues, he came to the conclusion that the only way to avoid a lot of the anomalies that are raised in SB 20 is to go the aggravator route.

Ms. Robinson suggested that North Carolina has the best approach and using that standard, the proposed amendment falls short even though it does provide that the aggravator is applied if the offense was a felony and if the defendant knew or should have known that the victim was pregnant. Nonetheless, because the proposed amendment might not be the best approach, he requested

that the committee wait and review the North Carolina language before taking any action.

CHAIR THERRIAULT said he would maintain his objection in part because he hopes the governor will sign a bill into law that deals with the Blakely decision. Because of court action aggravators have become harder and more expensive to apply both in Alaska and across the nation so he wasn't sure that using the aggravator approach was the one that he or the sponsor would prefer.

[5:05:38 PM](#)

SENATOR DYSON stated that he was disappointed with the repetitive testimony and he couldn't understand why giving additional protection to a wanted unborn child has any sort of negative affect on mitigating domestic violence. He argued that just because you can't see what would be a protected entity doesn't change how you would proceed under law.

Pointing out that he has taken care not to call the unborn child a person, he argued that under law the Legislature has the right to extend a protective category to any entity in need of protection. In fact, it's done to endangered species and bodies of water all the time, so protecting unborn children that are wanted doesn't denigrate any other group of protected entities.

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CHAIR THERRIAULT asked if there was further debate.

[5:10:48 PM](#)

SENATOR ELTON said the question regarding aggravators is interesting and he would like to hear from the Department of Law about whether Blakely and the proposed solution gets in the way of aggravators. He used the example of an aggravator in law for killing a law enforcement officer.

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MS. CARPENETI said no, after Blakely is enacted there will still be aggravators. It's just that the procedure to prove them has changed somewhat and they won't be as easy to use as in the past. They will have to be charged in the charging document and the jury must decide whether prosecutors proved them beyond a

reasonable doubt. The standard of proof was just lower, but they'll still be used when appropriate.

[5:12:23 PM](#)

CHAIR THERRIAULT called for a roll call vote on Amendment 1. The amendment failed 2 to 3 with Senators Davis and Elton voting yea and Senators Huggins, Wagoner and Chair Therriault voting nay.

[5:13:09 PM](#)

CHAIR THERRIAULT mentioned that he understood why the sponsor removed the exemption for the mother, but doing so opens other issues that are difficult to respond to. He suggested the sponsor might want to revisit the decision and consider some of the debate that occurred.

SENATOR DYSON said he was impressed with the logic and arguments Senator Elton brought up previously and he would work on the bill further.

CHAIR THERRIAULT noted the bill has a Judiciary Committee referral and asked if the sponsor would prefer to present a committee substitute at that time. He said he expects a spirited debate from both Senator Guess and Senator French.

SENATOR DYSON agreed that might be a good venue in which to present the next version and he continues to look forward to hearing from all sides.

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CHAIR THERRIAULT noted there were two fiscal notes and one was indeterminate, which would likely trigger a Finance Committee referral. He asked the will of the committee.

[5:15:50 PM](#)

SENATOR WAGONER said he was willing to move the bill as long as it had a thorough vetting in the Judiciary Committee. That being said, he motioned to report SB 20, \X version, and attached fiscal notes from committee with individual recommendations.

[5:16:22 PM](#)

SENATOR ELTON said he would object to speak to the motion and then he would remove the objection. He stated:

It seems to me that what we're doing if we move the bill on - I am the person that created an awful lot of work on behalf of the sponsor and his staff when I asked about the anomalies about why one person could be charged and not another person and like you have mentioned, it's a Sophie's choice. You've got difficult questions to answer if it's one way and difficult questions to answer if it's another way. And so I will remove my objection to the motion, but I want to note that, in fact, I think that it's an appropriate decision for this committee to make on what the best approach is and I sense that the bill is going to move despite my wish to have us answer that question and apply the best of our logic to it and pass it on to another committee. With that, I'll remove my objection, Mr. Chair.

CHAIR THERRIAULT asked the sponsor if he anticipates asking the drafter to reinsert the exemption language.

SENATOR DYSON replied he intends to spend considerable time with the drafter, Ms. Carpeneti, and several others. He said he would also review similar action taken by the 37 other states. Specifically he would look at how they handled the anomalies Senator Elton brought up

CHAIR THERRIAULT advised that the State Affairs Committee could add the language back in a conceptual amendment.

SENATOR DYSON restated his intention.

CHAIR THERRIAULT announced that the objection was removed and CSSB 20(STA) and attached fiscal notes would move from committee with individual recommendations.

SB 54-PROTECTIVE ORDERS FOR SEXUAL ASSAULT

CHAIR THERRIAULT announced the committee would return to SB 54. The \S version CS was before the committee and Ms. Carpeneti was working on a proposed amendment. He questioned whether she had consulted with the drafters.

MS. CARPENETI said she hadn't, but Mr. Hooley and the legislative lawyers addressed her concerns. She explained the proposed amendment. On page 1, line 10 delete "18.66.105(c)(1)-(5)" and insert "18.66.105(c)(1)-(3)" and on page 1, line 14

delete "in violation of the order" and insert "that violates or would violate a provision listed in AS 18.65.850(c)(1)-(3).

CHAIR THERRIAULT remarked his comfort level always goes up when the legislative attorneys weigh in. With that he motioned to adopt the new handwritten language as Amendment 1. He asked Ms. Carpeneti to state her concern and how the amendment addresses it.

MS. CARPENETI explained her concern was that it hasn't been and it "shouldn't be a crime for a person to commit an act in violation of a protective order where the judge has adopted a provision in the protective order that's in a catchall provision that's not stated by the Legislature." She clarified that the amendment only deals with stalking protective orders.

CHAIR THERRIAULT recapped it would not be an additional crime for violation of something that the committee couldn't fully contemplate what the judge might choose.

MS. CARPENETI agreed. What the judge comes up with might be perfectly appropriate, but the violation of it shouldn't be a crime.

[5:21:01 PM](#)

CHAIR THERRIAULT noted that without objection, Amendment 1 passed. He asked Ms. Robinson to come forward.

CAREN ROBINSON, Alaska Network on Domestic Violence, said the network continues to contend that it fits best under the stalking provisions rather than the domestic violence provisions, but they want the bill to move and are willing to work with the sponsor and clear that point up in the Judiciary Committee.

CHAIR THERRIAULT said he was aware of the debate regarding which section of statute the bill should be under, but he wasn't clear on the arguments.

SENATOR ELTON said he understood the CS moved it into the stalking provisions.

SENATOR DYSON said he too was confused. The CS adopted the stalking language but it isn't under the stalking provision as Ms. Robinson suggests. He acknowledged that others share her opinion.

CHAIR THERRIAULT noted three zero fiscal notes and one for \$7,500 from statewide support in Public Safety and asked for a motion.

SENATOR WAGONER motioned to report CSSB 54(STA), \S version as amended, from committee with individual recommendations and attached fiscal notes. There being no objection, it was so ordered.

[5:25:08 PM](#)

There being no further business to come before the committee, Chair Therriault adjourned the meeting at [5:25:38 PM](#)