

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 19, 2007

1:34 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 48

"An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal or review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal."

BILL HEARING CANCELLED

SENATE BILL NO. 36

"An Act relating to sentencing for the commission of certain offenses influenced by alcohol and to the offense of consumption of alcohol in violation of sentence."

MOVED CSSB 36(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 36

SHORT TITLE: SENTENCING FOR ALCOHOL-RELATED CRIMES

SPONSOR(s): SENATOR(s) THERRIAULT

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	STA, JUD, FIN
01/23/07	(S)	STA AT 9:00 AM BELTZ 211
01/23/07	(S)	Heard & Held
01/23/07	(S)	MINUTE(STA)
01/25/07	(S)	STA AT 9:00 AM BELTZ 211

01/25/07	(S)	Scheduled But Not Heard
01/30/07	(S)	STA AT 9:00 AM BELTZ 211
01/30/07	(S)	PEACE OFFICER CONVICTED OF MURDER
02/01/07	(S)	STA AT 9:00 AM BELTZ 211
02/01/07	(S)	-- Rescheduled from 01/30/07 --
02/22/07	(S)	STA AT 9:00 AM BELTZ 211
02/22/07	(S)	Moved CSSB 36(STA) Out of Committee
02/22/07	(S)	MINUTE(STA)
02/23/07	(S)	STA RPT CS 1DP 2NR SAME TITLE
02/23/07	(S)	LETTER OF INTENT WITH STA REPORT
02/23/07	(S)	DP: FRENCH
02/23/07	(S)	NR: MCGUIRE, GREEN
03/05/07	(S)	JUD AT 1:30 PM BELTZ 211
03/05/07	(S)	Scheduled But Not Heard
03/15/07	(S)	JUD AT 3:30 PM BUTROVICH 205
03/15/07	(S)	Heard & Held
03/15/07	(S)	MINUTE(JUD)
03/19/07	(S)	JUD AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Responded to a question related to SB 36

**ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:34:33 PM](#). Present at the call to order were Senator Therriault, Senator Wielechowski, Senator Huggins, and Chair French. Senator McGuire arrived shortly thereafter.

**SB 36-SENTENCING FOR ALCOHOL-RELATED CRIMES**

[1:34:40 PM](#)

CHAIR FRENCH announced the consideration of CSSB 36(STA). He recapped that the committee heard an overview at the last meeting and considered some of the provisions.

SENATOR THERRIAULT, Sponsor of SB 36, said his staff informed him of the discussion that took place and he understands that the Department of Law (DOL) has proposed language that is relevant to that discussion. Page 3, subparagraph (B) contains

language about protecting the public and basically the amendment proposes to insert similar language in subparagraph (A). Barring opposition from the committee he would support the amendment because it appears to make sense.

CHAIR FRENCH said the discussion was about policy and whether language about protecting the public should be included in both subsections (A) and (B). Currently the language is only in subsection (B). The question was whether the additional language would make the bill better or create a hurdle that some courts would have difficulty overcoming. He noted the proposed amendment and highlighted the rationale for including the language. It reads as following:

In CSSB 36 under proposed AS 12.55.015(a)(13)(B), before a court can order the defendant to refrain from drinking for up to a lifetime, if the person has been convicted of drunk driving for a third time or the drunk driving resulted in a death or serious physical injury to another person, the court must find that imposing such a sentence is necessary to protect the public.

Under the proposed AS 12.55.015(a)(13)(A) the court may also order a person convicted of a first offense felony under AS 11.41 if the offense was substantially influenced by alcohol, to refrain from drinking alcohol for up to a lifetime. This offense may include, for example, assault in the third degree, a class C felony, which can consist of causing only physical injury by means of a dangerous instrument such as a car. There is no requirement that the court find that imposing such a sentence is necessary to protect the public under AS 12.55.015(a)(13)(A). This doesn't make sense.

Ordering a person, including a person who may be addicted to alcohol, to refrain from drinking as either part of a sentence or as a condition of probation or parole for up to the rest of his or her life is not an inconsequential part of a sentence. This is particularly true if the person has been convicted of misdemeanor drunk driving as is possible under proposed AS 12.55.015(a)(13)(B), which has a maximum term of incarceration of one year, or of assault in the third degree under the proposed AS 12.55.015(a)(13)(A), which has a maximum term of

incarceration of five years. Litigation over whether such a sentence or condition would involve a violation of due process of law or cruel and unusual punishment may be avoided if, under both scenarios, the court is required to find that the prohibition of drinking is necessary to protect the public.

[1:37:19 PM](#)

SENATOR McGUIRE joined the meeting.

CHAIR FRENCH motioned to adopt Amendment 1.

AMENDMENT 1

Page 3, line 17:

Following "alcohol":

Insert:

"and that, based on the defendant's history, there is reason to believe that imposing a requirement that the defendant refrain from consuming alcohol is necessary to protect the public"

SENATOR WIELECHOWSKI objected to the provision reasoning that there shouldn't be a requirement that a judge find that it is necessary to protect the public. Under many circumstances that finding would be challengeable, he stated. The entire section is at a judge's discretion and if someone commits a heinous crime while under the influence of alcohol, the judge should have the option to impose a ban on alcohol as part of the punishment, he stated.

[1:40:00 PM](#)

SENATOR THERRIAULT revealed that he would like to make all the statutes as anti-alcohol as possible. The idea behind the bill is to deal with those people who have shown a pattern of losing control and becoming a danger to themselves and others when they consume alcohol. If adding the language avoids problems at due process then he supports the amendment.

SENATOR WIELECHOWSKI argued that it will likely lead to more litigation and appeals. Instead of giving a judge carte blanche to make a finding on what is best, this will require the judge to go through the analysis that it is necessary to protect the public. He maintained his objection.

[1:42:04 PM](#)

CHAIR FRENCH asked Mr. Svobodny to comment on the debate.

RICK SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law, said there will be litigation either way and he doesn't know which would result in more.

SENATOR WIELECHOWSKI asked if adding the language will require a judge to make a finding that this is necessary to protect the public.

MR. SOVOBDNY said yes and that finding would be subject to appeal by a defendant.

CHAIR FRENCH asked if the amendment was prepared by an assistant district attorney.

MR. SOVOBDNY said it was prepared by Ms. Carpeneti who works for the criminal division. Commenting on the rationale he added that it is possible to commit assault in the third degree by causing no injury. That is, placing a person in fear of imminent serious physical injury even though they don't sustain any injury.

A roll call vote was taken. The motion to adopt Amendment 1 prevailed 4 to 1 with Senator Therriault, Senator Huggins, Senator McGuire and Chair French voting in favor and Senator Wielechowski voting against.

[1:45:38 PM](#)

CHAIR FRENCH asked if there was more discussion on the bill.

SENATOR THERRIAULT summarized the original idea, which was to provide a tool to deal with people who have a proven history of becoming a danger to themselves and others when they consume alcohol. The possibility of a lifetime alcohol ban could be used to get a person's attention and get them to agree to seek treatment. This is one more tool for prosecutors and the court system to use to help control the serious alcohol problems in the state.

CHAIR FRENCH referenced the letter of intent that came from the Senate State Affairs Standing Committee, which reads as follows:

The legislature recognizes that laws alone may not achieve the same level of behavioral correction that counseling and treatment are designed to provide. It is therefore the intent of the legislature that the courts, when addressing those who are first time violators of AS 12.55.015(a)(13) in this act, use when

available, Therapeutic Court in lieu of a standard sentencing.

If openings in the Therapeutic Court are not available, the legislature intends that standard sentencing for a class A misdemeanor be carried out as set out in AS 11.56.768(b)(d) of this Act.

[1:48:32 PM](#)

CHAIR FRENCH found no further questions or discussion and asked the will of the committee.

SENATOR THERRIAULT motioned to report CSSB 36(JUD), the attached fiscal note(s) and the Senate State Affairs Standing Committee Letter of Intent from committee with individual recommendations. There being no objection, it was so ordered.

There being nothing further to come before the committee, Chair French adjourned the meeting at [1:49:45 PM](#).