ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 2, 2007
1:35 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. 112
"An Act relating to the statute of limitations for certain sexual offenses and permitting causes of action for certain sexual offenses that would otherwise be barred by the statute of limitations to be brought during a certain one-year period."
MOVED SB 112 OUT OF COMMITTEE

SENATE BILL NO. 97
"An Act relating to identification seals for certain articles created or crafted in the state by Alaska Native persons; relating to the Alaska State Council on the Arts; and making certain identification seal violations unfair trade practices."
MOVED CSSB 97(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 112
SHORT TITLE: STATUTE OF LIMITATION FOR SEXUAL OFFENSES
SPONSOR(s): SENATOR(s) FRENCH

03/12/07	(S)	READ THE FIRST TIME - REFERRALS
03/12/07	(S)	JUD
03/26/07	(S)	JUD AT 1:30 PM BELTZ 211
03/26/07	(S)	Heard & Held
03/26/07	(S)	MINUTE(JUD)
04/02/07	(S)	JUD AT 1:30 PM BELTZ 211

BILL: SB 97

SHORT TITLE: ALASKA NATIVE ART IDENTIFICATION SEALS
SPONSOR(s): SENATOR(s) STEVENS

02/26/07	(S)	READ THE FIRST TIME - REFERRALS
02/26/07	(S)	L&C, FIN
03/08/07	(S)	L&C AT 1:30 PM BELTZ 211
03/08/07	(S)	Heard & Held
03/08/07	(S)	MINUTE(L&C)
03/13/07	(S)	L&C AT 1:30 PM BELTZ 211
03/13/07	(S)	Moved SB 97 Out of Committee
03/13/07	(S)	MINUTE(L&C)
03/14/07	(S)	L&C RPT 4DP
03/14/07	(S)	DP: ELLIS, BUNDE, DAVIS, STEVENS
03/21/07	(S)	FIN RPT 7DP
03/21/07	(S)	DP: HOFFMAN, STEDMAN, ELTON, THOMAS, DYSON, HUGGINS, OLSON
03/21/07	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/21/07	(S)	Moved SB 97 Out of Committee
03/21/07	(S)	MINUTE(FIN)
03/26/07	(S)	JUD REFERRAL ADDED
04/02/07	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

Jim Gorski, Attorney
Anchorage, AK
POSITION STATEMENT: Spoke against SB 112

David Clohessy
Survivor's Network of those Abused by Priests (SNAP)
St Louis, MO
POSITION STATEMENT: Spoke in support of SB 112

Joe Austin
Anchorage, AK
POSITION STATEMENT: Spoke in support of SB 112

Tim Lambkin, Staff
Senator Stevens
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 97

Ted Popley, Legislative Legal Counsel
Juneau, AK
POSITION STATEMENT:

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:35:34 PM. Present at the call to order were Senator Wielechowski, Senator McGuire, Senator Therriault, and Chair French.

SB 112-STATUTE OF LIMITATION FOR SEXUAL OFFENSES

1:35:57 PM
CHAIR FRENCH announced the consideration of SB 112. It has had one hearing already, he noted.

JIM GORSKI, Attorney, Anchorage, said one of his clients is the Society of Jesus--Oregon Province, also known as the Jesuits. He was asked to speak on SB 112, and to "approach it from the point of view from which I know best, which is…litigation." As a lawyer, his job is to advise a client regarding potential ramifications of the bill. He said SB 112 seeks to make a retroactive change to the statute of limitations for certain civil actions alleging felony sexual assault or abuse. It is a serious crime that must be eradicated, he said, but SB 112 doesn't assist in that goal. The bill isn't meant to deter or prevent sexual abuse, but it seeks to create a retroactive suspension of the statute of limitations to allow adjudication of potentially expired legal claims.

MR. GORSKI explained that the statutes of limitations were created to preserve the integrity of the process. The question could be asked for any wrongdoing: why not file suit at any time? But since the formation of our country, limitations were recognized as a necessary component for a fair and well-ordered system of jurisprudence. The U.S. Supreme Court has suggested they are vital to the welfare of society, and they are found in all systems of enlightened jurisprudence. They are attempts at striking a balance. Due process is a fundamental constitutional right that requires substantial fairness in the resolution of disputes. Older claims have increased difficulties in obtaining reliable adjudications, which require reliable and competent evidence. Common sense recognizes that adjudications become less reliable with the passage of time. Evidence may be lost, key witnesses may be gone, and witness testimony becomes less reliable as memories fade and recollection of events becomes colored by intervening experiences.

1:41:03 PM

MR. GORSKI said statues of limitation reduce mistakes and erroneous decisions. The statutes give stability to the law and to society, and they encourage the prompt resolution of disputes and allow parties to predict potential liabilities. Alaska has statutes of limitations for all kinds of claims, he added, and they are aligned with statutes across the country.

1:41:59 PM
SENATOR HUGGINS joined the committee.

MR. GORSKI said the key issue with statutes of limitations is the accrual date of the cause of action, which is when the statute begins to run. The accrual date of a tort action is when the injury is inflicted. Alaska has a number of tolling provisions that provide some exceptions. "These tolling provisions are very important to your consideration of SB 112," he stated. They delay the start date of the limitations to insure that the limitations are applied fairly. Examples include minors who can wait until the age of 18 and people who are incapacitated. There is a delayed discovery tolling, which is not in Alaska statutes, but it is in case law as articulated by the Alaska Supreme Court as in most courts around the country. This tolling provision applies to those who don't know they were injured by someone's conduct; the statute doesn't begin to run until the plaintiff or the claimant knows that this person's tortious conduct injured them. It's a discovery process, and the classic example is a surgeon leaving a sponge in a patient's stomach and not discovering it until later.

MR. GORSKI concluded that under current statutes of limitation, later claims are not prevented under the aforementioned criteria. If a claimant could have filed a timely action but chose not to do so, the statute of limitations does apply. He said SB 112 would change the law. "As I read it, for tort claims involving allegations of felony sexual abuse, the applicable statute of limitations depends on when the claim arose. For claims arising before October 1, 2001, the general two-year statute of limitation and 10-year statute of repose apply, subject to any relevant tolling provisions…For claims arriving after October 1, 2001…the legislature has modified the statute of limitations prospectively to allow those claims to be initiated at any time." SB 112 does not have any effect on prospective legal claims, and it will not affect any claims preserved under current tolling provisions. "What it does is make a narrow retroactive change to the law to affect only legal claims which may, depending on the application of the tolling provisions, have expired."

MR. GORSKI asked the purpose of this if it is not going to serve as a deterrent. This bill is problematic. Other than in California, such efforts have not been successful, because there is recognition that there's a threat to the integrity of the legal process. "To retroactively suspend the statute of limitations impairs the reliability that we put in our system of jurisprudence to resolve disputes in a timely fashion where the evidence is fresh in everybody's minds." The bill's retroactive suspension allows allegations of past wrong-doing with no consideration for how long ago it occurred. Schools, boroughs, correctional facilities, and other public entities, and private entities such as the Cub Scouts or churches risk being subjected to claims from many, many years ago, when the people involved aren't even around, he noted. It increases the risk of inaccurate and fraudulent claims. There may be no one to disprove or challenge someone's allegations, he said. If the alleged perpetrator is dead and the victim is alive, it's not a dialog; it's a monolog. That is not the way our system functions, he stated. There is also difficulty in the lack of notice that such claims would be resurrected, unlike the 2001 legislation where everybody is on notice. Here, there is no notice on the record or in the statute that suggests that these old claims could be resurrected. Going back 30 years is difficult—the IRS only looks back six years.

MR. GORSKI said that presently no one is denied access to Alaska's legal system for these old claims. He said he can speak to that with first-hand knowledge. "However, as the forum is chosen by the claimant for resolution, i.e. the courts of Alaska, we necessarily have to look at those claims and evaluate those claims in rules in the light of the forum." He said Father Whitney has a standing offer to virtually anybody to sit down and talk about the claims. "Not everybody takes us up on that offer for any number of different reasons," he said. Of the claims Mr. Gorski is personally aware of, there are 2 from the 1950s, 34 from the 1960s, 60 from the 1970s, only 7 in the 1980s, and nothing since. He said the issue has pretty much resolved itself over the passage of time. Of the 15 identified perpetrators involved in his litigations, 10 are deceased, and many have been dead for 10 or 20 years. He said trial dates have been set in 8 matters, so the cases are moving forward and being brought to resolution. Discovery is ongoing, and at the end of the day, present law strikes a proper balance between the rights of victims and the rights of the alleged perpetrators. He said a balance is difficult "in these very tragic matters," but the Supreme Court says to find out if there is valid reason for the

delay. If there is no valid reason, then the statute of limitations applies. Mr. Gorski concluded that current law should stand.

1:52:42 PM
SENATOR THERRIAULT asked if there is no statute of limitations for the offenses being talked about.

CHAIR FRENCH said there is a statute of limitations that was changed in 2001 when the legislature decided that "from this day forward, you can prosecute any sex crime whenever you get to court on it. But for those sex crimes that occurred in the past, you can't change the statute of limitations with respect to them because of the expos facto clause." So sexual assault in the past, where there may even be a full confession or a child support order, cannot be prosecuted criminally.

SENATOR THERRIAULT asked if the burden of proof would have been much higher for the civil.

CHAIR FRENCH said yes, beyond reasonable doubt to a unanimous jury verdict. There is no possibility of anyone going to jail, and the burden of proof is lower. It is preponderance of the evidence, but it still requires a unanimous jury verdict, he explained. He asked if Mr. Gorski is arguing about whether this is an expos facto violation or if he is just saying that the system has come to a balance, and that balance is better preserved by not looking backwards and subjecting a defendant to a stale claim.

MR. GORSKI said the expos facto clause primarily focuses on criminal types of statutes. "I think there is a potential constitutional concern about doing the same thing on the civil side, and each one is always a little bit factually oriented. It's one thing if the person--the alleged perpetrator--is still alive and here; it is another thing completely when the alleged perpetrator is dead and gone." Constitutional concerns could include an expos facto analysis, but it is not called that in the civil sense because the expos facto clause is criminally oriented.

SENATOR HUGGINS said, "I am assuming we're talking about punitive effect of dollars. Is that what we're looking at here?"

MR. GORSKI said yes, the claims being asserted are all a matter of dollars. The church has routinely offered to pay for counseling, and they have paid many, many dollars for that. But

it’s a question of finding a just result, and the Jesuits have worked mightily to help people, but at the end of the day it is a question of dollars.

SENATOR McGUIRE said she is interested in the new concept of “being allowed to say that you have a revelation about something, but you don’t have to reveal it because in an ecclesiastical sense, God supersedes our government and our laws.” She asked how that plays into the cases. She asked how other states handled the issue of deceased defendants.

1:57:52 PM
MR. GORSKI said she is alluding to the Doctrine of Mental Reservation. A number of deposed priests have said they will tell the truth. It is a civil court of law, not an ecclesiastical court. He surmised that the doctrine suggests that it may be okay to not tell the truth if there is a greater good that could be generated. One example is hiding a Jewish family in Nazi Germany. His clients swear to tell the truth, and he thinks it is a Middle Age anachronism that people throw out to muddy the water; it isn't relevant. Secondly, he is not “super familiar” with how other states handle deceased defendants. In California there was a 90-year-old claimant, so he assumes the alleged perpetrator was long dead.

SENATOR THERRIAULT asked if he testified that California is the only state that has opened a window similar to SB 112.

MR. GORSKI said that is the most prominent state, and it had a one-year window and saw a couple of thousand claims during that time. He said Colorado, Wisconsin and Ohio had proposals that didn't pass. He said different states have dealt with the issue, but those are the ones that he is familiar with. He could get that information.

2:01:30 PM
SENATOR McGUIRE stated her strong support for victims, and she surmised Mr. Gorski feels the same. “If the goal was not to bankrupt the churches or underlying organizations, than perhaps a cap would be something I would consider on damages.” The point of the bill is to get access to the truth for the victims. That is what is important to her, she said. It is for victims to get validation that it was real, it is to hold a person and institution accountable - and through the discovery part of civil court there is access to the truth - and “it is to put the public on notice in the event that there are still individuals who committed this kind of conduct that are still out in our

communities." She said there isn't enough money in the world to make people feel whole for the things that happened to them. She said she is sympathetic to bankruptcy and the statute of limitations, but other methods of getting to the information haven't worked. She added that she supports the bill and wishes it didn't have just a one-year window.

2:03:57 PM
MR. GORSKI said he doesn't believe that the current system isn't working. Many claims don't come about until his clients are served with a summons for a lawsuit. "Immediately the opportunity to have any kind of pastoral outreach is thwarted because they're represented by counsel – you have to go through counsel." He said a person can call the archdiocese of Anchorage or Standing Together Against Rape. Those options aren't being exercised, he noted. A lawsuit is filed instead. "I can tell you that in the lawsuits that we've been involved with, there have been tens of thousands of documents in the discovery process that have been passed out and exchanged between the parties." He said it was amazing what people keep, and "if there were a rhyme or reason to it, it would be a lot better." Missionaries in rural Alaska didn't have Xerox machines and filing cabinets, he said. "It's a potluck situation," he added. The courts have said that "before somebody is taken away, they are saying that you cannot exercise your rights and remedies, you're entitled to go through the discovery process. So we're doing that. We're spending untold hours of time gathering information in response…it's very easy to make a request for production in the litigation process. Provide us all documents that you have regarding X – either Father So-and-So or Mr. Smith." Access is being provided, he emphasized. "In Alaska, every time there is any kind of a salacious anything, it's on the news," he added.

SENATOR McGUIRE said she is glad it is on the news. This problem has been around for decades and it was never on the news. It was in whispers and secrets, "so if you're trying to sway me, you're not swaying me in the right direction."

MR. GORSKI said he doesn't dispute that, but the jury is supposed to hear evidence in an untainted fashion. Premature information can jeopardize the ability to get a fair trial. There are issues that need to be raised, and the media is one way to do so. But as a lawyer, believing that everyone deserves an impartial trial, some of the information has nothing to do with the allegations and doesn't serve a good purpose.

2:08:43 PM

MR. GORSKI said he can't speak for his clients on the issue of a cap. That is another one of these policy decisions where no amount of money will make it right, he said. The bill, as proposed, is retroactive, and it raises serious constitutional issues in situations with a dead alleged perpetrator. It isn't a dialog. The statute of limitations is focused on the claimant—what did you know and when did you know it? “Once you found the sponge was in your stomach, does that mean you could wait for five or ten years before you filed suit against the surgeon?” Alaska law says, once known, a person has two years.

2:10:24 PM
CHAIR FRENCH noted that Mr. Gorski wasn’t present during the testimony of victims. He spoke of the fear, shame, and resulting alcoholism and serious life problems that the events give rise to. A boy was beaten by his father for disclosing the abuse. The psychological repression is different from a sponge in a stomach.

MR. GORSKI said he used the sponge analogy because it is a simple one, and the issues here are far more complex and horrific. That is why experts testify if someone wasn’t able to meet the two-year time frame, he said. We know it is embarrassing and horrific but current law says “once you get to that point--and that’s what this process is under the discovery rule--once you get to that point, you have an obligation to move the case forward.”

SENATOR THERRIAULT said current law is not so automatic that once you reach the age of 18, it starts ticking. A person can make a case that a psychological reason kept him or her from meeting that standard. He asked the connection between Mr. Gorski, Bob Groseclose, and Cook, Schuhmann & Groseclose.

MR. GORSKI said Mr. Groseclose represents the Catholic Bishop of northern Alaska, the diocese of Fairbanks. The defendants include the diocese – the corporate entity that exists for northern Alaska - and the Jesuits. “So I’m representing the religious order from which a number of these defendants – the priests – were from.” Mr. Groseclose represents the diocese itself. The Jesuits would allow the priests to serve in the diocese, “and so they have two different potentially liable parties is what they’re looking for.”

SENATOR THERRIAULT noted that Bob Groseclose is a principle partner in his wife's law firm. He said the bill would mean lots of litigation and bankruptcy, and that’s what she does. “It

would be great for her, but I just don't know if that's the right policy," he stated.

2:14:42 PM
DAVID CLOHESSY, National Director, Survivor's Network of those Abused by Priests (SNAP), St. Louis, Missouri, said there are 8,000 members across the country. He told the committee that three of his brothers were abused by the same priest who molested him. One of those brothers went on to become a Catholic priest and became a child molester himself. He said to remember one figure. If the present system works, as Mr. Gorski testified, "how do we explain the fact that the FBI estimates that 90 percent of child molesters are never caught or prosecuted or convicted?" Efforts are needed to deal with the horrific problem. He said everyone has wonderful imaginations, and we can do what his mother called "awfulizing." "We can spend hours speculating about potential future harm." He said our society is blind to actual harm. The current reality is there are hundreds or thousands of Alaska citizens who were molested and have no criminal or civil recourse. The cab driver who picked him up at the airport yesterday said, "Good luck; it happened to me too."

MR. CLOHESSY said it comes down to prevention versus secrecy. There is no question that this civil window is the single most effective way to prevent future abuse. There are child molesters out there now who have run out the clock. They have intimidated victims and threatened witnesses and they have essentially destroyed evidence. And now they can't be prosecuted, he said. The passage of time hurts the claimant, he stated. "The burden of proof is on us; it's not on Mr. Gorski and his clients…He talked out of both sides of his mouth because you heard him say that there were tens of thousands of documents that they had to wade through when these cases came forward." Some people using the window in California were out of luck because of a lack of records and witnesses. Mr. Gorski's slippery slope argument is ridiculous, and he asked if other aggrieved parties are asking for this. It is a ludicrous argument. Five years ago California enacted a law similar to SB 112, and not one individual has come forward saying, "I was hurt as a child in some other way, and I need more time to expose my predator."

MR. CLOHESSY spoke of the sponge analogy. A victim of bad surgery is usually an adult, and problems tend to be accidental. Repeated deliberately reckless surgeries by a physician aren't common. Child molesters do it serially. There needs to be special allowances. The victims are confused, frightened,

intimidated children, and the crimes are repeated over and over. Nearly all victims he has spoken to have said they just want to make sure that it doesn't happen again. Even when the perpetrator is dead, the rigid, secretive, centuries-old, all-male hierarchy has not changed. He surmised that if every sexually abusive priest dies tomorrow, the legislation will still be needed. Five years from now there will be another institution in a similar situation, and the legislature can say that the problem is fixed.

MR. CLOHESSY said it is ludicrous to say that this problem is getting resolved on its own. There always has been and will always be child molesters. There also will always be people too timid to do anything about it, and there will be people who are proactive and responsible and prevent harm from being done, he stated. Child molesters will always gravitate to where they will have power over kids. Headlines won't fix it, and the legislature must. He said he agrees with Senator McGuire. The purpose of the bill is to expose child molesters that are free and to expose people who shielded them. The second purpose is to get at the truth. The truth shall set you free. The one thing that Mr. Gorski and his clients do not want to do—and that's why they pay settlements and that's why he and his colleagues across the country fight this kind of legislation—is they do not want the officials to have to take the oath and acknowledge what they knew and how little they did about predators. He said the bill is not directed at the Catholic Church, but at any child molester and anyone reckless enough to hire them and self-serving enough to keep that person on the payroll instead of getting rid of him when the first allegations come forward.

MR. CLOHESSY said to keep in mind the 90 percent figure. The burden of proof falls on claimants. There is a chance for a false claim, but juries do a pretty good job of sorting fact from fiction. The church's own leading defense lawyer told the New York Times that he represented more than 500 accused pedophile priests, and less than 10 of them were falsely accused. Before considering a cap, ask Mr. Gorski's clients to disclose to an independent party the amount of property, insurance and assets they have. The Orange County settlement for $100 million was the largest settlement in history that involved one institution in child sexual abuse, and it repaid its loan in six months and is now building a $150 million cathedral. If the goal is to deter recklessness, wrongdoing, destruction of evidence, secrecy, and scaring victims, caps won't help in that respect.

2:24:40 PM
CHAIR FRENCH said the committee should have three papers on expos facto. He said he appreciates that Mr. Gorski is not focusing on that as the centerpiece to his opposition to the bill. But the committee should consider the arguments that were advanced. In 2006, a decision entitled Catholic Bishop of Northern Alaska v. John Does 1-6, says, with respect to the 2001 changes on the statute of limitation, "had the legislature intended it to apply retrospectively, it would have used similar language…thus we conclude that the plaintiffs cannot rely on this statute as a basis for their claims." It discusses that Mr. Luckhaupt said that the expos facto clause would forbid a time-barred prosecution of sex abuse claims. It discusses it a little more without resolving whether a retrospective change on the civil statute of limitation would be a violation of the expos facto law.

2:27:35 PM
CHAIR FRENCH quoted a March 30, 2007 memo from [Dennis] Bailey, [Alaska Legislative Affairs Agency] saying it may or may not be a violation. He said Mr. Bailey was equivocal, and he notes that there is authority from other jurisdictions finding that constitutional prohibition against expos facto laws applies only to criminal laws. He said Mr. Bailey couldn't find an Alaska case that definitively states that it only applies in the criminal setting in Alaska. Mr. Bailey points out that the Attorney General's opinion is that expos facto laws relate to crimes in criminal statutes only. On page 3, Mr. Bailey notes that in other Alaska cases, the Alaska Supreme Court has held that an extension of the statute of limitations was a procedural change that did not violate expos facto. Mr. Bailey pointed out that the Alaska Supreme Court upheld a retroactively applied criminal law requiring the registration of sex offenders. Senator French construed a couple of things from that. "I think the court would view a statute of limitations change in this subject matter somewhat leniently…given that they were willing to allow a retroactive criminal law with respect to registration of sex offenders." He said that issue was hotly contested.

2:29:35 PM
CHAIR FRENCH said another document in the committee packet is a district court decision, and the court points out that the expos facto clause in the constitution prohibits the federal government or states from enacting laws with certain retroactive effects. It points to some cases. One is Calder v. Bull from 1798, and the court concludes, on page 22, that the California law is not an extension of criminal punishment, and therefore

the law simply extends the statute of limitations for the filing of a civil tort cause of action, and it is not an expos facto problem. “So I think it’s fair to say that the law leans in the direction that it’s not being an expos facto problem; it’s certainly not clear cut.” It is something to keep in mind, he stated.

2:31:22 PM
JOE AUSTIN said he is a retired Anchorage Police Department investigator who is testifying as a concerned citizen. He said he worked in the homicide unit and on sex crimes, and he organized and supervised the Crimes Against Children Unit in the early 1990s. In 1992, over 1,700 cases were reported to the unit, and of those he assigned about 700 to the nine investigators in the unit. The ones that couldn't be investigated were ones where no crimes were committed or there was a lack of evidence. There were also the cases that were outside the statute of limitations, which was frustrating to him. In 1990 he asked former Senator Donley to introduce legislation which resulted in the law of changing the statute of limitations to 10 years past a person’s 16th birthday. Since then the 2001 law removed the statute of limitations for sex crimes. He said his unit investigated all types of maltreatment of children, and about two thirds of the caseload dealt with sexual abuse. Most involved intra-familial abuse, usually by the father, stepfather or uncle. The extra-familial cases are the most dangerous because there could be dozens or hundreds of victims. One molester molested over 400 kids, he noted. A molester can be found in all professions. He found that victims don't report the abuse until years later. By passing SB 112, victims that are now barred will be able to have their day in court, and it may allow healing to begin, he said. Another benefit is exposing child predators that have remained under the radar for years. It may also discover evidence allowing law enforcement to investigate and prosecute these predators. Public exposure will help prevent future victimization, he concluded.

2:35:47 PM
SENATOR McGUIRE asked why the bill excludes AS 09.10.140, and why it is just for one year. Perhaps the secrecy and intimidation still exists, she said.

CHAIR FRENCH said it is a balance between totally opening the doors and confronting the issues that Mr. Gorski raised. Since 2001 there is no statute of limitations, so there is a narrowing number to whom this will apply. It will allow time for those to come forward and then they enter a state of repose. Her other

question dealt with why just felony sexual abuse and not misdemeanor sexual abuse. He said it is a policy call. He said the difference in severity and provability in a penetration claim versus a touching claim seemed a rational balance.

SENATOR THERRIAULT asked about a cap, allowing just for court costs, or donating to a victim's compensation fund. "I don't know if whether we're dealing with a cottage industry that's building up and bringing this type of case around the nation and now proposing to bring it in the State of Alaska." He said he is concerned that all testifiers were psychologists involved in these cases, victims, and attorneys. No one testified from the judiciary. "If we were just writing this whole section of statute without any cases, where would we strike that balance?" He is afraid of emotionally changing something that goes back to England and old common law. He would like to hear from a retired judge or somebody without a dog in the fight, especially since this is the only committee of referral.

CHAIR FRENCH said he has tried to be sensitive to the fact that this is the only committee hearing the bill. He waited for witnesses that were out of the country. He questioned the ability to find a totally neutral individual. Mr. Gorski gave a good explanation of why there is a statute of limitations. The committee heard both sides, and the policy call is there, he said. Do we accept that fear, shame, or a beating from your father overcomes fairly tight legal reasons for not disclosing events? he asked.

SENATOR McGUIRE asked if any other state considered excluding the church tithe money. "I don't think there's a way around it, I'm just expressing on the record that general reservation." There are folks that have given their hard-earned money, she said.

CHAIR FRENCH said he can't imagine a more painful process to enter into.

2:42:08 PM
SENATOR HUGGINS said he is interested in what the victims have ended up with in the judgments. These things are terrible, but it begs the question of who is being punished since many people are dead, and church money comes from people who tithe. "A lot of people owe their salvation to the church—not to defend anybody that protected these people…I would be one to go help chisel on somebody's gravestone that they were a sexual pervert…but in the same token I would be interested to see what

the divisions of moneys look like and how much actually ends up to the victim."

MR. CLOHESSY said 90 percent of the settlements come from insurance, so the costs have been paid by previous generations. A victim gets 30 to 40 percent from a settlement. He added that even with a window, an overwhelming majority of victims simply can't or don't come forward and pursue litigation. He said they are embarrassed and worried about what will be said or done to them.

SENATOR HUGGINS said he firmly believes in accountability, but in some sense it is ultimately about money, and "to that extent it gives me a little bit of discomfort."

MR. CLOHESSY said Senator McGuire hit the nail on head, and what victims really want is the perpetrator and anybody who covered up for the perpetrator to be exposed. They want to prevent that recklessness. "And the validation that comes when a jury says yes we believe…."

SENATOR HUGGINS said he concurs.

SENATOR THERRIAULT said the debate has been about the acts in the church, but this bill opens the window up for anybody, including boy scouts, which Senator Therriault has been involved with for ten years. It also includes Girl Scouts, Brownies, and any organization. That is why he is really concerned that the committee has not heard from anybody who is disassociated with all the present cases to "just give us some suggestions on how we might be tilting the legal field in a system that's been in existence for hundreds and hundreds of years." He is not sure the discussion has been adequate.

At ease from 2:46:40 PM to 2:48:03 PM.

CHAIR FRENCH said Senator Therriault has some policy concerns, but the likelihood of getting a black and white answer to that question is fairly limited. He said the committee has heard from both sides on the basic structure of the statute of limitations.

SENATOR McGUIRE motioned to report SB 112 from committee with individual recommendations and attached fiscal note(s).

SENATOR THERRIAULT objected. He said there is "nothing real time sensitive, and I think that perhaps we could find somebody from the judiciary that's really disassociated with any of the

emotion that's attached to this issue just on the sensibility of the change that we're contemplating here and the ramifications it has in our legal system that's been in place for hundreds and hundreds of years." There could be suggestions on how to make the change without inviting a bunch of trumped-up cases to stampede through the window while it's open.

CHAIR FRENCH said the bill was brought up a week ago and he gave notice to the world that it was going to be heard again today.

SENATOR HUGGINS said he would support the bill with reservations because it is not that time sensitive. It could be done this session or next. He said he identifies and understands the victims' piece of it, but there are potentially large spillovers that give him discomfort.

SENATOR THERRIAULT removed his objection.

CHAIR FRENCH announced that, without objection, SB 112 moves from committee.

At ease 2:50:26 PM

SB 97-ALASKA NATIVE ART IDENTIFICATION SEALS

2:53:18 PM
CHAIR FRENCH announced the consideration of SB 97.

TIM LAMBKIN, Staff to Senator Stevens, Sponsor of SB 97, explained that the bill was introduced on behalf of the Alaska State Council on the Arts. It seeks to bring increased credibility to the silver hand program, which has been stymied by fraud. SB 97 has "no motivation other than to modernize the statues regarding silver hand permitting and to rejuvenate a program that is poised to blossom," he stated.

MR. LAMBKIN explained that as the bill gained momentum problems came to light relating to the legal terms used in the definitions section. He noted a proposed amendment to address the policy issue of using phrases of recognized tribes in Alaska.

CHAIR FRENCH asked for a motion to adopt Amendment 1.

SENATOR McGUIRE moved Amendment 1, labeled 25-LS0405\M.1.

SENATOR THERRIAULT objected for discussion purposes.

MR. LAMBKIN explained the amendment intends to avoid inadvertent consequences of using the word "recognized" when referencing federal statutory language to define Indian tribes in Alaska. The bill is definitely not intended to open the debate of whether there are or are not recognized tribes in Alaska, he stated.

CHAIR FRENCH asked how many years the silver hand program has been in statute.

MR. LAMBKIN said since 1961.

CHAIR FRENCH said the issue with respect to the amendment addresses the definition of what is and what is not a tribe.

SENATOR THERRIAULT said he'd like Mr. Popely to discuss the limitations associated with using the definition with respect to the Indian Self-Determination and Education Assistance Act.

2:56:58 PM
TED POPLEY, Legislative Legal Counsel, said the issue is controversial and largely unresolved from the legislature's perspective.

CHAIR FRENCH asked if the controversial issue is the federal recognition of tribal status in Alaska.

MR. POPLEY said the issue is whether or not federally recognized tribes with powers of sovereign governmental immunity exist in Alaska. The purpose of the amendment is to try to avoid that issue being further confused in this legislation, he stated. Certainly lots of legislation passes that addresses Alaska Natives as groups, but the danger is putting forth legislation that suggests that the legislature recognizes or wishes to recognize federally recognized Indian tribes for purposes such as sovereign immunity.

CHAIR FRENCH asked Mr. Popely if he believes this amendment reduces the likelihood that there will be some recognition of sovereign tribes in Alaska.

MR. POPLEY replied he believes that "Amendments 1 and 2 together…eliminate the issue altogether from this piece of legislation."

CHAIR FRENCH asked if Amendment 1 takes care of the problem.

MR. POPLEY noted that everything is contained in Amendment 1 and he articulated the view that it would "keep this issue from becoming a central part of this bill."

CHAIR FRENCH asked for clarification that he sees that Amendment 1 incorporates both the ideas he referenced initially.

MR. POPELY said yes.

CHAIR FRENCH asked if there is further objection to Amendment 1.

SENATOR THERRIAULT withdrew his objection.

CHAIR FRENCH announced that Amendment 1 is adopted and the bill is back before the committee.

SENATOR THERRIAULT asked if there is any need to insert boilerplate language - such as Congress inserts - stating that there is no intention to change the current status of recognition.

MR. POPLEY said he doesn't think it's necessary. "The insertion of the language that describes Indian tribes through the federal definition…does specifically indicate that that list of groups is strictly for receiving benefits as defined by the federal government and for no other purpose," he stated.

3:01:14 PM
CHAIR FRENCH stated that the bill was sent to the committee to fix this specific problem and that has been accomplished. He asked if there are any other concerns.

SENATOR THERRIAULT stated that the existing stature has had an equal protection issue for 45 years.

CHAIR FRENCH thanked him for the disclaimer and qualification and asked for the will of the committee.

SENATOR McGUIRE motioned to report CSSB 97(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, it was so ordered.

There being no further business to come before the committee, Chair French adjourned the meeting at 3:01:56 PM.