

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 31, 2007

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Confirmation Hearings

Select Committee on Legislative Ethics

Ann Rabinowitz - Anchorage
H. Conner Thomas - Nome
Gary J. Turner - Soldotna

CONFIRMATIONS ADVANCED

SENATE BILL NO. 5

"An Act relating to reporting of certain crimes."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 5

SHORT TITLE: FAILURE TO REPORT CRIMES

SPONSOR(s): SENATOR(s) MCGUIRE

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	JUD, FIN
01/24/07	(S)	JUD AT 1:30 PM BUTROVICH 205
01/24/07	(S)	Heard & Held
01/24/07	(S)	MINUTE(JUD)
01/31/07	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

Ann Rabinowitz, Appointee
to the Select Committee on Legislative Ethics
Anchorage, AK

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics

H. Conner Thomas, Appointee
to the Select Committee on Legislative Ethics
Nome, AK

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics

Gary J. Turner, Appointee
to the Select Committee on Legislative Ethics
Soldotna, AK

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics

THERESA OBERMEYER
No address provided

POSITION STATEMENT: Testified during the appointment hearings
to the Select Committee on Legislative Ethics

Rick Svobodny, Chief Assistant Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Described problems that SB 5 would present
for prosecutors

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing
Committee meeting to order at [1:33:16 PM](#). Present at the call to
order were Senators Lesil McGuire, Bill Wielechowski, Charlie
Huggins, and Chair Hollis French. Senator Gene Therriault
arrived shortly thereafter.

CONFIRMATION HEARING(S)

Select Committee on Ethics Legislative

CHAIR FRENCH announced that the committee would hear from the
appointees to the Select Committee on Legislative Ethics. He

thanked Ms. Rabinowitz for her past service and asked her to state why she would like to continue to serve.

[1:33:35 PM](#)

Senator Therriault joined the meeting.

ANN RABINOWITZ, Appointee to the Select Committee on Legislative Ethics, relayed that she learned a great deal during her first three-year term. She believes she could make a contribution this session.

SENATOR MCGUIRE made a motion to advance the name Ann Rabinowitz as appointee to the Select Committee on Legislative Ethics to the full body for consideration.

CHAIR FRENCH announced that forwarding the name does not reflect the intent by any member to vote for or against the individual during any further sessions. There being no objection, the confirmation was advanced from the Senate Judiciary Standing Committee.

At ease from [1:35:55 PM](#) to [1:36:52 PM](#).

CHAIR FRENCH thanked H. Conner Thomas for his past service on the Select Committee on Legislative Ethics. He asked him to articulate why he would like to continue to serve.

H. CONNER THOMAS, Appointee to the Select Committee on Legislative Ethics, said he has been practicing law in Nome in various capacities since 1978. He has been in private practice since 1986 and has served on the ethics committee since 1999. He has enjoyed performing this worthwhile public service and the workload has not been burdensome. Based on the experience he has had he looks forward to providing relevant comments regarding upcoming ethics legislation.

SENATOR MCGUIRE asked if his contract with the Office of Public Advocacy, Department of Administration is renewed on an annual basis.

MR. THOMAS said the three-year contract has a renewal provision.

SENATOR MCGUIRE said she could see a potential conflict through the budget process. She asked if he might maintain a bias if a lawmaker made a decision that impacted his contract and subsequently came before him on an ethics issue.

MR. THOMAS said he didn't think it would be a conflict. He'd like to believe that if he felt that he couldn't be impartial, then he wouldn't continue to sit on the particular issue.

SENATOR McGUIRE asked if he would recuse himself or simply state the potential conflict on the record if a lawmaker who oversaw his contract were to come before him.

MR. THOMAS replied he isn't sure he would consider that a conflict in and of itself, but if he was aware of a potential conflict he would state it on the record. He wouldn't necessarily know the composition of a budget sub-committee unless the issue before the committee related to his contract. In general he has observed that when people have a conflict it's stated on the record and they don't participate. It's a little different than the legislative process.

CHAIR FRENCH asked if his contract would be separately identifiable or if it would fall under a general legal services classification in the DOA budget.

MR. THOMAS said he isn't sure.

CHAIR FRENCH noted that a lawmaker could be aware of the potential for bias in the instance that Senator McGuire posed even if the ethics committee member is not. With that in mind he asked if there is a method for a person who is charged with an ethical violation to bring a challenge to a sitting member of the committee.

MR. THOMAS replied he's not aware of a formal method for a challenge. When a complaint is filed, the subject is given notice and asked to respond. That would be the time for the subject to raise the issue of a potential conflict, he said.

CHAIR FRENCH commented that there is no recusal motion like there is for a judge.

MR. THOMAS agreed.

[1:45:33 PM](#)

SENATOR McGUIRE clarified that she brought up the issue because there is a reason that state contracts are included in the disclosure laws. She noted that they apply to lawmakers as well. She emphasized that her questions weren't meant to be negative. She simply thought it was appropriate to get his response on the record.

MR. THOMAS replied it's a legitimate area of inquiry.

SENATOR HUGGINS raised the question of prerequisites. Only one public member can be a former legislator and no more than two public members can be registered with the same political party.

CHAIR FRENCH asked Mr. Thomas if he is registered with a political party.

MR. THOMAS replied he is a registered Democrat.

CHAIR FRENCH commented he is familiar with the rule and he would ask the next member about his political affiliation.

[1:47:40 PM](#)

SENATOR MCGUIRE made a motion to advance the name H. Conner Thomas as appointee to the Select Committee on Legislative Ethics to the full body for consideration.

CHAIR FRENCH announced that forwarding the name does not reflect the intent by any member to vote for or against the individual during any further sessions. There being no objection, the confirmation was advanced from the Senate Judiciary Standing Committee.

At ease from [1:48:13 PM](#) to [1:49:02 PM](#)

CHAIR FRENCH announced that Gary J. Turner was up for consideration as a member of the Select Committee on Legislative Ethics. He thanked Mr. Turner and asked him to put himself on the record.

[1:49:22 PM](#)

GARY J. TURNER, Appointee to the Select Committee on Legislative Ethics, said he lives in Soldotna and is the director of Kenai Peninsula College. He explained that he is interested in serving on the committee and that he has a strong sense of ethics. When he taught at the Air Force Academy the importance of a strong ethical foundation became very evident. Legislative ethics is of particular interest and his past experience and background will serve the legislature well in light of the challenges it currently faces.

CHAIR FRENCH asked how long he has been on the committee.

MR. TURNER replied he has been a member since November 2006.

CHAIR FRENCH asked if he is a member of a political party.

MR. TURNER said he is a registered Republican.

SENATOR THERRIAULT asked him to provide further information on teaching ethics and ethical behavior at the military academy.

MR. TURNER briefly outlined the Air Force code of conduct that all academy cadets are required to abide by and suggested that others would do well to emulate that code. He relayed that it can be very difficult for a student to report a friend who was cheating to the honor committee.

CHAIR FRENCH opened public testimony.

[1:52:03 PM](#)

THERESA OBERMEYER opened her comments with the statement that she is still motivated by a letter of reference she received from Chief Justice Rabinowitz in 1981. She established that she does not know Mr. Turner but she was disturbed by what she heard him say during the House Judiciary Committee hearing. She emphasized that there is a tremendous distinction between civil law that is based on due process and military law that is based on command authority.

MS. OBERMEYER described civil lawsuits she has filed and several not-for-publication court rulings and suggested that the particulars can be located by going to the state's court website and entering the case names correctly. She advised that she has a website outlining her views on issues that face the state.

[1:58:37 PM](#)

CHAIR FRENCH asked if the committee had questions for Mr. Turner.

SENATOR HUGGINS said he doesn't know the difference between military and civil law, but it doesn't matter in this instance. Mr. Turner should in no way be ashamed of or concerned about his military background. He observed that some of us may well benefit from his experience in the area of ethics.

CHAIR FRENCH added that he served with Mr. Turner for several meetings and he is remarkably well prepared and thoughtful.

[1:59:55 PM](#)

SENATOR McGUIRE made a motion to advance from committee the name Gary J. Turner as appointee to the Select Committee on Legislative Ethics to the full body for consideration.

CHAIR FRENCH announced that forwarding the name does not reflect the intent by any member to vote for or against the individual during any further sessions. There being no objection, the confirmation was advanced from the Senate Judiciary Standing Committee.

At ease from [2:00:27 PM](#) to [2:01:37 PM](#)

SB 5-FAILURE TO REPORT CRIMES

[2:01:41 PM](#)

CHAIR FRENCH announced the consideration of SB 5 and said the first order of business is to adopt the committee substitute (CS), Version \M.

SENATOR HUGGINS moved CSSB 5, labeled 25-LS0097\M, as the working document. There was no objection.

CHAIR FRENCH noted the proposed amendments that were discussed during the previous hearing.

SENATOR McGUIRE made a motion to adopt Amendment 1, labeled 25-LS0097\M.2.

Amendment 1

Page 2, line 11:

Delete "in a timely manner"

Insert "**as soon as reasonably practicable** [IN A TIMELY MANNER]"

CHAIR FRENCH found no objection and announced that Amendment 1 was adopted.

[2:04:40 PM](#)

SENATOR McGUIRE made a motion to adopt Amendment 2, labeled 25-LS0097\M.1.

Amendment 2

Page 1, line 7, following "victim":

Insert "or a coconspirator or accomplice of another person who commits the crime listed in (1)(A) - (D) of this subsection"

CHAIR FRENCH objected for discussion purposes.

SENATOR McGUIRE explained that it addresses a concern the Department of Law (DOL) expressed about forcing a person to self-incriminate. She emphasized that the right to not self-incriminate supersedes any statutory right regardless, but the amendment would clarify that a coconspirator or accomplice to an underlying crime would not be expected to report the crime.

CHAIR FRENCH restated that in no case would someone who is involved in the commission of a crime ever be charged with failure to report. He or she would be charged with the underlying crime or not charged at all.

SENATOR McGUIRE said yes.

[2:06:28 PM](#)

SENATOR THERRIault recalled a national case involving a young girl who was lured into a casino bathroom. A friend of the perpetrator had knowledge of the incident. He asked if there is a bright line at the point where a person becomes an accomplice or coconspirator.

SENATOR McGUIRE said the statutes defining an accomplice or coconspirator are clear. In fact, former Senator Pearce's original misprision law [failure to report a felony] was designed to respond to that case. The target of this bill is the person who did not conspire or participate in the crime, but has knowledge of the crime and could possibly save the victim's life.

[2:07:48 PM](#)

SENATOR WIELECHOWSKI posed a situation whereby a witness helped the attacker escape instead of reporting the crime. This provision would exempt that bad act. He suggested leaving well enough alone since there is a constitutional protection against self-incrimination.

SENATOR McGUIRE said, first, a person who takes the step to become an accomplice would be charged with the more serious crime. The intention here is to simply get innocent bystanders involved. Second, the concern DOL expressed has some founding. When the Exxon Valdez fetched up on Bligh Reef, Captain

Hazelwood reported the incident. A creative defense lawyer motioned to strike that call from evidence. The argument was that reporting was mandatory under spill laws so he was essentially forced to self-incriminate. The point of this amendment is to make sure that a defense attorney can't use that creative argument to get the charge thrown out.

SENATOR THERRIault mentioned the issue of charge stacking and cutting a deal with prosecutors.

CHAIR FRENCH said that relates to the memo from DOL. The committee could discuss the issue now or hold it for subsequent discussion.

[2:13:59 PM](#)

SENATOR McGUIRE withdrew Amendment 2.

CHAIR FRENCH announced that without objection, Amendment 2 is withdrawn.

SENATOR WIELECHOWSKI asked or if there is a requirement to give your name when reporting a crime or could a report be anonymous.

CHAIR FRENCH solicited a response. Finding none he said that question would be given consideration.

CHAIR FRENCH made a motion to adopt Amendment 3, labeled 25-LS0097\C.1 and objected for discussion purposes.

Amendment 3

Page 2, line 12 [15]:

Delete "class A misdemeanor"

Insert new material to read:

"(1) class C felony if the crime not reported is an unclassified felony; or

(2) class A misdemeanor if the crime not reported is other than an unclassified felony."

CHAIR FRENCH noted that the amendment pertains to an earlier version of the bill. Thus it requires amendment.

CHAIR FRENCH made a motion to amend Amendment 3 as follows:

On line 2 delete "class A misdemeanor" and insert "a class C felony". [Reference is to page 2, line 15 of Version M.]

CHAIR FRENCH explained that failure to report an unclassified felony would be a class C felony. That includes: murder in the first degree, murder in the second degree, sexual assault in the first degree, sex abuse of a minor in the first degree, and kidnapping. It would be a misdemeanor to not report lesser crimes such as: sex assault, sex abuse, and assault causing serious physical injury. Thus it is more serious not to report a horrific murder than to not report what may be a bar fight, which is captured by subparagraph (D).

SENATOR THERRIAULT asked for and received clarification. He said he had no objection.

CHAIR FRENCH removed his objection.

2:18:19 PM

SENATOR WIELECHOWSKI asked what the punishment is for a class C felony and a class A misdemeanor.

CHAIR FRENCH relayed that the penalty for a class C felony is 0 to 5 years in prison and a \$50,000 fine. The penalty for a class A misdemeanor is 0 to 1 year in prison and a \$10,000 fine. A suspended imposition of sentence (SIS) could pertain to either crime. Upon completion of some probationary terms, a judge could suspend the sentence.

SENATOR THERRIAULT asked is the crime for not reporting would be the same as the crime itself.

CHAIR FRENCH said no; failure to report an unclassified felony would be a class C felony.

SENATOR THERRIAULT asked what the penalty is for an unclassified felony.

CHAIR FRENCH said it's up to 99 years in prison. For murder 1 the penalty is 20 to 99 years, for murder 2 the penalty is 10 to 99 years. He noted that sex assault and sex abuse penalties have recently been seriously increased.

SENATOR THERRIAULT asked what the crime classification is for murder.

CHAIR FRENCH said it's an unclassified felony. Class A felony is the least serious followed by class B then class C. An unclassified felony is the most serious.

2:20:07 PM

SENATOR THERRIAULT stated no objection to Amendment 3, but noted it requires a technical fix. The reference should be to page 2, line 15.

CHAIR FRENCH said the discrepancy is noted; the reference is from the earlier version.

CHAIR FRENCH announced Amendment 3, as amended, is adopted without objection.

2:20:40 PM

SENATOR WIELECHOWSKI made a motion to adopt Amendment 4, labeled 25-LS0097\C.1.

Amendment 4

Page 2, following line 12:

Insert a new bill section to read:

"* **Sec. 3.** AS 11.56.765(b) is amended to read:

(b) In a prosecution under this section, it is an affirmative defense that the defendant

(1) did not report in a timely manner because the defendant reasonably believed that doing so would have exposed the defendant or others to a substantial risk of physical injury; [OR]

(2) acted to stop the commission of the crime and stopped

(A) the commission of the crime; or

(B) the completion of the crime being attempted; or

(3) reasonably believed that the crime had already been reported to a peace officer or law enforcement agency."

Renumber the following bill section accordingly.

CHAIR FRENCH objected for discussion purposes.

SENATOR WIELECHOWSKI said the amendment would add an affirmative defense for a witness who reasonably believes that the crime has already been reported to authorities.

SENATOR McGUIRE said she would rather err on the side of multiple reporting. Anyone could use this defense so it would take the teeth out of the bill. For example the three men that

witnessed the Kiva Friedman crime testified to the fact that Jerry McClain told them he would call 911. Another example is the 1962 Kitty Genovese case in Boston. She was outside her apartment and thirty some people witnessed her being stabbed over 35 times. One purpose of the bill is to increase civic responsibility. That affirmative defense sets the threshold so low that anyone could throw out a good defense for that, she said.

[2:23:43 PM](#)

SENATOR WIELECHOWSKI acknowledged that the points are good and that they are well taken. He brought the issue up for discussion because someone who witnesses a car accident and doesn't call in would potentially go to jail.

CHAIR FRENCH commented on the Kitty Genovese and Kiva Friedman examples. In the '60s it wasn't reasonable to believe that someone would use a cell phone at the scene of a crime. Reporting was more difficult because a witness would have to take an affirmative step to find a telephone. But in a case like Kiva's he questions whether it is reasonable to expect that a perpetrator would turn himself in. A jury might buy that defense, but it could probably be convinced otherwise.

He said Senator Wielechowski is on to something because of the prevalence of cell phones as well as the concern that a 911 center could be overloaded.

SENATOR HUGGINS expressed the view that the amendment would take the teeth out of the bill.

[2:26:14 PM](#)

SENATOR THERRIAULT said he would be voting no on the amendment. He is comfortable relying on prosecutorial discretion.

[2:26:38 PM](#)

SENATOR WIELECHOWSKI withdrew Amendment 4.

CHAIR FRENCH announced that without objection, Amendment 4 is withdrawn.

[2:27:04 PM](#)

SENATOR THERRIAULT reported that his staff contacted Senator McGuire's staff to relay his long-standing desire to keep statutes as clean as possible. He noted that the impact of Section 1 is to name a section of statute in the statutes. Over

the years he has tried to avoid doing that because it's difficult to know where to draw the line.

SENATOR THERRIAULT moved Amendment 5 to delete Section 1.

[2:28:50 PM](#)

SENATOR McGUIRE objected. She said the precedential value of the argument is well taken, but on the other hand naming a law as a result of some egregious event ensures that the story is retold. Keeping Kiva's Law in the bill reminds people of the story and illustrates the need for the law.

[2:30:28 PM](#)

SENATOR HUGGINS stated support for the amendment and noted that Senator Therriault has been very consistent in the effort to keep names out of statute.

CHAIR FRENCH expressed the view that this will forever be known as Kiva's Law with or without the line in statute.

A roll call was taken on Amendment 5. Senator Therriault, Senator Huggins and Chair French voted in favor and Senator McGuire and Senator Wielechowski voted against; therefore, Amendment 5 carried.

[2:31:46 PM](#)

CHAIR FRENCH directed attention to a memorandum from Chief Assistant Attorney General, Rick Svobodny. It consists of three pages of legal argument with an attached memorandum to Mr. Svobodny thru Doug Kossler from Blair Christensen.

He said it should come as no surprise that the Department of Law has a great number of concerns about this bill. In the second memorandum Ms. Christensen cites Ohio v. Wardlow [484, N.E.2d246(Ohio App. 1985)]. Chair French said that case jumped out at him because that fact pattern is seen very frequently in criminal law.

The fact pattern is a 13-year-old girl who is repeatedly raped by her mother's boyfriend. In the course of uncovering the crime, the mother was charged with failure to report and child endangerment. The State of Ohio Court of Appeals tossed one of the convictions because of the Fifth Amendment right against self-incrimination.

CHAIR FRENCH announced his intention to carry the bill over to allow time to review the memorandum and the facts of the case.

SENATOR WIELECHOWSKI noted that Ms. Christensen's memorandum also says that "if the statute does not require the reporter to give their name and some other pertinent information, then the statute would be difficult to enforce.". He said he raised that question earlier and the committee might want to give that more thought.

CHAIR FRENCH asked Mr. Svobodny and Commissioner Monegan if they would like to present their views.

2:34:40 PM

RICHARD SVOBODNY, Chief Attorney General, Criminal Division, Department of Law, noted that the packets also contain an email from Ms. Christensen to Ms. Carpeneti summarizing Kiva's case from the prosecutor's perspective.

He recapped that the three witnesses did not report the crime, but if SB 5 had been in effect prosecution would have been substantially more difficult. By virtue of not reporting the crime the three witnesses would have committed a C felony offense and that would give them a Fifth Amendment right not to testify in the underlying murder trial. Simply admitting to the judge that they were present at the scene of the crime is a link in the chain that could result in a conviction.

There are statutory provisions for granting immunity but there are associated problems. To begin with the witness has probably been advised not to talk to the police, so the state really doesn't know what the witness will testify to at trial. If immunity is granted, the defense has two built-in arguments to weaken the witness's credibility. On cross examination the defense will argue that the witness struck a deal with the state and got immunity. In Alaska immunity is transactional meaning that the witness has immunity from anything he or she says about the underlying case and any other case. In closing argument the defense further challenges the witness's credibility by pointing out that the state went through the extraordinary process of granting immunity. He summarized that this will limit the people who are willing to talk to the police and it will put the state at a tactical disadvantage at trial.

MR. SVOBODNY said Hazelwood v. State is an example of immunity for an abettor, a coconspirator, or a perpetrator who reports an offense. A federal statute required Captain Hazelwood to report that the Exxon Valdez was aground and leaking oil. The statute he was relying on had a provision that said he would receive

use, derivative use immunity - anything he said or anything that flowed from his statement could not be used.

Captain Hazelwood argued that his call triggered the investigation of the spill and so his call and all the information found after the call should not be used against him at trial. In a 3 to 0 ruling the Alaska Court of Appeals agreed. Therefore, the only thing the state could present was something that happened before he made the call saying that the Exxon Valdez was aground.

In a 3 to 1 decision the Alaska Supreme Court overturned the Alaska Court of Appeals decision saying that Captain Hazelwood's statement could not be used, but that the spill would have inevitably been discovered independent of the call. Thus the state could move forward in the prosecution of the case. He relayed that two teams of lawyers worked on the case. The first team worked on the trial while the second worked to ensure that information that was directly related to Captain Hazelwood's statement was never transmitted to the first team.

Mr. Svobodny reiterated that the fact that Alaska has transactional immunity is part of DOL's underlying concern with SB 5.

[2:42:37 PM](#)

CHAIR FRENCH noted that this law that pertains to children has been on the books for a number of years. At the heart of the matter is a family member, friend or neighbor who is aware of an abuse and doesn't make a report until they hear that a criminal case is evolving. He suggested that the highlighted concern has played out numerous times in the past few years but it doesn't appear to have been a problem. He asked if it's correct that it has not been a problem and if so, why hasn't it been a problem.

MR. SVOBODNY replied it hasn't been a problem because no one has been prosecuted under that statute.

CHAIR FRENCH questioned why the immunity issue hasn't been identified as a continuing problem to getting testimony from a family member, neighbor or other witness.

MR. SVOBODNY relayed that he has been the Attorney General's immunity designee for seven months and those immunity decisions have been among the most difficult he has made in 30 years as a prosecutor. They are best judgment decisions based on the judge telling him that the witness may have a Fifth Amendment

privilege and the crime for which there may be a privilege is a misdemeanor, a felony, or a serious felony. If the judge says the crime is a serious felony, I might think the witness is the perpetrator, he said.

CHAIR FRENCH asked him to explain the difference between a felony and a serious felony.

MR. SVOBODNY said under the immunity statute the most serious are the unclassified felony offenses. Class A felony offenses might be included, but B felonies are not. An example of a B felony is perjury under oath.

SENATOR McGUIRE said the argument is waning. If there were to be a problem then the same argument would apply as the material witness law, which is a statutory construct that has played out successfully in other states. The notion is that someone who has committed a serious crime, or is an accomplice, or a coconspirator is going to report the crime they committed so that they can get off.

She suggested that it's not logical to argue that criminals in Alaska will begin calling to report the gruesome details of their crimes, but if that were to happen perhaps it's not a bad goal.

SENATOR McGUIRE pressed Mr. Svobodny to say why having this law on the books would be potentially dangerous if the mandatory reporting requirement for serious crimes against children hasn't been used in the last six years.

MR. SVOBODNY said the concern relates to the fact that a person who didn't report a murder in a timely manner is guilty of a C felony offense. Now they have a Fifth Amendment right not to testify at trial. He noted that although prosecutors might tell a witness not to worry about being charged with a felony for not reporting, a defense attorney would tell a client not to talk to the police.

CHAIR FRENCH stated that his advice would be "tough luck fess up," which is why he is not in the defense bar.

SENATOR McGUIRE argued that granting immunity would at least get the witness to the table. Also, she speculated that there was some ability to threaten the three witnesses in the Kiva case to force them to testify. With or without this law there will always be a carrot and a stick, she said.

MR. SVOBODNY reiterated that under SB 5 a witness who doesn't report would have a Fifth Amendment right not to testify at trial and he or she probably won't talk to the police.

SENATOR McGUIRE asked if the three witnesses [to Kiva's torture and abuse] were threatened with some type of crime to force them to testify.

[2:52:44 PM](#)

MR. SVOBODNY said he did not have first-hand knowledge, but the email strongly suggests that there was no threat.

SENATOR McGUIRE said having this law on the books could open a conversation about avoiding prosecution for a misdemeanor or felony in exchange for stepping up to testify and help prove a charge of torture and brutal murder.

MR. SVOBODNY responded that the problem is that the prosecutor doesn't know what a witness will say.

CHAIR FRENCH said the problem is that the state can grant immunity for what it believes is just the failure to report, but Alaska courts interpret that to be an open grant of immunity. It would apply to anything that the witness confesses to while on the stand. He said it's a prosecutor's nightmare and he could appreciate the strain Mr. Svobodny is under when he makes those decisions.

[2:54:34 PM](#)

SENATOR WIELECHOWSKI asked if anyone has used the current statute to refuse to give information on the grounds that it may be self-incriminating.

MR. SVOBODNY replied not under the statute that pertains to children. He qualified that it may be because prosecutors haven't enlightened the less culpable bystanders to the fact that consulting an attorney would be a good idea.

[2:56:05 PM](#)

SENATOR HUGGINS commented that this is pushing him further outside his comfort zone, but he does realize that societal norms are changing.

MR. SVOBODNY described the material witness law and said it's not the same thing as SB 5.

SENATOR THERRIAULT brought up the issue of establishing an age limit regarding the duty to report.

SENATOR McGUIRE said the general rule is the age of majority.

SENATOR McGUIRE encouraged Mr. Svobodny to rethink the similarity between the material witness law and SB 5. She looks forward to constructive suggestions from Mr. Svobodny; so far he's just shot holes in the bill. She referenced the issue of changing norms and comfort levels and said all changes aren't necessarily right. Statutes reflect the moral fabric of a community and lawmakers have a responsibility to think about that, she said. Finally, she asked if the Department of Law would like to repeal the current law pertaining to children.

MR. SVOBODNY relayed that footnotes 2 and 4 from his memorandum have statutory references to hindering prosecution, immunity and making a false report all of which may reach the same goal as this bill. Yes, he said, the DOL would like the current law to be repealed. "We'd probably be better off without it."

CHAIR FRENCH held SB 5 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 3:01:00 PM.