

MINUTES
SENATE FINANCE COMMITTEE
March 28, 2007
9:03 a.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately [9:03:42 AM](#).

PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Kim Elton
Senator Joe Thomas
Senator Fred Dyson
Senator Donny Olson

Also Attending: SENATOR LESIL MCGUIRE, SENATOR GARY STEVENS, ANNE CARPENETTI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law;

Attending via Teleconference: From offnet locations: LISA SOMMER, GERAD GODFREY, Chair, Violent Crimes Compensation Board, Department of Administration; KATHY HANSON, Interim Director, Office of Victims' Rights.

SUMMARY INFORMATION

SB 5-FAILURE TO REPORT CRIMES

The Committee heard from the bill's sponsor, the Department of Law, the Violent Crimes Compensation Board, the Office of Victims' Rights, and a member of the public. The bill was held in Committee.

#sb5

[9:03:49 AM](#)

CS FOR SENATE BILL NO. 5(JUD)
"An Act relating to reporting of certain crimes."

This was the first hearing for this bill in the Senate Finance Committee.

9:04:56 AM

SENATOR LESIL MCGUIRE, sponsor of the bill, introduced her staff member, Marit Carlson-Van Dort, as a policy aide who would be available to answer questions.

Senator McGuire recounted that the impetus for this legislation was the highly publicized death of Kiva Friedmann. Ms. Friedmann was brutally beaten, raped and murdered by her boyfriend in 2003 in Anchorage. Three individuals, one of whom was the perpetrator's brother, witnessed the extent of her injuries while she was still alive, but did not report the crime. Ms. Friedmann died as a result of her injuries hours later.

9:07:41 AM

Senator McGuire informed that this bill would add to existing required reporting statute. The existing reporting requirements were developed in reaction to a crime committed against an eight year old girl in Nevada. Senator McGuire reminded that the child was raped and killed in a casino bathroom. A friend of the assailant witnessed the commission of the crime and did not report it to authorities.

9:09:47 AM

Senator McGuire told that this bill would expand the definition of required reporting to a crime committed against a "person", as the existing legislation is limited to crimes committed against a "child". An amendment made by the Senate Judiciary Committee changed language in the bill requiring the report of a crime "in a timely manner" to "as soon as reasonably practicable". The bill retained the defenses for not reporting that exist in statute. These included fear of harm to self or family due to reporting the crime. She exemplified an instance of a small apartment complex, in which neighbors know each other, and an individual might fear for their own safety if they reported a suspected crime committed by a neighbor.

9:11:25 AM

Senator McGuire explained that the bill would "stagger" the penalties that would apply to a violation of this bill to make the ramifications relative to the crime itself. For example, failure to report an unclassified felony would result in a charge of a Class C felony under this bill. Failure to report a classified felony or other crime would result in a charge of a Class A misdemeanor. She considered this a "middle ground".

[9:12:15 AM](#)

Senator McGuire stated that the Department of Law would present its concerns regarding immunity and prosecution. She advised that the complications the Department anticipated were without merit, as the original required reporting legislation had been in statute since 1999 and had not produced such results. Similar laws exist in the states of California, Nevada, Massachusetts, Florida, Ohio, Rhode Island, Texas, Washington, and Wisconsin.

Senator McGuire addressed the "philosophical underpinnings" of this legislation by referencing the 1964 murder of Kitty Genovese in New York City. Ms. Genovese was stabbed as she approached her home, and despite numerous witnesses, the police were not notified. Senator McGuire stressed that this bill was intended to address instances of imminent danger of bodily harm or death, and not minor violations.

[9:14:55 AM](#)

Co-Chair Stedman asked the differentiation of classified and unclassified felonies.

[9:15:21 AM](#)

Senator McGuire defined unclassified felonies as "serious murders" which would carry a life sentence. Classified felonies are delineated as class A, B, or C. The next step down in severity is a misdemeanor offence, followed by a violation.

[9:16:02 AM](#)

Senator McGuire set forth that this bill would not be applicable to average misdemeanor or white-collar offences. It would be limited to very serious, visible crimes that would lead to imminent physical harm and likely death.

[9:16:52 AM](#)

Co-Chair Stedman asked if this legislation could weaken the original statutory intent by changing "child" to "person".

Senator McGuire responded negatively, adding that this bill would strengthen the original legislation by expanding the class of person covered by the reporting requirement from "child" to any person.

[9:17:22 AM](#)

Co-Chair Stedman asked about charges brought under the original statute.

Senator McGuire understood that no charges had been brought under that law since its enactment. She specified that the bill would be used where applicable, and characterized it as a "hammer to have in the tool belt". It would raise public awareness regarding the duty of individuals to report crimes against others. The "defense" in the bill would not require a person to put themselves in danger by reporting a crime.

Senator McGuire continued, summarizing a television news story on bystander inaction when witnessing a kidnapping. This bill would not require a person to intervene in a kidnapping, but merely call police to report the event.

[9:20:39 AM](#)

Senator Thomas asked the location of the exemption to the reporting requirement.

[9:21:04 AM](#)

Senator McGuire identified that provision as AS 11.56.765. Failure to report a violent crime committed against a child., subsection (b).

[9:22:52 AM](#)

Senator Huggins exemplified a reporter embedded with a sniper filming the shooting of a US military officer in Afghanistan. He asked how a reporting requirement would apply in that situation. He opined that the culture was moving in a direction counter to

the intent of this legislation, and asked how people could be required conform.

[9:24:47 AM](#)

Senator McGuire responded that war circumstances were different than "average daily life in America", and were governed by different laws. This bill would encourage citizens to act responsibly. She suggested that the laws created and implemented by adults have a "trickle down effect" on children, and exampled marijuana laws.

[9:26:37 AM](#)

Senator Huggins offered that he would likely support the bill, but stated that the legislation would not encourage people, it would criminalize them. He asked the predominance of "accessory" charges in these types of cases.

[9:27:40 AM](#)

Senator Dyson related that the friend of the man convicted in the Nevada case was not charged as an accessory to the murder due to the fact that he had not been a participant the commission of the crime. There existed a "common law assumption" that an individual was obligated to render assistance to a crime victim. This legislation would codify common law, and clearly state the expected standards of society.

Senator Dyson had had discussions regarding the possible legal options available to charge a hotel employee who is aware of an underage prostitute at the location, and he indicated that this bill would be an appropriate medium. The bill would also have been applicable to the "gang rape" of two girls, during which 10 to 15 people observed the crime. At that time, the original legislation had not yet been signed in to law.

Senator Dyson told that he had not advocated for a more generally applicable law when drafting the original legislation due to the fact that the legislation "was breaking new ground," and the crime was more clearly defined when limited to an adult's duty to report a crime against a child.

[9:32:11 AM](#)

Co-Chair Stedman highlighted the indeterminate fiscal notes from the Public Defender Agency and the Office of Public Advocacy. He was unsure of the fiscal impact on the Department of Administration, but would "explore" the issue. Fiscal note #3 from the Violent Crimes Compensation Board contained analysis stating that the Board anticipated the legislation would increase the number of violent crimes reported. He alluded that an increase in reported crimes could also affect the Department of Law.

[9:33:14 AM](#)

Senator Elton was concerned by the "slippery slope" of criminalizing immoral behavior. He suspected that changing the law to legally prohibit the "heinous" behavior detailed previously would make it easier to change reporting requirements related to other crimes. He was unsure where the line would be drawn, and exemplified a situation where a teenager who witnessed friends smoking marijuana could be required to report the offense.

[9:35:27 AM](#)

Senator McGuire opined that Alaskans were adamant regarding the protection of their rights and privacy. She "would not agree to go down a slippery slope". She assumed the legislative process would prevent the erosion of personal rights. This bill would address physical acts of: murder, attempted murder, kidnapping, attempted kidnapping, sexual penetration and assault. It would not be applicable to the example offered by Senator Elton, and would not encourage "snooping". She stressed the "reasonability" of the bill, and its intent to provide an "incentive" for an individual to get involved to protect the life of another citizen.

[9:38:28 AM](#)

Senator Elton remarked that the manufacture of methamphetamine would have the effect of putting many lives at risk, including drug users and members of the general public who may fall victim to the crimes of drug users attempting to support their habit. He struggled with this aspect of the bill, as it seemed to "lead down the slippery slope."

[9:39:21 AM](#)

Senator McGuire responded that the bill contained very specific definitions of the crimes that would fall under the purview of this legislation, and did not include the situation described by Senator Elton.

Senator Elton appreciated the efforts of the bill, but saw a real possibility for the expansion of reporting requirements by a future legislature.

[9:40:21 AM](#)

Senator Huggins was concerned with criminalizing inaction. He offered an example of his daughter, a cadet at West Point Academy, who voluntarily reported a misdoing of a fellow classmate and friend. While he supported this type of involvement, he questioned expanding the reporting requirement.

AT EASE [9:42:24 AM](#)/[9:42:47 AM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, expressed the Department's reservations about the bill. She informed that the legislation would harm the Department's ability to prosecute offenders. She understood the "compelling moral obligation" to assist others, but told that criminalizing non-reporting would make prosecution of perpetrators more difficult.

[9:44:45 AM](#)

Ms. Carpeneti identified the practical problem of the potential loss of a witness to testify against an offender. If a witness had not reported crime within a "reasonably practicable time" that person would be subject to criminal prosecution. In such a case, the witness would hire or be appointed an attorney, and that attorney would advise their client not to cooperate with the prosecution to avoid self-incrimination.

Ms. Carpeneti explained that the prosecution would either lose that person as a witness, or would have to grant immunity to the witness for the entire crime their testimony would relate to. The State of Alaska utilizes "transactional immunity," which immunizes the witness from the entire crime they testify about. Immunized testimony is not as persuasive as other testimony in prosecuting the perpetrator of a crime.

[9:46:38 AM](#)

Ms. Carpeneti stressed the Department's trepidation regarding immunized witnesses, and acknowledged that the same apprehension existed when the original legislation was under consideration. No cases had been brought under the original "failure to report crimes against a child" legislation. Two arrests were made under that law, but both were dismissed by prosecutors due to lack of evidence.

Ms. Carpeneti communicated that the current law and the legislation under consideration cover assault as well as murder, kidnapping and rape. She exemplified witnessing a car accident involving drunk driver that resulted in a serious injury to another passenger. That injury would be classified as an assault, and every driver who passed that accident scene would be required to report the assault, or would be subject to prosecution under this bill for failure to do so.

Ms. Carpeneti stated that current law includes provisions to address affirmative actions taken after the commission of a crime to hinder prosecution. Hindering prosecution in the first degree is a Class C felony under current law, and that provision could be expanded to assist law enforcement. One possibility would be the addition of language proscribing "acting with intent to hinder the discovery of a crime", and adding a provision to address lying to a police officer. Laws enacted by other states typically are limited to the failure to report crimes against a child. A federal law also existed pertaining to misprision of a felony, but that law had been interpreted by the courts to require some other "affirmative" act by the defendant, not just failure to report.

Ms. Carpeneti concluded that the Department was willing to assist in the development of a bill that would encourage the reporting of criminal acts, but that this legislation would make prosecution of perpetrators of crime more difficult. She disclosed that in the case involving Ms. Friedmann's death, the perpetrator called police and confessed to his crimes, thus no witnesses were necessary. Future cases, however, could very well require the cooperation of a witness in order to prosecute the offenders.

[9:51:41 AM](#)

Senator Dyson recalled legislation passed the previous year to allow police officers to gather information at the scene of a crime.

Ms. Carpeneti clarified that the new law allowed officers to ask the names of persons at the scene. A person refusing to provide their name could be photographed for identification purposes.

Senator Dyson hypothesized a situation in which police respond to a report of a crime, and upon arrival at the scene, everyone present claims to have witnessed nothing. The police photograph or otherwise identify those present, and subsequently learn that a crime had been committed. He asked if in that case, the prosecutors would be able to offer immunity against prosecution under this bill in exchange for testimony from a witness.

[9:53:35 AM](#)

Ms. Carpeneti replied that a witness would have the right to refuse to speak with authorities. If the witness was subject to prosecution under this bill, they would recruit legal counsel. If the case went to court, the witness' lawyer would request immunity. If the witness had participated in the commission of the crime in any way, immunization would disallow prosecution of that witness for their involvement.

[9:54:56 AM](#)

Senator Dyson understood that timing was extremely important in apprehending offenders, as a witness' "voracity" and ability to recollect details diminished over time. He asked if a police officer would have an obligation under *Miranda* to inform a witness that admitting to having seen a crime may subject them to prosecution. He also asked how long it would take a witness to secure immunity before agreeing to testify.

Ms. Carpeneti answered that it could take weeks to grant immunity to a witness. As to the question of *Miranda* warnings, that would depend on whether or not the witness was in custody.

[9:56:41 AM](#)

Senator Dyson expounded, outlining an instance of an individual approached by an officer and questioned regarding a crime. The

individual provided details of the commission, but had not reported the crime, and was subsequently prosecuted under the provisions of this bill. Senator Dyson asked if the witness could claim that he had not been warned of his right to remain silent and avoid self-incrimination, essentially a violation of the *Miranda* rights.

Ms. Carpeneti replied that it would depend on the circumstances of the questioning. If the witness was not in police custody, a *Miranda* defense would not be applicable. If the witness was in custody, failure to inform him or her of their *Miranda* rights may be a plausible defense.

[9:58:03 AM](#)

LISA SOMMER testified via teleconference from an offnet location that she was the mother of Kiva Friedmann. Ms. Sommer read her testimony [copy on file] into the record, detailing the circumstances of her daughter's death.

[10:04:49 AM](#)

GERAD GODFREY, Chair, Violent Crimes Compensation Board, Department of Administration testified via teleconference from an offnet location. He read a prepared statement into the record, which was similar to the written comments he submitted to the Committee [copy on file], which reads as follows.

Dear Senators:

My name is Gerad Godfrey and I chair Alaska's Violent Crimes Compensation Board (VCCB). I am writing this letter in support of SB5 with the perspective I have gained during my tenure on the VCCB.

First and foremost I must preface this letter by stating that I am as apprehensive about legislation requiring an affirmative act of private citizens as anyone else. But this legislation does not present a gross encroachment of personal freedoms. This legislation is designed to save people's lives not make criminals of apathetic citizens. If one can be made a criminal by failing to file a tax return where no one's life hangs ion the balance then surely, by comparison, this legislation asks less than that of filing

a tax return yet provides a much greater benefit to the public than a tax return, by saving lives.

The circumstances of the heinous crime committed on Kiva Friedman which catalyzed this legislation, unfortunately, are not unique in Alaska. As chair of the VCCB I have seen the aftermath and details of thousands of violent crimes committed on innocent Alaskans. Although the nature of the crime perpetrated on Kiva was extreme, it is similar to many other crimes in this state whereby uninvolved parties were aware of the felony being perpetrated yet did not do so much as make an anonymous call to 911. Based on empirical data from the VCCB I estimate that 5-10 times a year there are circumstances wherein an act of minimal intervention by an uninvolved citizen, aware of a violent felony perpetrated on an innocent victim, would have mitigated the suffering of that victim or saved the victim's life.

I have read the Department of Law's analysis and position on this legislation. The DOL is doing what they should be doing by viewing this from a pragmatic perspective and reducing it to convictions and acquittals. However, that is not the purpose of this legislation. The purpose of this legislation is to compel one to act whereby he/she would not have acted otherwise. If this legislation compels one to act, thereby saving a life, but in the process costs the state a conviction, so be it. Such an occurrence would be entirely consistent with, and anchored in, one of the foundational tenets of the American Criminal Justice system. That tenet is: It is better for a guilty man to go free than an innocent man to go to jail. In this parallel the guilty man is the perpetrator of a violent felony and the innocent man is the victim of such felony. DOL's position on the unintended consequences is not well supported by the history of comparable legislation in other states. DOL cited the rarity of prosecution with such legislation in other states and that it appeared to be "token legislation" in some states. Generally, token legislation is not legislative time well spent. That is not the case in this instance.

Obscure laws are typically learned of through word of mouth and time. Imagine 10 years from now if the exact same scenario that happened to Kiva Friedman happens again. But

this time when the 3 witnesses leave and discuss what they should do, one of the witnesses recalls from a high school intro class, or such, that it would be a crime not to report the torture. So he convinces his buddies that they should make an anonymous 911 call just to cover their own tails. By doing this, medical aid is rendered in time to save Kiva's life. That is a plausible scenario not a myopic one and when it comes to pass and saves one life, it will have been worthwhile legislation, token or not.

One way DOL fears SB5 would cost convictions is when material witnesses to the crime failed to report the crime and either invoke the Fifth Amendment or are offered immunity for their testimony. Again, although plausible, the evidence appears to demonstrate this is a paper tiger. In all reality, if this legislation was designed to affirmatively and proactively prosecute apathetic witnesses, it is poorly written for such, as the defenses available and the ability to adequately prove the elements of the crime would be problematic. This is probably another reason prosecutions for this type of legislation are rarely seen.

If in fact, in an isolated instance, such legislation makes prosecution more arduous, yet in another isolated instance such legislation saves one's life, it can reasonably be said it is worthwhile legislation. It is only just that saved lives trump convictions if one must occasionally yield to the other.

All legislation does not boil down to prosecutions won and lost and this is such legislation. I hope that Alaska's Legislature maintains a broad perspective on SB5 and remembers the intent within it which is to save lives not make criminals of apathetic individuals.

[10:06:44 AM](#)

Co-Chair Stedman asked that Mr. Godfrey "paraphrase" his testimony and submit his written comments to the Committee.

Mr. Godfrey, as Chair of the Violent Crimes Compensation Board, had seen thousands of cases of violent crimes in the State, and described the circumstances of a witness failing to report the

commission of a crime as it was transpiring as "more common than one might think", occurring five to ten times per year.

10:08:00 AM

KATHY HANSON, Interim Director, Office of Victims Rights, testified via teleconference from an offnet location in support of the bill. She stated that concerns regarding immunity would not apply if the original legislation had applied to crimes committed against adults as well as children when initially passed. She identified three reasons to support the bill. The first was the "fundamental principle" that a society's laws should reflect its morals. Secondly, the legislation would serve an "educational function". Finally, the bill would serve as an additional "tool" for prosecutors. If passed, the Department of Law would retain sole discretion as to when and how to use the provisions in the bill.

Ms. Hanson referred to the law review article "41 Brandeis Law Journal 697" [copy on file] that compared existing similar laws and suggested a "model statute". She reiterated that the proposed legislation was limited to specific violent crimes. She suggested that Section 2 (d)(2) of the bill read: "class A misdemeanor if the crime not reported is a felony other than an unclassified felony". That change would limit the duty to report to witness of the commission of a violent felony.

10:11:10 AM

Ms. Hanson informed that the law review article explained comparable laws in Europe, other US states and federal statute as "more stringent" than the current proposal. Some of these laws require a duty to assist, rather than simply to report. The federal misprision laws had been "on the books" for ninety years, and used rarely although successfully.

Ms. Hanson reported that in 2005 a woman was convicted under the federal law after assisting her boyfriend in a bank robbery. Prosecutors did not have enough evidence to convict the woman on accomplice charges, but she was convicted of failure to report the crime. An appeal was made on Fifth Amendment grounds, and the court ruled that the Fifth Amendment does not afford a "privilege to lie".

10:12:59 AM

Co-Chair Stedman asked Ms. Hanson to conclude her testimony.

Ms. Hanson, in a prior hearing, had proposed an exception be added to subsection (b) of AS 11.56.765 that would provide an exemption to the requirement to report when existing law provided a privilege, such as the Fifth Amendment protection against self-incrimination.

[10:13:50 AM](#)

Ms. Hanson understood that the VCCB had a limited fund source, and thus had to select which victims to compensate. She expected no additional costs from the VCCB.

[10:14:44 AM](#)

Senator McGuire set forth that she would present a committee substitute for the bill at a later date. That version of the bill would incorporate Ms. Hanson's recommendation regarding the Fifth Amendment exception, and would remove reference to "assault" from the bill as it related to crimes against adults.

Senator McGuire highlighted the law review article and a legal opinion from Tamara Cook, Director of the Division of Legal and Research Services.

#

ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [10:17:03 AM](#)