

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 23, 2007

1:32 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

SENATE BILL NO. 150

"An Act relating to an aggravating factor at sentencing for crimes committed at certain shelters and facilities."

MOVED SB 150 OUT OF COMMITTEE

SENATE BILL NO. 128

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain alcoholic purchases of alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 141

"An Act relating to limited liability companies."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 78

"An Act relating to the installation of window tinting in automobiles."

MOVED CSSB 78(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 150

SHORT TITLE: CRIMES AT DOMESTIC VIOLENCE SHELTERS

SPONSOR(S): SENATOR(S) DAVIS

03/30/07 (S) READ THE FIRST TIME - REFERRALS

03/30/07 (S) HES, JUD
04/18/07 (S) HES AT 2:00 PM BELTZ 211
04/18/07 (S) Moved SB 150 Out of Committee
04/18/07 (S) MINUTE(HES)
04/20/07 (S) HES RPT 3DP
04/20/07 (S) DP: DAVIS, ELTON, COWDERY
04/23/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 128

SHORT TITLE: ALCOHOL LOCAL OPTION PROVISIONS

SPONSOR(S): SENATOR(S) OLSON

03/19/07 (S) READ THE FIRST TIME - REFERRALS
03/19/07 (S) CRA, JUD, FIN
03/27/07 (S) CRA AT 3:30 PM BELTZ 211
03/27/07 (S) Moved CSSB 128(CRA) Out of Committee
03/27/07 (S) MINUTE(CRA)
03/28/07 (S) CRA RPT CS 3DP NEW TITLE
03/28/07 (S) DP: OLSON, THOMAS, KOOKESH
04/23/07 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

DONNA FLEAGLE, Staff to Senator Davis
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced SB 150 for the sponsor.

CRIS ASHENBRENNER, Interim Program Administrator
Council on Domestic Violence & Sexual Assault
Department of Public Safety
Juneau, AK

POSITION STATEMENT: Spoke in support of SB 150

SARALYN TABACHNICK, Executive Director
AWARE Shelter
Juneau, AK

POSITION STATEMENT: Spoke in support of SB 150

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 150 and SB 128.

GINNY AUSTERMAN, Staff to Senator Olson

Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced SB 128 for the sponsor.

TALIS COLBERG, Attorney General
Co-Chair, Alaska Rural Justice and Law Enforcement Commission
Anchorage, Alaska

POSITION STATEMENT: Supported SB 128.

LORETTA BULLARD, President
Kawerak, Inc.
Nome, AK

POSITION STATEMENT: Supported SB 128.

CASEY REYNOLDS, Economic Development Planner
City of Wasilla, AK

POSITION STATEMENT: Supported SB 128.

DOUG GRIFFIN, Director
Alcoholic Beverage Control Board
Anchorage, AK

POSITION STATEMENT: Supported SB 128.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:32:28 PM](#). Present at the call to order were Senator Huggins, Senator Wielechowski, and Chair French.

SB 150-CRIMES AT DOMESTIC VIOLENCE SHELTERS

CHAIR FRENCH announced the consideration of SB 150.

[1:33:04 PM](#)

DONNIE FLEAGLE, Legislative Intern to Senator Davis, relayed that SB 150 is in response to an event at the Juneau AWARE Center. She stated the following:

Domestic violence is a serious, significant, preventable public health challenge for Alaska. Alaska has the distinction of being in the top five states for per capita domestic violence rates. And Alaska's women are being killed by their partners at the rate of 1.5 times the national average. In 2005 Alaska shelters provided services to 8,793 clients.

This bill will not solve this social ill. However, it will bring attention to protecting victims of domestic violence and will serve to draw the general public's attention to the need for social change and the responsibility we all have as citizens to protect the most vulnerable of populations.

Over time this learned behavior will change when it is generally known that such behavior can result in additional time spent incarcerated. Anchorage has seen that over time rape is committed without the use of a weapon because it is known that should a weapon be used, the stakes go up considerably. This legislation will give courts the ability to impose additional time above and beyond the presumptive sentence for felonies committed on the premises of a shelter or a facility providing services to victims of domestic violence or sexual assault.

Passage of SB 150 provides a tool that can be used to send a message that crimes committed on the premises of a shelter or a facility providing services to victims of domestic violence or sexual assault are deserving of the maximum allowable punishment. And that the safety that is expected in such an environment will be enforced and respected.

The language in this bill was left purposefully broad, allowing the courts of each jurisdiction to determine the definition of facilities and services. If such a word as "residential" were to be inserted, it would eliminate STAR, a rape crisis center. It is not tied to particular facilities or services. Victims receive services in other places and are entitled to protection. In rural Alaska there are recognized safe homes, which do not receive funds from the Council on Domestic Violence. In this instance, again, the courts determine the definitions.

[1:36:00 PM](#)

SENATOR HUGGINS asked how other states address the issue.

MS. FLEAGLE said Minnesota statute makes it a gross misdemeanor, but it does not add aggravating factors. She called the Department of Justice and reviewed the National Crime Victimization Survey and found that felonies that are committed

at shelters are not broken out so it's difficult to gather statistics.

CHAIR FRENCH mused about the purposefully broad language and said although he has some qualms, this will probably be used only when a crime is committed on the grounds of a recognized shelter.

MS. FLEAGLE said in rural Alaska federal funds are provided for safe homes and in those small communities they are known to be places of refuge. It would be up to local jurisdiction to determine if that is a recognized shelter or facility, she said.

[1:39:20 PM](#)

CHAIR FRENCH opened public testimony.

CHRIS ASHENBRENNER, Interim Program Administrator, Council on Domestic Violence & Sexual Assault, Juneau, told the committee that she submitted written testimony. We support this legislation and believe it's important to send the message that committing a crime at a safe haven warrants something "extra" in terms of holding the perpetrator accountable, she said.

She was at the AWARE shelter when the perpetrator tried to break in several years ago. The perpetrator did not get into the shelter, but he wasn't held accountable for going after the victim who was in safe shelter, for putting others at risk, or for re-traumatizing other victims. She encouraged the committee to pass the bill because it sends a strong message.

[1:41:54 PM](#)

SARALYN TABACHNICK, Executive Director, AWARE Shelter, Juneau, spoke in support of SB 150. There is a higher expectation and need for safety for this high risk population, she said. Referring to the 2005 break in at the shelter, she said it was traumatic for everyone involved. Passing this bill will promote increased safety for victims of domestic violence and sexual assault and it will hold batterers accountable for their behaviors, she stated.

[1:43:48 PM](#)

LINDA STANFORD, Program Director, Artic Women in Crisis (AWIC), Barrow, spoke in support of SB 150. This is an opportunity to provide tools for prosecutors and others to hold offenders accountable, she said. Safety is always a primary goal because without it you can't provide crisis intervention or help children report sexual abuse. In 2006 AWIC provided close to

3,000 safe shelter nights for women and children at the Barrow facility. That figure does not include shelter provided in safe homes in outlying villages.

When the Dillingham shelter director was asked how she measures success, she said it's the children. They arrive full of fear and it takes time before they feel safe enough to want to play. But it's not just children; it takes time for all victims to feel safe again. She related several traumatizing events at AWIC to demonstrate how an entire facility can be impacted when a perpetrator tries to gain access to a shelter. We have cameras and other security features at the facility here in Barrow, but safe homes in the villages don't have those luxuries. Please take the safe homes into consideration when you look at passing SB 150, she said. They do need additional protections.

[1:50:33 PM](#)

CHAIR FRENCH noted that there are letters of support from the Alaska Network on Domestic Violence and Sexual Assault, Ms. Ashenbrenner, Virginia Walsh who is a clinician at the Arctic Women in Crisis, and Nellie Sears who provides a safe home in Point Hope.

SENATOR HUGGINS recalled that similar measures had been taken to make school sites safe. Musing about a young Georgia football player who received what many believe to be an unusually harsh sentence and a hypothetical defendant who breaks into a shelter believing it's a private home, he said he would hate to have unintended consequences related to the aggravator.

SENATOR MCGUIRE asked if mental intent language is used for aggravators. She suggested amending the bill to make it clear that this applies to a defendant who committed the offense on the premises with the intent to threaten or harm staff or victims. The idea is to avoid the unintended consequences that Senator Huggins is referring to, she said.

[1:53:38 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, Juneau, advised that this isn't a concern for factors in aggravation and mitigation. These are discretionary factors that the court uses in the particular situation that's involved, she said.

CHAIR FRENCH said under Senator Huggins' hypothetical scenario, the sentencing judge could decide what way to apply the aggravator and proceed accordingly.

MS. CARPENETI said yes, and Alaska judges usually have lots of common sense.

SENATOR McGUIRE recalled that knowingly is the mental intent so it would be the defendant knowingly committed the offense.

MS. CARPENETI suggested you'd say "committed the offense knowing that it was a shelter."

[1:55:25 PM](#)

SENATOR McGUIRE motioned to report SB 150 from committee with individual recommendations and attached fiscal note(s). There being no objection, it was so ordered.

Brief recess to sign paperwork.

SB 128 ALCOHOL LOCAL OPTION PROVISIONS

[1:59:30 PM](#)

CHAIR FRENCH announced the consideration of SB 128 by Senator Donny Olson. Before the committee was CSSB 128(CRS).

GINNY AUSTERMAN, Staff to Senator Olson, sponsor of SB 128, explained that the bill requires the Alcohol Beverage Control (ABC) Board to create and maintain a database so that businesses that sell alcoholic beverages can keep track of written orders for alcohol shipped to a buyer. Whenever a written order is received from a resident of a damp local option area, the package store licensee is required to consult the database before filling the order to ensure that the person has not already ordered his or her quota for that month. The order may only be shipped to the residence of the person placing the order or to a community delivery site if there is one. Also, reselling the alcohol to another person in the community would be a class A misdemeanor.

MS. AUSTERMAN stated that having the information in a database will prevent bootleggers from ordering from multiple package stores in violation of the local option. Information in the database will be available only to package stores and law enforcement and none of the information would be public.

SB 128 also contains a provision to correct an omission in state law. Organized boroughs would be allowed to transfer a borough liquor license to a community within the borough that has used its allotment of liquor licenses.

[2:01:51 PM](#)

TALIS COLBERG, Attorney General and Co-Chair of the Alaska Rural Justice Commission, said the commission has focused on four areas of concern in the past two years, with alcohol interdiction as one. He explained that the commission has formed working groups across the state and came up with action options including the provisions in SB 128. The bill seeks to interdict alcohol in Alaska villages with a statewide database for tracking alcohol purchases and shipments to damp villages. Another feature addresses possession of the ingredients for homebrew coupled with the concept of intent. He reiterated the Rural Justice Commission and the Department of Law support the bill as an effort to address a major problem in rural Alaska.

[2:05:54 PM](#)

SENATOR McGUIRE referred to page 5, bill section 10 and said it's difficult to prove intent when a person is in possession of ingredients that could be used to make an alcoholic beverage. She asked why it's important to include "with the intent" and if it could be proved.

ATTORNEY GENERAL COLBERG offered the view that that language provides a tool that gives more options. What's more problematic in rural Alaska is enforcement because somebody has to be available to look into the situation, he added.

[2:08:07 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, agreed. It will be difficult to prove, but when there is proof it will probably be good to have that tool available.

CHAIR FRENCH said he takes it that the possession of homebrew is illegal because it's an alcoholic beverage, so the likely charge would be knowing possession. You wouldn't have to prove intent.

MS. CARPENETI agreed. The possession of ingredients for homebrew only applies to dry communities, she added.

CHAIR FRENCH said it's nearly beyond comprehension that someone would be prosecuted for the possession of sugar or yeast without there being a bucket of homebrew nearby. Skepticism aside, he said that as a former prosecutor he's happy to provide a tool if it's needed. He then asked if AS 04.11.499(b) essentially addresses buying alcohol in a dry community.

[2:09:50 PM](#)

MS. CARPENETI clarified that bootlegging is a class C felony, but under this provision the person who buys from the bootlegger would be guilty of a class A misdemeanor.

CHAIR FRENCH asked if before this it was not a crime to buy alcohol in a dry community.

MS. CARPENETI answered this would apply more in damp communities. A person who buys alcohol from a bootlegger knowing that it was brought in illegally, could be convicted under this new section, she said.

CHAIR FRENCH recapped that it's a class C felony to import alcohol in violation of a local option. He then asked if it's illegal to possess alcohol in a dry community.

MS. CARPENETI said yes, but under current law it may not necessarily be illegal to possess it in a damp community. Purchasing alcohol from a bootlegger knowing that it was brought in illegally would be a class A misdemeanor under this provision. Normally Title 4 doesn't have penalties but this exception is to clarify that the purchase of the bootlegged liquor is an A misdemeanor as opposed to bootlegging itself which is a class C felony."

CHAIR FRENCH summarized that bill section 12 is about a person who buys alcohol in a damp community from a person who is known to be a bootlegger.

MS. CARPENETI nodded.

[2:12:42 PM](#)

LORETTA BULLARD, President, Kawerak, Inc., Nome, said she also serves on the Alaska Rural Justice and Law Enforcement Commission representing a VPSO contractor. Stating support for SB 128, she said that many of rural Alaska's social problems revolve around alcohol and substance abuse. Those problems include: suicide, homicide, child sexual abuse and physical neglect, FAE and FAS, domestic violence, and accidental death and injuries. She estimates that 90 percent of the inmates in Alaska correctional facilities are serving time for offenses conducted under the influence of alcohol, for consuming alcohol while on probation, or for importing or brewing alcohol in violation of local option laws.

MS. BULLARD said that many of the provisions in SB 128 include the practical solutions developed as part of the Rural Justice and Law Enforcement work group process. Noting that the bill is weighted to address the supply side of the issue, she encouraged the legislature to make resources available to address the demand for and treatment of alcohol and substance abuse. Address the problem before hand as opposed to locking people up after the fact. She highlighted that her written testimony included a list of options that were developed by the alcohol work group and she wants the committee to know there are many more ideas, including early intervention.

MS. BULLARD noted that the commission asked the legislature for stop-gap funding to allow continued work and she encourages members to honor that request.

2:15:55 PM

CASEY REYNOLDS, Economic Development Planner, City of Wasilla, said his testimony relates to the relocation of liquor licenses within boroughs into incorporated cities. Wasilla is growing rapidly and a great deal of investment is coming into the community. The problem is that only four beverage dispensary licenses are available for use in the community so it's difficult to attract new restaurants. The value of these licenses is in the mid-six figures, which is cost prohibitive even for national chains.

MR. REYNOLDS pointed out that restaurants need city services for water, sewer, fire, and police so they won't locate in the area unless they can be within the city limits. It's a Catch-22 situation because they won't go outside the city limits where there aren't services, but they can't locate within the city limits because they can't obtain a beverage dispensary license. To address this problem, Wasilla has crafted a solution whereby licenses allocated to the borough could be used inside the city as long as both the borough and the city are in agreement. This allows maximum efficiency for using liquor licenses without increasing the number. The ABC Board, the Department of Public Safety, and other communities have given this concept unanimous support. It's good public policy, he said.

CHAIR FRENCH asked for a concrete example of where a MatSu Borough license might be relocated within an incorporated city.

MR. REYNOLDS explained that when a restaurant, package liquor stores, or bar goes out of business, it could sell that license to an entity in Palmer, Wasilla, or Houston provided that both

the city and the borough approved the relocation. Those are the only three incorporated cities that would fall into that category in the MatSu Borough.

[2:21:02 PM](#)

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Anchorage, said the board does support the concept of allowing relocation of licenses within boroughs. The fiscal note reflects the cost of creating and maintaining the database for keeping track of written orders for alcohol to rural Alaska. Bill section 15 calls for the creation of a delivery site pilot project that's not reflected in the fiscal note. Those costs are being investigated and he anticipates that it will be a very expensive proposition.

[2:24:43 PM](#)

CHAIR FRENCH asked him to explain how the database would work.

MR. GRIFFIN explained that in rural Alaska 80-90 communities have voted by local option to become dry. Each month people living in damp communities can legally order 10.5 liters of spirits, 24 liters of wine, and 12 gallons of beer. The working group was concerned that there was no way of knowing how many times a person might place orders so that's how the idea for the database came about.

[2:30:37 PM](#)

CHAIR FRENCH asked who is in charge of entering the data into the database.

MR. GRIFFIN answered the law says the individual clerks enter the information upon filling an order. The database would be on a secure website that's accessible by law enforcement, but no standard database meets the requirement for this program, which is one reason that the fiscal note is high.

CHAIR FRENCH observed that it doesn't sound like there's any state oversight of the database. It's designed so that one clerk can find out if another clerk has already sold an individual a quantity of alcohol within a given month.

MR. GRIFFIN agreed and added that the fiscal note does reflect one criminal justice technician position which would provide some oversight.

CHAIR FRENCH asked how he intends to monitor whether package stores are actually entering the data.

MR. GRIFFIN replied that would require an audit.

CHAIR FRENCH asked if someone would compare the paper orders with what is in database.

MR. GRIFFIN said yes; the technician would probably perform that accounting function.

[2:36:11 PM](#)

SENATOR McGUIRE suggested he look at the Oregon package store model in terms of establishing community distribution sites. For the registry model she said he might look at how Pseudoephedrine sales are registered and regulated. She noted that the bill doesn't have penalties for unauthorized use of the information in the database and it might be advantageous to include that because privacy should be respected. She asked what penalty would be assessed if an agent or employee fails to enter the information in a timely manner.

MR. GRIFFIN deferred to the Department of Law.

[2:39:49 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, Juneau, explained that penalties for violations in Title 4 are all class A misdemeanors unless specifically made another offense.

CHAIR FRENCH asked if failure to maintain the integrity of the database would automatically be a criminal offense.

MS. CARPENETI said she assumes that it would be a violation for somebody to sent alcohol without consulting the database, but she doesn't know if you'd want it to be a class A misdemeanor or not.

[2:41:33 PM](#)

CHAIR FRENCH said there are a number of ways to go wrong in terms of entering the data, consulting the database, and protecting integrity of the database, but he needs to think about whether it's a criminal act. A fairly high duty is being imposed on liquor store clerks, he said.

MS. CARPENETI pointed out that they are selling a controlled substance so caution is warranted, but a class A misdemeanor might not be the way to go. However, a person who knowingly

distributes confidential information should be held to a fairly high standard.

CHAIR FRENCH asked what the penalty is for selling alcohol to a minor.

MS. CARPENETI said it's a class A misdemeanor and that applies to bartenders and pubs.

CHAIR FRENCH asked if this would become part of the training for those who sell alcohol.

MS. CARPENETI said she would imagine so.

SENATOR McGUIRE asked if he intends to hold the bill.

CHAIR FRENCH said he would like to think about where to place the weight on a clerk.

SENATOR McGUIRE said she'd like the penalty for unauthorized release of confidential information contained in the database to be specified in the bill.

[2:44:37 PM](#)

MS. CARPENETI said she'd be happy to supply amendments for the committee to consider.

CHAIR FRENCH announced he would hold SB 128 in committee.

Brief recess to sign paperwork at [2:45:25 PM](#).

SB 78-MOTOR VEHICLE WINDOW TINTING

[2:46:33 PM](#)

CHAIR FRENCH announced the consideration of SB 78 and asked for a motion to adopt Version C committee substitute (CS) as the working document.

[2:46:55 PM](#)

SENATOR McGUIRE moved CSSB 78, labeled 25-LS0526\C, for discussion purposes. There being no objection, it was so ordered.

CHAIR FRENCH explained that the principle change is to make it clear that it's an infraction to install illegal tinting. There were no questions or comments.

2:47:53 PM

SENATOR WIELECHOWSKI motioned to report CSSB 78 from committee with individual recommendations and attached fiscal note.

CHAIR FRENCH announced that without objection, CSSB 78(JUD) moves from committee.

Short recess at 2:48:19 PM.

There being no further business to come before the committee, Chair French adjourned the meeting at 2:48:56 PM.