

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 21, 2007

1:34 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 69

"An Act relating to the creation of a civil legal services fund."

MOVED SB 69 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 76(JUD)

"An Act relating to the creation of a civil legal services fund."

HEARD AND HELD

SENATE BILL NO. 5

"An Act relating to reporting of certain crimes."

MOVED CSSB 5(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 69

SHORT TITLE: CIVIL LEGAL SERVICES FUND

SPONSOR(s): SENATOR(s) MCGUIRE

01/29/07	(S)	READ THE FIRST TIME - REFERRALS
01/29/07	(S)	JUD, FIN
02/05/07	(S)	JUD AT 1:30 PM BELTZ 211
02/05/07	(S)	-- Meeting Canceled --
02/08/07	(S)	JUD AT 3:30 PM BUTROVICH 205
02/08/07	(S)	Heard & Held
02/08/07	(S)	MINUTE(JUD)
02/21/07	(S)	JUD AT 1:30 PM BELTZ 211

BILL: HB 76

SHORT TITLE: CIVIL LEGAL SERVICES FUND

SPONSOR(S): REPRESENTATIVE(S) RAMRAS, LEDOUX

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) JUD, FIN
01/22/07 (H) JUD AT 1:00 PM CAPITOL 120
01/22/07 (H) Heard & Held
01/22/07 (H) MINUTE(JUD)
01/24/07 (H) JUD AT 1:00 PM CAPITOL 120
01/24/07 (H) Moved CSHB 76(JUD) Out of Committee
01/24/07 (H) MINUTE(JUD)
01/25/07 (H) JUD RPT CS(JUD) 3DP 3NR
01/25/07 (H) DP: GRUENBERG, HOLMES, RAMRAS
01/25/07 (H) NR: DAHLSTROM, LYNN, COGHILL
02/01/07 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/01/07 (H) Moved CSHB 76(JUD) Out of Committee
02/01/07 (H) MINUTE(FIN)
02/05/07 (H) FIN RPT CS(JUD) 6DP 3NR 2AM
02/05/07 (H) DP: THOMAS, NELSON, KELLY, FOSTER,
MEYER, CHENAULT
02/05/07 (H) NR: HAWKER, JOULE, STOLTZE
02/05/07 (H) AM: CRAWFORD, GARA
02/12/07 (H) TRANSMITTED TO (S)
02/12/07 (H) VERSION: CSHB 76(JUD)
02/14/07 (S) READ THE FIRST TIME - REFERRALS
02/14/07 (S) JUD, FIN
02/21/07 (S) JUD AT 1:30 PM BELTZ 211

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
01/31/07 (S) Heard & Held
01/31/07 (S) MINUTE(JUD)
02/05/07 (S) JUD AT 1:30 PM BELTZ 211
02/05/07 (S) -- Meeting Canceled --
02/08/07 (S) JUD AT 3:30 PM BUTROVICH 205

02/08/07 (S) Scheduled But Not Heard
02/21/07 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

Emily Stancliff, Staff
Representative Jay Ramras
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Stated that the sponsor of HB 76 supports SB 69 as the vehicle for the civil legal services fund

Allen Bailey, Attorney
Alaska Bar Association Commission on Domestic Violence
Anchorage, AK

POSITION STATEMENT: Spoke in support of SB 69 and SB 5

Andy Harrington, Executive Director
Alaska Legal Services
1648 Cushman, Suite 300
Fairbanks, AK

POSITION STATEMENT: Spoke in support of SB 69 and SB 5

Theresa Obermeyer
No address provided

POSITION STATEMENT: Testified on SB 69

Christine Pate, Attorney
Alaska Network on Domestic Violence and Sexual Assault
Sitka, AK

POSITION STATEMENT: Spoke in support of SB 69

Caren Robinson
Alaska Women's Lobby
Juneau, AK

POSITION STATEMENT: Spoke in support of SB 69

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

POSITION STATEMENT: Expressed concern with SB 5

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:34:32 PM](#). Present at the call to order were Senator McGuire, Senator Huggins, Senator Wielechowski, and Chair French. Senator Therriault arrived momentarily.

SB 69-CIVIL LEGAL SERVICES FUND
HB 76-CIVIL LEGAL SERVICES FUND

CHAIR FRENCH announced the consideration of SB 69 and HB 76, both of which deal with the civil legal services fund. He noted the sponsor of the House bill has agreed that the Senate bill would be the one going forward.

[1:35:25 PM](#)

EMILY STANCLIFF, Staff to Representative Ramras, stated that the sponsor of HB 76 would like the committee to defer to SB 69 as the vehicle for the civil legal services fund.

[1:35:54 PM](#)

Senator Therriault arrived.

CHAIR FRENCH reminded the committee that it heard the bill at the last hearing and that it contains the exact same language that the Senate passed in a previous session. He queried the members and no amendments were forthcoming.

[1:37:01 PM](#)

ALLEN BAILEY, Anchorage attorney, informed the committee that he is currently a member of the American Bar Association Commission on Domestic Violence. Its mission is to improve access to the legal system for victims of domestic violence. Urging the committee to pass the legislation, he noted that a recent study has shown that one reason for a reported decline in domestic violence in the United States is because victims of domestic violence have increased access to legal services. This is important to the citizens of Alaska, he said, since it ranks in the top five in the country in the incidence of interpersonal violence. Also Alaska is number one in the country in rape, which is often a crime of domestic violence or by someone the victim knows.

He emphasized that the legislation is important because it affects people who need legal help badly, but often can not afford it. Access to legal services means help in obtaining protective orders, child custody orders, and other legal protections against abusers. He noted that male batterers, who

represent the majority of domestic violence perpetrators, tend to follow protective orders.

[1:40:29 PM](#)

CHAIR FRENCH thanked Mr. Bailey for his work, which is of wide renown in the Anchorage legal community.

ANDY HARRINGTON, Alaska Legal Services Corporation (ALSC), said he did not have testimony beyond what he offered at the last hearing, but he was available to answer questions.

[1:41:10 PM](#)

SENATOR HUGGINS asked what would happen to ALSC if SB 69 did not pass.

MR. HARRINGTON said the level and quality of services that ALSC could provide to victims of domestic violence who are facing wage garnishment and the loss of their homes through eviction or foreclosure would be curtailed substantially. In past years ALSC had a large direct appropriation from the state. At that time the organization was about twice the size it is today. Now there are about 40 full-time employees and about half are attorneys. The board has set long-term goals that include: maintaining the eight offices located in Anchorage, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kotzebue, and Nome; reopening offices in Barrow, Kodiak and Sitka; and opening new offices on the Kenai Peninsula and Mat-Su. Indications are that the poverty population in those areas is not being well-served and the needs are high.

MR. HARRINGTON said in the absence of ongoing state support it is likely that an existing office would be closed instead of expanding services to people who should be getting access to justice.

SENATOR HUGGINS said some people believe that healthcare is more important for low income people than access to the legal system. He said he was not asking for a playoff, but it's a matter of priorities and ALSC appears to be functioning. "And you said you would probably close one office if you did not get this funding," he asked.

MR. HARRINGTON said at least one office would close in the absence of this funding. With regard to access to healthcare versus access to the legal justice system, he said it's an important priority for the legislature to address access to the

healthcare system, but it should not be done at the expense of access to the civil justice system.

SENATOR HUGGINS questioned what 125 percent of federal poverty means in dollars.

MR. HARRINGTON explained that Alaska sets its poverty ceiling at 125 percent of the poverty ceiling that is set for the Lower 48. Alaska Legal Services Corporation sets its own eligibility ceiling at 125 percent of the Alaska poverty ceiling. He did not have the actual figures with him.

1:48:45 PM

CHAIR FRENCH advised that the information is contained in the report, *Access to Civil Justice Task Force: Report and Recommendations* on page 14, footnote 17, which is in the packet. It says:

For 1999, the maximum poverty income for a single individual is \$12,900/yr. \$1.075/mo., \$248.08/wk; for a family of four, the income limit is \$26,000/yr., \$2,175/mo., \$501.92/wk.

MR. HARRINGTON added that the figures are adjusted for cost-of-living increases so the current figures would be higher.

SENATOR HUGGINS questioned whether it is equitable to take care of just a small portion of the people.

MR. HARRINGTON said the observation is valid; any income ceiling on eligibility could be seen as arbitrary. However, that is the case with any needs-based program and addressing those needs is a matter of prioritizing those who are least capable of retaining a private attorney.

He noted that there are some ideas about a modest-means program to address the people who are over the income limit. They are not eligible for ALSC representation, but they are not able to afford private attorney fees. Also some organizations provide legal assistance to particular groups so there is not an income eligibility criterion. Examples include the Disability Law Center and Alaska Network on Domestic Violence and Sexual Assault.

It is not possible to be completely fair to everyone, but the approach ought to be to address the highest needs first. "The highest needs for access to justice are at the lowest rungs on

the annual income ladder." That is the proper order for addressing those needs, he stated.

1:53:04 PM

SENATOR HUGGINS asked, "Is this legal? - equal treatment."

MR. HARRINGTON replied he believes the bill, which creates a dedicated program reserve, is legal. He also believes the provision of providing legal assistance to the lowest of the low-income and setting a cutoff above which legal assistance it not provided is legal. "That replicates the type of needs-based eligibility that is used in all kinds of different programs."

1:54:36 PM

THERESA OBERMEYER, Anchorage, advised that on February 13 she sent an email relating to SB 69. She stated the belief that Alaska Bar Rule 43 is punitive against Alaskans and destructive to small working groups such as Alaska Legal Services. About half the people practicing law at ALSC are waived in under Rule 43 and they never become equals of the other members of the Alaska Bar Association. Opining that SB 69 is a way to hide the way ALSC will be funded, she suggested a better approach is to slow down and think about licensing reciprocal bar applicants.

1:59:28 PM

CHRISTINE PATE, Attorney, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), explained that ANDVSA is a coalition of 19 programs statewide. Her primary job is to run the volunteer attorney arm for the victims who enter the program. She noted Mr. Bailey's testimony on the importance of legal services to these clients and said she would amplify on the need for these services, which is so great in Alaska. HB 76 and SB 69 are two ways to help assure that victims of domestic violence and sexual assault will have safety for themselves and their children, she said.

MS. PATE explained that the volunteer legal program started in 1999. Since inception just 40 percent of the 1,500 cases requesting civil legal services have been accommodated because resources are always short. A limited number of attorneys are trained in this area and the cases are time consuming. Alaska Legal Services Corporation is the only other provider that offers civil legal assistance to victims of domestic violence and sexual assault. ANDVSA works closely with that entity to coordinate efforts and ensure that services are not duplicated.

MS. PATE said that member programs are surveyed each year and the program advocates always say that civil legal needs are the highest priority and greatest need of clients coming to the shelters. A victim who does not receive civil legal help goes to court alone. She may lose custody of her children or she may get joint custody. The latter can be dangerous to the victim and can lock the children in the cycle of violence increasing the likelihood that they become the next generation of perpetrators or victims.

Without an attorney to fight for child support or spousal support, a victim may decide it is not safe to leave. Knowing that separation can be a highly lethal time, a woman who does not have an attorney to help get a protection order may decide that it is safer to stay with her batterer.

MS. PATE emphasized the extreme need and said it is a failing in terms of equal justice when attorneys are not provided to people who are fighting in court for basic civil liberties. Stating high regard for the attorneys who work for ALSC, she said they go into this work because they realize the need and have a strong desire to help people. "They make the lowest salaries statewide of any public attorney and I ask you to pass this bill," she said.

MS. PATE addressed the questions that Senator Huggins asked Mr. Harrington about healthcare and equity. Referencing a recent child sexual abuse training program, she cited a national expert and said, "You may not think of legal services as a preventative measure, but when you have a legal services attorney helping victims of domestic violence to break out of that cycle, you are doing preventative work down the road ... in the healthcare system." With regard to the second issue she said "we are federally funded and we do not have to meet the federal poverty guidelines." All these clients are financially needy, but other programs are available for people who do not fall under the federal poverty guideline.

[2:05:42 PM](#)

CAREN ROBINSON, Alaska Women's Lobby, made the following points:
1) The shelter programs across the state would not be where they are today without the help of Alaska Legal Services. That entity assisted shelters statewide in moving forward to set up the incredible network system that exists today.

2) When hiring private counsel is not affordable, being able to get a little legal advice from an attorney can mean the difference between moving forward or not.

3) Alaska Legal Services has done a tremendous amount of work in the area of domestic violence and sexual assault. It played an integral part in setting up the original protective orders papers, which is the system that is used today.

4) The list of former ALSC attorneys is long and distinguished.

[2:08:00 PM](#)

CHAIR FRENCH, finding no further public testimony, questions or suggested amendments, asked for the will of the committee.

SENATOR THERRIAULT made a motion to report SB 69 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection SB 69 moves from committee.

[2:08:33 PM](#) at ease

SB 5-FAILURE TO REPORT CRIMES

[2:11:42 PM](#)

CHAIR FRENCH announced the consideration of SB 5. He noted that amended Version M is before the committee.

[2:12:05 PM](#)

ALLEN BAILEY, Attorney, Anchorage, said SB 5 would be a valuable addition to Alaska criminal statutes. "People who are being victimized by an intimate partner or a parent deserve a higher level of legal protection than they are getting under current laws." SB 5 enhances victim safety at the time of the assault because the police would be involved earlier and it enhances victim safety later because more evidence would probably be available from witnesses and the police.

[2:13:36 PM](#)

SENATOR THERRIAULT asked about his previous employment.

MR. BAILEY said he is a former Anchorage borough and municipal prosecutor who currently practices family law.

SENATOR THERRIAULT asked how a prosecutor might deal with the circumstance of a person who is reluctant to come forward as a witness after a crime was committed because doing so would expose that they had violated this law.

MR. BAILEY said a witness who provides evidence of an assault even though he or she did not notify the police immediately is

likely to be appreciated by the prosecution and the police. In his experience it is not likely that someone in that circumstance would be prosecuted.

2:15:37 PM

SENATOR WIELECHOWSKI asked if he would be inclined to advise a client to invoke the Fifth Amendment if he or she had witnessed a crime and not reported.

MR. BAILEY said he would always find it difficult to tell a witness to a crime not to reveal him or herself as a witness. "It's so critically important, especially in domestic violence assaults that people who are not involved in the relationship come forward and provide information that assists the prosecution."

SENATOR WIELECHOWSKI said he was trying to address the Department of Law concerns about self incrimination so he was wondering about the real-life application. Someone who witnessed a gang shooting and did not come forward because of personal safety concerns, would have potentially committed a felony under this bill. He asked if there would be some amount of prosecutorial discretion in that situation.

MR. BAILEY said "many aspects of the criminal justice system depend on prosecutorial discretion." As a prosecutor he was grateful when citizens acted in the face of personal danger and he would not have been inclined to file a criminal charge against the person.

2:19:09 PM

SENATOR HUGGINS said he hears that senior citizens who live in rural areas are afraid of reprisal. "What's your though about making those people guilty of something," he asked.

MR. BAILEY said he sympathizes with people who have been intimidated by criminals and perhaps the bill should take that into consideration.

2:21:17 PM

CHAIR FRENCH advised Mr. Bailey that there is already a defense in statute. He read from AS 11.56.765(b) as follows:

(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;

CHAIR FRENCH said if someone knew that the person they were going to report on was prone to violence, he suspects the prosecutor would not bring charges for not reporting. If the prosecutor did bring charges, the jury would probably acquit.

SENATOR HUGGINS said the people he is describing do not believe someone will respond to a call. They live in rural settings that do not have a police force. There is just one trooper who has 100 or so square miles to patrol. This is a different context, he said.

SENATOR McGUIRE said she can appreciate that, but that is a separate issue. The point of SB 5 is to get people to feel the civic responsibility to report crimes. "If you have a reasonable fear of physical harm to yourself or your family, you have the right to take that into account," she said. Hopefully the call is made and a life is saved.

[2:24:26 PM](#)

SENATOR HUGGINS remarked, "Go to Bagdad and try this."

SENATOR THERRIAULT said with regard to the affirmative defense it would seem that the cited statute would offer people in rural settings "more coverage because it would be more reasonable with no civic police force that you would have a higher degree of fear for yourself and for your protection." It's in those rural settings where you might find marijuana and meth warlords, he said.

[2:26:10 PM](#)

RICHARD SVBODNY, Chief Assistant Attorney General, Criminal Division, Department of Law, said he is heartened to hear that there are attorneys who would tell their clients to do the right thing, but his concern is that most would tell a client to take the Fifth Amendment.

CHAIR FRENCH said he is glad to get that on the record because Mr. Bailey's and his perspective is not the norm. Most defense attorneys would advise their clients to take the Fifth.

MR. SVBODNY maintained the position that there are other ways to go that do not implicate the Fifth Amendment privilege. One is to make it a civil penalty because civil cases do not have Fifth

Amendment privileges. Another way is to change the hindering prosecution statute. Make it a crime to try to hide the commission of a crime and lie to the police.

MR. SVBODNY highlighted that just last week he granted immunity to four people in a murder case when he did not know what they had done. That's what happens when the crime is serious and the state is forcing testimony from people who do not want to testify. He relayed the particulars of the case and said the state went to court with one hand tied behind its back because granting immunity creates a defense argument that the state had to make deals with people who had no incentive to tell the truth.

MR. SVBODNY reiterated that there are different ways to attain the goal without creating this extra work for the attorneys in the Department of Law.

[2:31:10 PM](#)

CHAIR FRENCH referenced 2005 and 2006 statistics for sex abuse cases involving children and noted that there have been about 300 per year so nearly every day someone in the state is charged with violating a child. That means that about 1,800 of those cases have come through the state since 1999 when the statute was put on the books. He noted that according to previous testimony none of those trials were interrupted with a claim of immunity or Fifth Amendment problems of a late arriving witness.

CHAIR FRENCH said although he shares the concern that this will be a headache, his view is that it is a manageable headache. If that isn't the case, the issue can be revisited in the future.

MR. SVBODNY clarified that there has not been a prosecution under the present statute because DOL either did not want to charge the person or could not get the evidence. "That doesn't mean that immunity wasn't granted in a whole bunch of those cases," he said.

[2:33:10 PM](#)

CHAIR FRENCH found no further questions, comments or amendments and asked for the will of the committee.

SENATOR McGUIRE motioned to report CSSB 5(JUD) from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH, finding no objection, announced that CSSB 5(JUD) moves from committee.

There being no further business to come before the committee,
Chair French adjourned the meeting at [2:34:37 PM](#).