

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 10, 2008

2:17 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 226

"An Act relating to litigation brought by a vexatious litigant; amending Rules 3, 4, 12, and 41, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED SB 226 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 8(FIN)

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

- MOVED CSSB 8(FIN) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 273(JUD)

"An Act relating to cruelty to animals and promoting an exhibition of fighting animals."

- MOVED HCS CSSB 273(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 226

SHORT TITLE: VEXATIOUS LITIGANTS

SPONSOR(S): JUDICIARY

01/16/08 (S) READ THE FIRST TIME - REFERRALS
 01/16/08 (S) JUD, FIN
 01/30/08 (S) JUD AT 1:30 PM BELTZ 211
 01/30/08 (S) Heard & Held
 01/30/08 (S) MINUTE(JUD)
 02/11/08 (S) JUD AT 1:30 PM BELTZ 211
 02/11/08 (S) Moved SB 226 Out of Committee
 02/11/08 (S) MINUTE(JUD)
 02/13/08 (S) JUD RPT 5DP
 02/13/08 (S) DP: FRENCH, THERRIAULT, WIELECHOWSKI,
 HUGGINS, MCGUIRE
 02/20/08 (S) FIN AT 9:00 AM SENATE FINANCE 532
 02/20/08 (S) Heard & Held
 02/20/08 (S) MINUTE(FIN)
 04/04/08 (S) FIN RPT 1DP 5NR
 04/04/08 (S) DP: THOMAS
 04/04/08 (S) NR: HOFFMAN, STEDMAN, ELTON, HUGGINS,
 OLSON
 04/04/08 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/04/08 (S) Moved SB 226 Out of Committee
 04/04/08 (S) MINUTE(FIN)
 04/09/08 (S) TRANSMITTED TO (H)
 04/09/08 (S) VERSION: SB 226
 04/09/08 (H) READ THE FIRST TIME - REFERRALS
 04/09/08 (H) JUD
 04/10/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 8

SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS:STAFF GENDER
 SPONSOR(S): SENATOR(S) DAVIS

01/16/07 (S) PREFILE RELEASED 1/5/07
 01/16/07 (S) READ THE FIRST TIME - REFERRALS
 01/16/07 (S) HES, JUD, FIN
 04/18/07 (S) HES AT 2:00 PM BELTZ 211
 04/18/07 (S) Heard & Held
 04/18/07 (S) MINUTE(HES)
 04/23/07 (S) HES AT 1:30 PM BUTROVICH 205
 04/23/07 (S) Moved SB 8 Out of Committee
 04/23/07 (S) MINUTE(HES)
 04/25/07 (S) HES RPT 4DP 1NR
 04/25/07 (S) DP: DAVIS, ELTON, THOMAS, DYSON
 04/25/07 (S) NR: COWDERY
 04/30/07 (S) JUD AT 1:30 PM BELTZ 211
 04/30/07 (S) Moved CSSB 8(JUD) Out of Committee
 04/30/07 (S) MINUTE(JUD)

05/02/07 (S) JUD RPT CS 2DP 2NR SAME TITLE
 05/02/07 (S) DP: FRENCH, MCGUIRE
 05/02/07 (S) NR: THERRIAULT, WIELECHOWSKI
 02/06/08 (S) FIN AT 9:00 AM SENATE FINANCE 532
 02/06/08 (S) Heard & Held
 02/06/08 (S) MINUTE(FIN)
 04/08/08 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/08/08 (S) Moved CSSB 8(FIN) Out of Committee
 04/08/08 (S) MINUTE(FIN)
 04/08/08 (S) FIN RPT CS 3DP 3NR SAME TITLE
 04/08/08 (S) DP: ELTON, THOMAS, DYSON
 04/08/08 (S) NR: HOFFMAN, STEDMAN, OLSON
 04/09/08 (S) TRANSMITTED TO (H)
 04/09/08 (S) VERSION: CSSB 8(FIN)
 04/09/08 (H) READ THE FIRST TIME - REFERRALS
 04/09/08 (H) JUD
 04/10/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 273

SHORT TITLE: CRUELTY TO ANIMALS

SPONSOR(S): SENATOR(S) WIELECHOWSKI

02/15/08 (S) READ THE FIRST TIME - REFERRALS
 02/15/08 (S) JUD
 02/27/08 (S) JUD AT 1:30 PM BELTZ 211
 02/27/08 (S) Scheduled But Not Heard
 03/05/08 (S) JUD AT 1:30 PM BELTZ 211
 03/05/08 (S) Heard & Held
 03/05/08 (S) MINUTE(JUD)
 03/10/08 (S) JUD AT 1:30 PM BELTZ 211
 03/10/08 (S) Heard & Held
 03/10/08 (S) MINUTE(JUD)
 03/14/08 (S) JUD AT 1:30 PM BELTZ 211
 03/14/08 (S) Moved CSSB 273(JUD) Out of Committee
 03/14/08 (S) MINUTE(JUD)
 03/17/08 (S) JUD RPT CS 2DP 2NR SAME TITLE
 03/17/08 (S) DP: FRENCH, WIELECHOWSKI
 03/17/08 (S) NR: THERRIAULT, MCGUIRE
 03/27/08 (S) TRANSMITTED TO (H)
 03/27/08 (S) VERSION: CSSB 273(JUD)
 03/28/08 (H) READ THE FIRST TIME - REFERRALS
 03/28/08 (H) CRA, JUD
 04/10/08 (H) CRA AT 9:00 AM BARNES 124
 04/10/08 (H) CRA REFERRAL WAIVED
 04/10/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CINDY SMITH, Staff
to Senator Hollis French
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 226 on behalf of Senator French, chair of the Senate Judiciary Committee, sponsor.

SUSAN COX, Senior Assistant Attorney General
Torts and Worker's Compensation Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 226.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 226.

THOMAS OBERMEYER, Staff
to Senator Bettye Davis
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 8 on behalf of Senator Davis, sponsor.

FAITH MYERS, Mental Health Advocate
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

DORRANCE COLLINS, Mental Health Advocate
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

HOLLY JOHANKNECHT, Attorney
Disability Law Center
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 8.

KATHERINE PUSTAY, Staff
to Senator Bill Wielechowski
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced SB 273 on behalf of Senator Wielechowski, sponsor.

SHANA ANDERSON, Facility Manager; Animal Control Officer
Valdez Animal Shelter
Valdez, Alaska

POSITION STATEMENT: Testified in support of SB 273.

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the sponsor, answered questions during the hearing on SB 273.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 273.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [2:17:09 PM](#). Representatives Gruenberg, Dahlstrom, Coghill, Samuels, and Ramras were present at the call to order. Representatives Holmes and Lynn arrived as the meeting was in progress.

SB 226 - VEXATIOUS LITIGANTS

[2:17:47 PM](#)

CHAIR RAMRAS announced that the first order of business would be SENATE BILL NO. 226, "An Act relating to litigation brought by a vexatious litigant; amending Rules 3, 4, 12, and 41, Alaska Rules of Civil Procedure; and providing for an effective date."

[2:17:53 PM](#)

CINDY SMITH, Staff to Senator Hollis French, Alaska State Legislature, relayed on behalf of Senator French, chair of the Senate Judiciary Standing Committee, sponsor, that SB 226 creates a process in statute for courts to manage the problem of lawsuits brought by individuals who are "vexatious litigants."

A vexatious litigant is defined as a person who, among other things, repeatedly litigates the same claims or previous adverse decisions against the same parties, files multiple frivolous lawsuits, repeatedly files pleadings or motions that are frivolous or in bad faith, or repeatedly engages in tactics that are without merit or intended to cause unnecessary delay.

MS. SMITH continued to explain that the bill would allow the court to impose reasonable restrictions on access to the court and to review complaints before an action can proceed. She pointed out that the states of Hawaii, California, Ohio, Florida, and Texas have passed similar legislation; in fact, the bill was modeled on California's Code of Civil Procedure and was deemed constitutional by the California Supreme Court.

[2:19:46 PM](#)

SUSAN COX, Senior Assistant Attorney General, Torts and Worker's Compensation Section, Civil Division (Juneau), Department of Law (DOL), in response to a question, said that the bill has not been introduced in the legislature before and that she was unaware of a similar bill. She assured the committee that the bill would not affect litigation of public interest lawsuits and would only affect nuisance plaintiffs who file without merit. In addition, the bill would provide a means to control pro se litigants, those who file without the assistance of an attorney, and thus are not subject to other means of control. Ms. Cox said that there are not too many people abusing the court system; however, there are those who are not deterred by adverse attorney fee awards when cases are lost and who re-file cases repeatedly.

MS. COX, in response to a question, said she has no knowledge of the administration's policy toward public interest litigants as that is not her field of expertise.

REPRESENTATIVE SAMUELS asked for examples of vexatious litigation.

MS. COX relayed previous testimony from an attorney representing a landlord whose tenant filed a lawsuit against the owner, the neighbors, family members, and the attorney. The case has been litigated eight times.

REPRESENTATIVE SAMUELS then asked for an estimate of the number of similar cases and whether there have been unintended consequences, for example, on cases regarding permitting issues.

MS. COX stated that SB 226 does not prevent the filing of litigation; however, it does provide the court with a means of reviewing cases, especially those that are not filed by an attorney. She opined that cases involving permitting would be litigated by an attorney.

REPRESENTATIVE SAMUELS surmised that the bill would not stop vexatious litigation by an attorney.

MS. COX clarified that an attorney, representing himself/herself, is still an unrepresented party.

REPRESENTATIVE SAMUELS asked why cases brought with the assistance of an attorney are excluded.

MS. COX explained that there are civil rules that apply to the professional conduct of attorneys; moreover, an attorney would be financially motivated to not waste time.

[2:27:03 PM](#)

REPRESENTATIVE HOLMES expressed favor with SB 226, adding that her experience as a clerk for the Alaska Supreme Court was that the court wasted a lot of time on repeated filings and appeals for cases with no merit. Time and money is wasted throughout the trial court system and at the supreme court level. Furthermore, [vexatious litigation] delays the processing of meritorious cases. Representative Holmes then referred to page 2, lines 20-23, which read:

If the clerk mistakenly filed the litigation without an order from the presiding judge, any party may file with the clerk and serve on the parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order under (d) of this section.

REPRESENTATIVE HOLMES asked how one party would know whether another party is a vexatious litigant.

MS. COX pointed out that subsection (g) on page 2 instructs the Alaska Court System to maintain a record of vexatious litigants that would be available to clerks of the court and the public.

REPRESENTATIVE SAMUELS asked whether someone listed as a vexatious litigant could still file a meritorious suit.

MS. COX reminded that committee that the intent of the bill was to enable the court to screen a filing, not to preclude it. She noted that similar action is taken in federal courts, and when there is merit to a case the court allows the case to proceed. In fact, under subsection (e), the presiding judge would decide whether a case has merit.

[2:34:03 PM](#)

REPRESENTATIVE COGHILL stated his concern about the creation of a burden so heavy as to prevent a citizen from presenting legitimate issues. In addition, page 1, subsection (b), requires the provision of security to "secure payment of a prevailing party's reasonable expenses." He observed that that may also be a burden on one in a "pro se situation."

MS. COX opined that the court would consider what is appropriate and what is a reasonable balance between the protection of the plaintiff from the vexatious litigant and the merits of the issue.

REPRESENTATIVE COGHILL questioned whether the criteria precedes the security, or if the security comes first. He gave the example of a judge who has before him a reasonable case from a vexatious person and who subsequently requires security.

MS. COX stressed that in order to be considered a vexatious litigant, a person would have to meet the four definitions on page 3 of the bill. It should be a label that not many people end up bearing.

REPRESENTATIVE COGHILL asked whether the definition section would be the criteria considered before a decision was made on requiring security from a litigant.

MS. COX said yes.

[2:37:09 PM](#)

REPRESENTATIVE LYNN declared a conflict of interest in that he is involved in a political contest and some have characterized a participant as a "serial litigator."

CHAIR RAMRAS said, "So noted." He then referred to the zero fiscal note and asked for an estimate of the savings by the court system as a result of the passage of this bill.

[2:38:12 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), informed the committee that the ACS is neutral on SB 226. He observed that there are not many vexatious litigants; however, their cases are time consuming for the attorneys at the Department of Law. The Alaska Court System would not save a measurable amount of money to indicate on a fiscal note.

CHAIR RAMRAS again asked whether some public interest groups would be regarded as vexatious litigants.

MR. WOOLIVER acknowledged that any group could conceivably be considered; however, the bill is meant to address extraordinary cases, not just cases that can not win.

CHAIR RAMRAS opined that the same could be said of some public interest cases.

REPRESENTATIVE SAMUELS asked for the sponsor's opinion of an amendment such that public interest litigants would be put in a "loser pays" situation.

MS. SMITH opined that the sponsor would prefer that the bill not be amended in that way.

[2:41:15 PM](#)

REPRESENTATIVE GRUENBERG asked whether the court system has any experience with vexatious or frivolous defendants. He stated his concern that the bill only addresses one side of the problem and referred to certain groups that make their living by denying claims using frivolous defenses. He opined that the court does not extend protection from defendants.

MR. WOOLIVER said that he was not aware of this issue, or how the court could pre-screen a lawsuit in the same way. He remarked:

You know who the plaintiff is and you may know who the defendant is. I don't think you could issue summary judgment, somehow, against the defendant without hearing from ...

REPRESENTATIVE GRUENBERG interjected to say that that is not his intent. He gave the example of a defendant who is also a defendant in similar claims. He then asked whether the court should have the ability to impose a similar security against defenses that have been ruled as frivolous by other courts.

MR. WOOLIVER expressed the need to conduct research on this topic.

REPRESENTATIVE GRUENBERG observed that as technology advances, this scenario can occur. In fact, present day law firms specialize in certain types of claims.

CHAIR RAMRAS offered an example of a case against a drug company.

REPRESENTATIVE GRUENBERG described a case against the Mercer Company. The law firm that the state retained specialized in a certain type of litigation, and so did the defense firm. He surmised that the defense firm may have been involved in other cases for other clients raising similar kinds of defenses. Furthermore, he is also concerned that poorer citizens may bring unsuccessful cases pro se, that are rejected for technical reasons, and then the citizens end up declared vexatious litigants.

MR. WOOLIVER said that he is reluctant to debate how the court would interpret this legislation.

MS. SMITH pointed out that the court has discretion and "may" take action if litigants meet the definitions.

REPRESENTATIVE GRUENBERG questioned whether the language on page 1, lines 10-11 - "reasonably probable that the plaintiff will prevail in the litigation" - would create too high a standard, particularly given that it pertains to a very early stage of a lawsuit.

[2:48:14 PM](#)

MS. COX re-stated that the court is not required to take action. The court may order the plaintiff to provide security if the court determines that the plaintiff is a vexatious litigant and probably would not prevail. There would obviously be a motion brought by the defendant explaining the circumstances and requesting protection from the court. In the case of litigants

who already have a pre-filing order against them, other provisions in the bill would apply.

REPRESENTATIVE GRUENBERG observed that once the defendant makes the motion, the burden of persuasion shifts to the plaintiff to show reasonable probability.

MS. COX affirmed that the court would determine whether the plaintiff was a vexatious litigant, whether the definitions of the bill have been satisfied, and whether there was a reasonable probability that they could succeed in the case. She opined that these are judgments that the court routinely makes.

REPRESENTATIVE GRUENBERG said, "So you're not saying that necessarily the plaintiff must show that it is reasonably probable, you think it might be the defendant's burden to show that it's not reasonably probable.

MS. COX said yes.

REPRESENTATIVE GRUENBERG said, "It's very important for us to establish, on the record, who has that burden, and it's the defendant."

[2:51:09 PM](#)

CHAIR RAMRAS closed public testimony on SB 226.

REPRESENTATIVE COGHILL indicated that he might have a future amendment for SB 226 regarding the inflexibility of the provision for security.

REPRESENTATIVE LYNN expressed his support for the intent of the bill; however, the bill creates two procedures for filing a lawsuit, one for "you and I" and two court hearings for someone defined as a vexatious litigant.

REPRESENTATIVE GRUENBERG, in response to Representative Coghill's statement, offered that security could come in the form of cash or a corporate bond, or another bond or undertaking, under Civil Rule 80, which could be a piece of property, or an unsecured bond by people who are worth the required amount of money.

MS. COX said she didn't disagree.

REPRESENTATIVE SAMUELS surmised that even vexatious litigants must account for "loser pays" which is something that public interest litigants do not.

[2:54:47 PM](#)

REPRESENTATIVE Dahlstrom moved to report SB 226 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 226 was reported out of the House Judiciary Standing Committee.

SB 8 - MENTAL HEALTH PATIENT RIGHTS: STAFF GENDER

[2:55:20 PM](#)

CHAIR RAMRAS announced that the next order of business would be CS FOR SENATE BILL NO. 8(FIN), "An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

[2:57:06 PM](#)

THOMAS OBERMEYER, Staff to Senator Bettye Davis, Alaska State Legislature, explained on behalf of Senator Davis, sponsor, that SB 8 requires that hospitals providing psychiatric services must offer patients 18 years of age or older gender choice of staff for intimate care, and document in the patient record after "reasonable and good faith efforts to comply" either failure to meet the patient's request for gender choice, but provision of intimate care by a licensed professional, or failure to meet the patient's request for gender choice, but provision of intimate care by a non-licensed professional. The bill further requires posting of the notice of the patient's right of gender choice in intimate care situations. More than half of these patients are reported to have been traumatized by sexual and or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse, feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. While it is understandable that a hospital may not always be able to comply with a request of gender in all situations due to staffing schedules and shortages on particular shifts or duty units, the bill requires, after a good faith effort, that the hospital document the noncompliance in the patient's record. This information is important for medical

purposes and in the event of inquiry during grievance procedures under Title 47.

[2:59:37 PM](#)

CHAIR RAMRAS referred to page 2, lines 19-22, and asked whether this provision allows for an exemption in the case of a mental health patient who desires a caregiver of the opposite gender which, if granted, would be adverse for the staff and for the treatment of the patient.

REPRESENTATIVE HOLMES offered her understanding that that language allows the psychiatrist to overrule the patient's request when compliance would adversely affect patient treatment.

MR. OBERMEYER concurred.

REPRESENTATIVE HOLMES asked whether non mental health patients have the same right to request caregivers of a certain gender.

MR. OBERMEYER responded that the bill was designed specifically for psychiatric hospital patients because admittance to a mental health facility generally removes most of a patient's rights and limits their contact with family or others. Further, documentation of care for mental health patients can be incomplete.

REPRESENTATIVE GRUENBERG asked why the right of choice should not be extended to all in-patients.

MR. OBERMEYER agreed that all patients should have the right; however, most of the problems that have been identified for intimate care are for those who have been emotionally and psychologically traumatized by perceived or actual contact.

REPRESENTATIVE GRUENBERG stated that if the bill extended this right only to non-mental-health patients, that would be a denial of equal protection; therefore, in order for the bill to survive, the provision should apply to everybody.

REPRESENTATIVE HOLMES suggested that the request should also be allowed to come from a representative on behalf of the patient, because the patient may be under medication.

MR. OBERMEYER informed the committee that there is a grievance procedure to avow patients and guardians of their rights and privileges at the time of admittance to a facility.

[3:06:54 PM](#)

FAITH MYERS, Mental Health Advocate, described her experience as a patient in mental health facilities in Washington, Alaska, and Nevada. She explained that there is unnecessary trauma of patients in psychiatric facilities and the rules and statutes established by the state may reduce the amount of trauma and recidivism. The percentage of women in acute care mental health facilities, with a history of sexual or physical abuse, is somewhere between 51 percent and 98 percent. The percentage is slightly less for men. Ms. Myers opined that a patient is re-victimized by intimate care given, against their will, by a caregiver of the same gender of the person who abused them in the past. She listed the names and backgrounds of the authors of letters of support for gender choice of intimate care staff. Ms. Myers concluded that SB 8 would only require psychiatric institutions to make a good faith effort to comply, and she asked the committee to pass the bill.

[3:10:01 PM](#)

DORRANCE COLLINS, Mental Health Advocate, pointed out that a recent ruling by the Alaska Supreme Court cited a clear tension between psychiatric facilities seeking convenience and economics and patient's rights, which can manifest itself into patient abuse. He opined that without regulation, facilities will take short cuts. Mr. Collins read from a letter of support such that many common practices in psychiatric settings cause patients chronic stress and put patients at risk. He noted that a woman can request a female physician for a gynecological exam; however, once admitted to a mental health facility, she no longer has that choice. Mr. Collins then asked the committee to pass SB 8.

[3:11:33 PM](#)

HOLLY JOHANKNECHT, Attorney, Disability Law Center, relayed that she has provided written testimony in support of SB 8.

CHAIR RAMRAS closed public testimony on SB 8. He then noted his satisfaction that language on page 2, lines 19-22, allows for the determination of compliance by the psychiatrist at the

hospital, while maintaining respect for the rights of the patient, and expressed his support for the bill.

[3:13:12 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 8(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 8(FIN) was reported out of the House Judiciary Standing Committee.

SB 273 - CRUELTY TO ANIMALS

[3:13:34 PM](#)

CHAIR RAMRAS announced that the final order of business would be CS FOR SENATE BILL NO. 273(JUD), "An Act relating to cruelty to animals and promoting an exhibition of fighting animals."

[3:13:42 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed House committee substitute (HCS) for CS for SB 273, Version 25-LS1127\M, Luckhaupt, 4/9/08 as the work draft. There being no objection, Version M was before the committee.

[3:14:28 PM](#)

KATHERINE PUSTAY, Staff to Senator Bill Wielechowski, Alaska State Legislature, explained that SB 273 seeks to increase the penalties for the most heinous acts of animal cruelty. Currently an Alaskan can torture or poison an animal and only be charged for a misdemeanor. She stressed that the bill does not increase the penalty for causing an animal's death by neglect. Forty-three states and the District of Columbia have enacted felony level penalties for animal cruelty, yet Alaska ranks among the weakest states for animal protection. Ms. Pustay continued to explain that research indicates that without intervention, people who abuse animals are more likely to abuse humans. In fact, many abusers have a history of animal abuse that precedes domestic violence toward their partner. In addition, animal abuse is often an indicator that an individual poses a risk to himself/herself and others, and can be a predictor of anti-social and aggressive behavior in children. She concluded by noting that the bill has been endorsed by the Alaska Outdoor Council, the Alaska Network on Domestic Violence and Sexual Assault, the Alaska State Veterinary Medical Association, the Municipality of Anchorage Animal Control

Advisory Board, the Kodiak Police Department and Animal Control, the Commissioner of the Division of Animal Control in Fairbanks, the Valdez Police Department, and numerous organizations and individuals across the state.

REPRESENTATIVE HOLMES assumed that cases against very young children would be sent to the juvenile system and "weeded out."

MS. PUSTAY said that the existing standard in statute for prosecution is, "knowingly inflicts severe pain and suffering in an animal."

REPRESENTATIVE SAMUELS opined that the bill does not address animal cruelty as a precursor to violence against humans. He asked the representative from the Department of Law (DOL) whether an incident involving a 17 year old could be "a waiver of a class C felony." He also asked whether cock and dog fighting was a problem in Alaska.

MS. PUSTAY advised that the Community Council in Mountain View reported that gang-related dog fighting was on the increase. Her understanding was that the dog-fighting was very violent. Nevertheless, the Judiciary committee substitute scales back the animal fighting provisions to limit the third, and each subsequent, offense to a class A misdemeanor, as indicated on page 2, line 20 and 21, of the bill.

[3:23:07 PM](#)

SHANA ANDERSON, Facility Manager; Animal Control Officer, Valdez Animal Shelter, informed the committee that she has been the animal shelter manager and Animal Control Officer for 19 years. She stressed that Alaska is one of only seven states where animal cruelty laws do not carry felony provisions, and there is strong support in the state for this change. Many cases of animal cruelty are not reported, ranging from neglect to physical abuse. While most problems of neglect can be addressed with the education of the pet owner, when animal cruelty is intentional, law enforcement people should have available the use of a felony animal abuse charge. Ms. Anderson re-stated the link between animal cruelty and violence against family members.

CHAIR RAMRAS noted that members' packets include a letter of support for SB 273 from Chris Ashenbrenner, Executive Director of the Council on Domestic Violence & Sexual Assault (CDVSA).

REPRESENTATIVE LYNN asked what would be considered an animal for purposes of the bill. He said he would not want the bill to have unintended consequences, though he does support the bill.

[3:27:03 PM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, responded that AS 11.61.145(c) defines an animal as, "a vertebrate living creature, not a human being, but does not include fish." He added that sled dog racing, hunting, fishing, and trapping are all excluded.

REPRESENTATIVE SAMUELS questioned whether attending a dog fight could be interpreted as "promoting an exhibition of fighting animals" and subject one to a felony charge.

SENATOR WIELECHOWSKI said that current statute already makes it a felony to conduct dog and cock fights. The bill simply adds an additional offense such that the third offense is escalated to a felony of a higher level.

REPRESENTATIVE SAMUELS asked what a decompression chamber is.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

SENATOR WIELECHOWSKI answered that a decompression chamber was used to euthanize animals and is now archaic language in the statute.

MS. PUSTAY added that the language precedes the 2004 changes.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

REPRESENTATIVE COGHILL asked whether separate counts of a class C felony could "ratchet up" a single incident to a class A felony

SENATOR WIELECHOWSKI explained that all three counts would be a class C felony. He gave an example of proportionality of the classes of felonies.

REPRESENTATIVE COGHILL stated that the definitions of cruelty are very severe degrees of injuries.

SENATOR WIELECHOWSKI acknowledged that the bill only covers the most heinous of crimes and cited the difficulty to prosecute and prove cruelty to an animal.

REPRESENTATIVE COGHILL asked how many convictions of animal abuse are reported.

SENATOR WIELECHOWSKI said that twelve cases were referred, and seven accepted, for prosecution in 2006. In 2007, eighteen cases were referred and ten were accepted. Additional research into criminal records revealed that each high profile animal cruelty perpetrator had previous and/or subsequent convictions and/or arrests. The connection with domestic violence is staggering; 71 percent to 81 percent of victims cite violent attacks on family pets. Senator Wielechowski observed that the rationale for making such behavior a felony was that the police are much less likely to prosecute misdemeanor crimes.

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REPRESENTATIVE HOLMES clarified that if someone is promoting dog fighting, or training the dogs, the charge remains a felony. The bill would make attending a dog fight, for the third and subsequent times, a class A misdemeanor.

SENATOR WIELECHOWSKI said correct. He opined that these activities are not good for society; in fact, in Anchorage, gang members are conducting these fights and creating a problem for neighborhoods.

REPRESENTATIVE SAMUELS questioned whether the term, "severe and prolonged physical pain and suffering" could be applied to hunting.

SENATOR WIELECHOWSKI pointed out that AS 11.61.140(c)(4) specifically excludes hunting, fishing, and trapping. He restated the support for the bill by the Alaska Outdoor Council (AOC).

SENATOR WIELECHOWSKI, in response to questions, stressed that the language in the bill is language in current statute, except for the felony classification of the crime. He also noted that the action must be intentional.

REPRESENTATIVE COGHILL asked whether a charge could be made against someone in the practice of normal husbandry; for example, setting a broken leg.

SENATOR WIELECHOWSKI pointed out the exception for "accepted veterinary or animal husbandry practices." In fact, gross

negligence or recklessness is accepted, as long as the action is not intentional.

CHAIR RAMRAS asked for details on the effect of the bill on all aspects of dog mushing. He gave examples of: euthanizing a puppy with a birth defect; euthanizing older dogs; the death of a dog during a race; or neglect by a large kennel.

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SENATOR WIELECHOWSKI directed the committee's attention to the current provisions in AS 11.61.140 that exempts the humane destruction of an animal, dog mushing, pulling contests or practices, and rodeos or stock contests. He relayed that there has been support for having the prohibition of animal cruelty apply to dog mushing, but he is not in favor of such and so dog mushing remains exempted.

REPRESENTATIVE HOLMES read AS 11.61.140(c):

- (c) It is a defense to a prosecution under this section that the conduct of the defendant
 - (1) was part of scientific research governed by accepted standards;
 - (2) constituted the humane destruction of an animal;
 - (3) conformed to accepted veterinary or animal husbandry practices;
 - (4) was necessarily incidental to lawful fishing, hunting or trapping activities;
 - (5) conformed to professionally accepted training and discipline standards.

REPRESENTATIVE HOLMES then read AS 11.61.140(e):

- (e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

REPRESENTATIVE SAMUELS gave an example of an adolescent whose torturing of the family pet is a precursor to future violent behavior. If the bill does not address this situation, and waives the felony for the adolescent, he asked whether the Department of Law (DOL) would be able to intervene.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), pointed out the possibility for a discretionary waiver for young people, but opined that it would be extremely unlikely that a waiver would be pursued for a class C felony. She reminded the committee that the legislature adopted mandatory waiver procedures in the 1990s out of frustration with discretionary procedures.

REPRESENTATIVE SAMUELS asked for examples of class C felonies against a person.

MS. CARPENETI advised that one example is the second offense for stalking in the first degree; however, assault in the fourth degree is a class A misdemeanor. In response to a question, she explained that a fourth degree assault is when a person recklessly causes physical injury to another person, or with criminal negligence, causes physical injury by means of a dangerous instrument, or recklessly places another person in fear of injury.

MS. CARPENETI, responding to a question, clarified that mutual conduct in a bar fight is generally considered disorderly conduct, depending on the circumstances. Assault in the third degree, which is a class C felony, involves a person recklessly placing another in fear of imminent serious physical injury by means of a dangerous instrument, or causes physical injury by means of a dangerous instrument. She further explained that first degree stalking is a class C felony.

SENATOR WIELECHOWSKI noted that if a human were intentionally killed by either a decompression chamber, or poison, the sentence would be 99 years in jail for the commission of an unclassified felony. Further, if a human is tortured, that is a class A felony, punishable by 20 years in jail.

MS. CARPENETI, in response to an earlier question, informed the committee that conducting dog fights is a class C felony, as is killing a police dog.

REPRESENTATIVE SAMUELS asked how hard it would be to prove someone's attendance at a dog fight and whether this provision would be a helpful tool for police.

MS. CARPENETI opined that animal fights are not prosecuted very often.

SENATOR WIELECHOWSKI said he assumed that the provision would be helpful for police as an opportunity to arrest gang members.

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CHAIR RAMRAS indicated his concern about the creation of laws that make more people felons. Although stricter penalties are warranted on a case-by-case basis, he warned that the corrections system would soon be overtaxed. In the instance of a dog fight, he asked whether all of the participants would be charged with a felony, or only the promoter.

SENATOR WIELECHOWSKI answered that the police would have to prove that one was promoting the dog fight in order to be charged. In fact, many states do have a felony provision for spectators. Alaska's law would just increase the penalty for a third offense.

MS. CARPENETI added that it is also a class C felony to have a pecuniary interest in the exhibition of fighting animals under current law.

REPRESENTATIVE SAMUELS said, "Or you own the kennel, like Michael Vick."

CHAIR RAMRAS closed public testimony on SB 273.

REPRESENTATIVE SAMUELS said, "I still have heartburn with the felony provision"

The committee took an at-ease from 3:58 p.m. to 3:59 p.m.

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REPRESENTATIVE Dahlstrom moved to report the proposed HCS for SB 273, Version 25-LS1127\M, Luckhaupt, 4/9/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 273(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:01 p.m.