

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 11, 2008

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 211

"An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

HEARD AND HELD

SENATE BILL NO. 226

"An Act relating to litigation brought by a vexatious litigant; amending Rules 3, 4, 12, and 41, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED SB 226 OUT OF COMMITTEE

SENATE BILL NO. 247

"An Act relating to missing persons and unidentified human remains."

MOVED CSSB 247(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 211

SHORT TITLE: AGGRAVATING FACTOR: HOMELESSNESS

SPONSOR(S): SENATOR(S) DAVIS

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS
01/16/08	(S)	JUD
02/01/08	(S)	JUD AT 1:30 PM BELTZ 211
02/01/08	(S)	-- MEETING CANCELED --

02/11/08 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 226

SHORT TITLE: VEXATIOUS LITIGANTS

SPONSOR(s): JUDICIARY

01/16/08 (S) READ THE FIRST TIME - REFERRALS
01/16/08 (S) JUD, FIN
01/30/08 (S) JUD AT 1:30 PM BELTZ 211
01/30/08 (S) Heard & Held
01/30/08 (S) MINUTE(JUD)
02/11/08 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 247

SHORT TITLE: MISSING PERSONS

SPONSOR(s): SENATOR(s) GREEN

01/23/08 (S) READ THE FIRST TIME - REFERRALS
01/23/08 (S) JUD, FIN
01/30/08 (S) JUD AT 1:30 PM BELTZ 211
01/30/08 (S) Heard & Held
01/30/08 (S) MINUTE(JUD)
02/11/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

JANA KREOFISKY, Legislative Intern
to Senator Bettye Davis
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced SB 211 on behalf of the sponsor.

GEORGE BRIGGS, Executive Director
Juneau Cooperative Christian Ministry
Glory Hole
Juneau, AK

POSITION STATEMENT: Spoke in support of SB 211.

DANIEL UNGIER
United Way of Southeast Alaska
said he chairs the Juneau Homeless Coalition
POSITION STATEMENT: Spoke in support of SB 211.

SAMUEL J. FORTIER, Attorney at Law
Anchorage, AK
POSITION STATEMENT: Spoke in support of SB 211.

DIANNE SLIGHTER

Juneau, AK

POSITION STATEMENT: Spoke in support of SB 211.

REPRESENTATIVE ANDREA DOLL

Alaska State Capitol

Juneau, AK

POSITION STATEMENT: Spoke in support of SB 211.

ANNE CARPENETI, Assistant Attorney General

Criminal Division

Department of Law (DOL)

Juneau, AK

POSITION STATEMENT: Answered questions about aggravating factors as related to SB 211.

DARWIN PETERSON, Staff

to Senator Stedman

Alaska Capitol Building

Juneau, AK

POSITION STATEMENT: Explained changes in CS to SB 247.

MARY WEIR

RODNEY DIAL, Lieutenant

Alaska State Troopers

Department of Public Safety

Ketchikan, AK

POSITION STATEMENT: Stated support for the goal of SB 247 and expressed concern with some of the directives.

JOAN WILSON, Assistant Attorney General

Civil Division

Department of Law

Anchorage, AK

POSITION STATEMENT: Provided information about HIPPA compliance related to SB 247.

SUSAN COX, Senior Assistant Attorney General

Civil Division

Torts & Worker's Compensation

Department of Law

Juneau, AK

POSITION STATEMENT: Provided explanation and answered questions related to SB 226.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:33:18 PM](#). Present at the call to order were Senators French, Huggins, and McGuire. Senators Wielechowski and Therriault joined the meeting soon thereafter.

SB 211-AGGRAVATING FACTOR: HOMELESSNESS

[1:33:54 PM](#)

CHAIR FRENCH announced the consideration of SB 211.

SENATOR WIELECHOWSKI joined the meeting.

JANA KREOFISKY, legislative intern to Senator Bettye Davis, introduced SB 211 on behalf of the sponsor. She read the following sponsor statement into the record.

SB 211 allows the court to increase the active term of imprisonment for felonies up to the maximum term of imprisonment, even for a first offense, for factors in aggravation. Current sentencing provisions allow imposition of a sentence above the presumption range set out in AS 12.55.125 based on race, sex, color, creed, physical or mental disability, ancestry, or national origin as set out in AS 12.55.155(c)(22). SB 211 adds "homelessness" as an aggravating factor to this section.

The purpose of this statute is to deter and punish defendants motivated to harm homeless people who are particularly vulnerable and increasingly targets of crime. Violent crimes against the homeless increased 65 percent from 2005-2006, according to a 2006 report by the National Coalition for the Homeless. The 2006 numbers reflect a 170 percent increase since the organization's first study in 1999. This national trend is reflected in the more than 14,000 individuals who experience homelessness in Alaska each year, according to the 2005 Alaska Interagency Council on Homelessness report, "Keeping Alaskans Out of the Cold." This violence against the homeless has a direct impact on the victim, the victim's family, the community, and Alaska as a whole.

[1:36:31 PM](#)

GEORGE BRIGGS, Executive Director, Juneau Cooperative Christian Ministry, "The Glory Hole", stated support for SB 211. The Glory Hole is a 40-bed homeless shelter and soup kitchen in Juneau. Over the course of a year he sees about 20 percent of Juneau's substantially high homeless population. During his 15 month tenure, he has seen crimes committed against homeless individuals committed for no apparent reason other than that they are homeless. Citing several examples, he said these are senseless acts of violence that target a very vulnerable population. Generally, homeless people want to be part of the community but they've been ostracized and have learned to be mistrustful. "This is a group of citizens that have a hard time trusting even me." As such, they're reluctant to report personal assaults to the police. Although he doesn't agree at all, he knows that some homeless individuals have the attitude that they deserve to be attacked.

MR. BRIGGS said SB 211 will give the courts the ability to address crimes against the homeless in a different manner. This will help send the message that "you can't just walk around the street and beat up people just for the heck of it."

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DANIEL UNGIER, United Way of Southeast Alaska, said he chairs the Juneau Homeless Coalition which looks at the root causes of homelessness. When he first heard about SB 211 he questioned adding homelessness as a separate factor, but that was before he knew anything about "Bum Fights Online." This privately made, low budget film series has played an integral part in the skyrocketing increase in violence against the homeless. These are videos of people who shout the phrase, "bum fights" and then attack someone who is playing a stereotypical homeless person. In particular this phenomenon is sweeping through young people and references are beginning to show up in mainstream Hollywood movies. The essential message is that it does no harm to beat up the homeless because they really aren't contributing to society.

MR. UNGIER said he concluded that "homelessness" should be added as an aggravating factor because these people are being stereotyped and disproportionately targeted simply because of their homeless status. In fact, 21 percent of homeless people report being the victim of a violent crime compared to 1 percent of the general population. Bum fight videos have created the image that an easy way to have fun is to target and attack someone because of their specific status.

MR. UNGIER said this legislation is about more than imposing stiffer sentences. It's about making a statement about this kind of crime and about reducing how often it happens. SB 211 sends a strong message; it counteracts stereotyping, and it could make a real difference.

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SENATOR HUGGINS observed that in his dealings with homeless people, most of whom are veterans, he's concluded that often they're a victim of a crime by another homeless person. "What does that do to the definition we're doing here if it's a homeless person with a crime on a homeless person," he asked.

MR. UNGIER replied he's heard stories along those lines but the statistics indicate that perpetrators are targeting people they don't know. "I don't know what the impact would be on homeless against homeless crimes," he said.

CHAIR FRENCH suggested that the Department of Law representative might be able to provide an answer.

SENATOR HUGGINS asked how couch-surfing teenagers would be addressed.

MR. UNGIER said he understands that for the aggravating factor to apply, the person must be knowingly targeted for their homelessness. He wouldn't expect the law to apply to a teenager who is couch surfing.

[1:48:29 PM](#)

SENATOR HUGGINS questioned how someone knows that another person really is homeless.

MR. UNGIER explained that people who have just left a homeless shelter and people who fit the stereotype are targeted.

SENATOR HUGGINS observed that in Anchorage there's a sizeable number of people who are sequestered somewhere off the street. "The common thing amongst them is if you fall asleep somebody will bong you on the head and take your fifth of whiskey or your sleeping bag or your bunny boots if it's really cold." It seems to be a cycle among a certain colony of people, he said.

[1:50:18 PM](#)

SAMUEL J. FORTIER stated support for SB 211. He's practiced law in Anchorage for more than 25 years and some of his practice involves homeless advocacy. Referring to the suggestion that

only homeless people target other homeless people, he said his experience is the opposite. Several years ago in Anchorage a group of youths took videos of paintball attacks on homeless people. Clearly that was a hate-related crime that focused on the category of homeless people. The purpose was to make fun of certain people and put it on video. "There was no basis in attacking those people other than the fact that they were homeless."

[1:53:31 PM](#)

SENATOR THERRIAULT joined the meeting.

MR. FORTIER relayed that on any given night there are about 3,500 people in Alaska who don't have homes. At least 700 of those individuals will be attacked and probably 20 percent of the attacks will be violent. The basis for the attacks isn't because someone is reaching for another person's bottle, he said. A number of the takings are on the basis that these people are homeless. "It's on the basis of status; it's on the basis of hate." We do have a responsibility for these individuals if we consider that they are among the most vulnerable, he said. The reasons for homelessness are varied; it's not simply because of mental problems or drug and alcohol abuse, although many homeless are faced with those problems. People are rendered homeless because of economic conditions too. There is a need for an aggravator, he said. We need to send a message that it's wrong to attack vulnerable people on the basis of status. Ours is an inclusive society that doesn't exclude people from basic protections and basic human rights. Discriminating against people on the basis of gender or race isn't permitted and people who are on the outskirts of society based on economic conditions should be similarly protected.

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MR. FORTIER revealed that he was homeless in Dillingham in the early 1970s when housing was in short supply. The difference is that he was in a village where people take care of one another. "That's not so in a large city." When you're at the bottom of the economic heap in Anchorage you are preyed upon. It's time to add the aggravator for the most serious felonies. Consideration should also be given to including homelessness in other hate crime legislation, he said.

[1:58:06 PM](#)

DIANNE SLIGHTER described herself as a concerned Juneau citizen who listened when Representative Andrea Doll introduced similar legislation. She said it's not difficult to identify a homeless

person because their entire composure is different; they're sort of inside themselves. She drew a parallel between current violent attacks on homeless people and the violent gladiator sports from ancient times. "What difference is it today?" These vulnerable people are targeted just for sport and it's wrong.

CHAIR FRENCH welcomed Representative Doll.

[2:00:54 PM](#)

REPRESENTATIVE ANDREA DOLL said she is proud to have introduced legislation similar to SB 211. Many Americans are not all that far from homelessness but her reason for introducing the legislation relates to homeless women with drug abuse problems. Often they aren't able to go into the AWARE women's shelter and they don't feel safe in the other shelters in town. That places them in the vulnerable position of being on the street. They're worried about rape and assault and sometimes they're worried about not being treated fairly by the police. She said she realized that she couldn't build a shelter, although she'd like to work on that. What she could do is highlight these individuals' plight and show that we care about their value. Adding "homelessness" as an aggravating factor is one way to do that.

CHAIR FRENCH asked the Department of Law to explain what it takes to prove an aggravator, what would happen if an aggravator were proved, and at what stage of the proceedings it has to be proved.

[2:03:15 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL) explained that this aggravating factor would be subject to the Blakely decision. The prosecution would have to prove beyond a reasonable doubt that the defendant directed the crime toward the victim because of their homeless status. "It would be a difficult aggravating factor to prove, as are others in this particular paragraph of aggravators."

CHAIR FRENCH referred to the questions Senator Huggins posed earlier about defining who is homeless, knowing who is homeless, and about couch surfers. In his mind they highlight the difficulties should DOL try to prove this aggravator.

MS. CARPENETI agreed it will be difficult. "This is not one we will be able to establish often." Initially she thought it would be a good idea to include a definition but then she realized that none of the other factors are defined in statute. It's

something that the courts can apply when it's reasonable to do so. But it won't happen often. It would be even more difficult to prove that a homeless person targeted another homeless person because they were homeless.

CHAIR FRENCH referred to Senator Huggins' example of one homeless person preying on another for their belongings and said to prove that the crime was based on homelessness you'd almost need a video of the person stating their motive into the camera. "Absent that sort of confession...it's going to be very difficult to prove."

MS. CARPENETI agreed.

[2:06:23 PM](#)

SENATOR WIELECHOWSKI asked if the person actually has to be homeless or if it's just the attacker's perception that they're homeless. For example, a person who is kicked out of their house and is attacked when they're sleeping on a park bench isn't really homeless, but the attacker thinks they are.

MS. CARPENETI replied it would depend on the facts, but someone who was kicked out of their house could be considered homeless if they had no place to go.

SENATOR HUGGINS said his concern is that this could be just another statute without teeth. "I'm not so sure the societal will to be able to follow through with some sort of oomph--no matter what we legislate--is there."

CHAIR FRENCH asked what affect it would have on a sentence if this aggravator were proved.

MS. CARPENETI explained that it would allow the sentencing court to increase the presumptive sentence to the maximum for that level of crime. For example, if it were established, the sentencing court could sentence to the maximum term of 20 years for a class A felony.

CHAIR FRENCH asked if the judge would be required to increase the sentence.

MS. CARPENETI said no; the court has more discretion once aggregating factors and mitigating factors are established, but it does not have a mandatory effect.

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CHAIR FRENCH summarized that it would be a fact-driven inquiry after which the judge would consider the elements and decide whether or not to add time to the sentence.

MS. CARPENETI said that's correct.

CHAIR FRENCH referred to Senator Huggins' concern about the effectiveness of adding "homelessness" to the list of aggravators and said the point is well taken. "It may sit there unused on the books for decades." Similarly, he's never seen creed alleged as an aggravator, but it's on the list. This is more a statement of our values. "If someone is going out and attacking a person just because they're homeless and you have the ability to prove that ... it's worthy of having that word on the books." The prosecutor will have that tool in their toolbox and the judge will have the ability to "make an upper departure on the sentence because of the nature of the assault."

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SENATOR THERRIAULT said he doesn't disagree but he understands Senator Huggins' concern. "We pat ourselves on the back, we add another line - it may never be used except for the one instance where, as you said, there's a video tape." I don't have a problem if the bill passes but this doesn't solve the homeless problem or the issue of violence against the homeless, he said.

SENATOR THERRIAULT noted that the sponsor statement says that according to a national study violent crimes against the homeless have increased by 65 percent from 2005-2006. It also says that the national trend is reflected in the more than 14,000 individuals who are homeless in Alaska. He asked if there's a direct link and there has been a 65 percent increase in violence against the homeless in Alaska.

MS. KREOFISKY clarified that is a national statistic and although violent crime against the homeless is reported to be rising in Alaska, she doesn't have specific data.

[2:13:11 PM](#)

TOM OBERMEYER, Aide to Senator Davis, highlighted several definitions of "homelessness" and relayed that for the purpose of this section the definition is, "An individual who lacks a fixed regular and adequate nighttime residence or has a primary nighttime residence that is not designed for permanent living." Thus a person in one of those temporary situations could be identified as homeless. The statutes don't mention perception of homelessness, but the term "knowingly" is used. That goes to

Senator French's point of trying to prove someone knowingly did this by putting the attack on the Internet, he said. What is most important though is that this will send a message to the general population to be more sensitive to homeless people in general.

CHAIR FRENCH asked Mr. Obermeyer to submit the definitions to his office. He would hold SB 211 so the committee could consider whether or not the term "homelessness" is adequately understood to allow a jury to make a good decision.

SB 247-MISSING PERSONS

CHAIR FRENCH announced the consideration of SB 247 and noted version E committee substitute (CS) had been distributed.

SENATOR HUGGINS moved to adopt version E, labeled 25-LS1157\E, as the working document.

[2:16:58 PM](#)

CHAIR FRENCH announced that without objection, version E is before the committee. He asked Mr. Peterson to highlight the changes in the CS.

[2:17:14 PM](#)

DARWIN PETERSON, staff to Senator Stedman, said he agreed to carry the bill for Senator Green, the bill sponsor, because he was on her staff when the bill was drafted. He explained the changes in the CS.

Page 1, lines 7-9, contains new language regarding civil immunity. It's also applied in Sec.2 at the request of the Department of Law (DOL). Law enforcement is provided some immunity if it's not possible to gather all the required information when a missing person report is filed.

Page 2, lines 14-16, subsection (c) says, "In accepting a report of a missing person, the law enforcement agency shall request from the person making the report, and make reasonable efforts to gather to the extent it is available, information including". The new language addresses DOL's concern that the phrase "shall gather" didn't give the law enforcement agency much latitude. Also, it addresses Senator McGuire's concern regarding HIPPA violations. Page 58 of the "HIPPA Administrative Simplification Regulation Text" says that "a covered entity may disclose protected health information to the extent that such use or disclosure is required by law." AS 18.65.630 deals specifically

with the issue of medical and dental records being released in a missing person report. It says that when a report is filed, the law enforcement agency "shall provide" release forms to the person filing the report. The family, next of kin, or guardian "may" fill out the form and deliver it to the physician and dentist. It that's done, the physician and dentist "shall" provide the information to the law enforcement agency. That covers any problems with HIPPA, he said.

[2:20:55 PM](#)

MR. PETERSON explained that the change on page 2, line 29, reflects Senator Therriault's suggestion that credit card numbers and bank card numbers can be helpful in tracking a missing person's whereabouts.

Page 3, lines 5-8, paragraph (17) reflects a suggestion by Senator Therriault that it would be helpful to collect more information related to date of last contact. Responding to a request for further explanation, he said the original language asked for date of last contact. He asked the drafter to expand the language so that all the circumstances surrounding the disappearance are recorded including "where the person was, whom the person might have been with, when the person was last seen or heard from - time and date - [and] reasons why they may be missing."

[2:22:08 PM](#)

SENATOR THERRIAULT asked if the date of last contact was removed and paragraph (17) was beefed up.

MR. PETERSON said yes.

Page 5, lines 1-6, subsection (f) addresses the concern Senator Huggins expressed about collecting DNA from family members of a missing person. The sponsor agrees and so the new language says DNA samples taken from a family member are provided voluntarily. Nothing in the section requires a family member who has not committed a crime to provide a DNA sample. It also clarifies that DNA samples are to be destroyed when a case is closed.

Page 6, line 29, reflects a suggestion by Senator Therriault to require law enforcement agencies to establish written protocols for handling missing person cases rather than encouraging them to do so.

MR. PETERSON said that is the extent of the changes in the CS.

[2:23:52 PM](#)

MARY WEIR said that she brought the issue forward because there were no protocols for collecting and handling information when her daughter went missing for 19 months. It was all very confusing. As it turned out her daughter was in California the entire time, but the information was mishandled and the identification was never made. Her experience is not uncommon. The last time she checked there were 109,000 missing persons and 6,700 unidentified [remains] and the Department of Justice estimates that those figures are low. SB 247 will make Alaska part of the solution since the biggest reason that matches aren't made is that protocols are lacking.

CHAIR FRENCH said he understands that the Department of Public Safety has concern with some of wording in the bill.

[2:26:31 PM](#)

RODNEY DIAL, Lieutenant, Alaska State Trooper, Department of Public Safety, stated support for the goal of the legislation, but concern with some of the directives. "We would prefer that the bill would change some of the 'shalls' to 'mays' so that we can maintain officer discretion in those cases and allocate the resources as we currently do."

CHAIR FRENCH asked him to be more specific.

LIEUTENANT DIAL explained that he's referring to collection of DNA in cases where the person has been missing more than 30 days and in high risk cases. "We have a significant percentage of our missing persons cases that go past 30 days." Specifically he is talking about the language on page 4, lines 18-20, and page 4, line 21.

CHAIR FRENCH asked if he believes that the new language "make reasonable efforts" is insufficient.

LIEUTENANT DIAL explained that in cases involving repeat runaways and search and rescue cases where it's unlikely that the victim will be rescued, it's not always an appropriate use of resources to travel to different communities to obtain DNA samples of family members. "We're asking to maintain the discretion we currently have so we can allocate resources."

CHAIR FRENCH asked if a DNA sample is collected by a Q-tip swab.

LIEUTENANT DIAL said yes; the inside of a person's mouth is swabbed for mitochondrial DNA. That's the "gold standard" for

missing person cases since it can be used for comparison with remains that are highly degraded. "We actually do collect that in many missing persons cases currently."

CHAIR FRENCH clarified that the bill doesn't place demands on the crime lab to put the samples at the front of the queue. It requires law enforcement agencies to make a reasonable effort to get a DNA swab from immediate family members and the missing person.

LIEUTENANT DIAL reminded the committee that the state crime lab doesn't have the ability to test mitochondrial DNA so those samples are sent out of state either to the University of Texas or the FBI national crime lab. Those samples are entered into a national DNA database for missing persons.

[2:31:10 PM](#)

CHAIR FRENCH asked if he said that the DNA swabs for these cases could not be tested in Alaska.

LIEUTENANT DIAL said that's correct. The state crime lab can only test for nuclear DNA, not mitochondrial DNA.

[2:31:38 PM](#)

CHAIR FRENCH noted a proposed amendment from the sponsor's office. He identified it as Amendment 1 by Senator French.

CHAIR FRENCH moved Amendment 1 and objected for discussion purposes.

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR FRENCH
TO: CSSB 247(JUD)

Page 2, line 1, following "18.60.175":
Insert "and 18.65.630"

Page 2, line 16, following "is available"
Insert "and permissible to disclose"

At ease from [2:32:35 PM](#) to [2:32:53 PM](#).

[2:33:05 PM](#)

MR. PETERSON explained that the amendment is at the request of the department. It adds reference to AS 18.65.63 in the civil immunity section on page 2, line 1.

CHAIR FRENCH added that the title of that particular statute is "Medical and Dental Records of Missing Persons."

MR. PETERSON said the added language on page 2, line 16, is an effort to avoid HIPPA violations.

CHAIR FRENCH added that this makes it clear that HIPPA trumps Alaska statute.

MR. PETERSON agreed.

CHAIR FRENCH ascertained there were no further questions and withdrew his objection to Amendment 1. Finding no objection, he announced that Amendment 1 is adopted.

[2:35:59 PM](#)

JOAN WILSON, Assistant Attorney General, Civil Division, Department of Law, relayed that part of her job is to advise the Department of Health and Social Services about HIPPA compliance. Much of that job is completing the state preemption analysis - comparing how the HIPPA privacy standards compare with Alaska laws, figuring out ways for them to work together, and pointing it out when they don't.

MS. WILSON clarified that AS 18.65.630 mandates disclosures and HIPPA says that where state or other law requires a disclosure, a healthcare provider doesn't violate HIPPA by complying with the other law. This section provides authority for family members who don't qualify as usual next of kin to sign a health information release. Subsection (b) provides law enforcement the ability to do that when it's not possible get family authorization. She cautioned that when AS 18.65.630 is interpreted with HIPPA, providers should know that the authorization form must also have all the mandatory terms that HIPPA provides. That will remove any difficulty providers have in figuring out whether this is a mandatory disclosure required by state law or a permissive disclosure under an authorization form. "I'm not really offering any suggestions for changes to 18 65.630, but just that there be some kind of legislative record that an authorization form provided under these sections should still comply with the mandatory authorization requirements of a HIPPA compliant authorization form."

CHAIR FRENCH asked if she had any further remarks to offer on the bill.

[2:38:11 PM](#)

MS. WILSON pointed out that the bill has two ways of getting information. First, law enforcement is able to get information from a family member and they are not subject to HIPPA. But when law enforcement makes further reasonable efforts, it may be requesting information directly from health care providers who are subject to privacy standards. "It's only then that HIPPA's going to create any kind of wall that someone will need to climb over." HIPPA does recognize public policy needs for protective health information and as such it has separate exceptions for disclosures to law enforcement for purposes of missing person investigations. But the section does not permit release of DNA or dental records. "Everything under HIPPA is disjunctive." If you fall under one exception you don't have to worry about the other barriers so the law enforcement barrier for DNA and dental records wouldn't be applicable in these cases because of the "required by law" exception and the "authorized disclosure" exception.

CHAIR FRENCH closed public testimony and announced that the CS is before committee for discussion. Although he wasn't present for first hearing, he has reviewed the minutes and there have been some good explanations. Definitions have been added since the committee first heard the bill and it will be heard next in the Finance Committee. Finding no further committee discussion, he asked for the will of the committee.

[2:40:24 PM](#)

SENATOR HUGGINS moved to report CSSB 247, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 247(JUD) is moved from committee.

At ease from [2:40:43 PM](#) to [2:41:51 PM`](#)

SB 226-VEXATIOUS LITIGANTS

CHAIR FRENCH announced the consideration of SB 266. He noted that Dennis DeWitt had distributed a letter of support from the National Federation of Independent Business/Alaska.

[2:42:40 PM](#)

SUSAN COX, Senior Assistant Attorney General, Civil Division, Torts and Worker's Compensation Section, Department of Law (DOL), said she's sorry she missed the last hearing. In summary

the bill is modeled on a California statute that was enacted in the 1960s to deal with frivolous litigation by vexatious litigators. Although the courts have inherent power to control abusive litigation, this bill creates a uniform mechanism for dealing with these individuals in the court system. The DOL supports this is an increasing problem in public and private sectors. She relayed that she has been a defendant in repeated nuisance litigation and has represented clients who have been in that position as well.

[2:44:41 PM](#)

MS. COX explained that in the bill defines a "vexatious litigant" as a person who, without legal representation, repeatedly files lawsuits against the same parties or repeatedly files meritless claims within a certain period of time or repeatedly files frivolous pleadings or motions in a case that the court considers to be in bad faith. Importantly, the bill does not completely block a vexatious litigant from filing a lawsuit in any circumstance. It just establishes hurdles that the vexatious litigator must overcome before the courthouse doors would be open. The idea is to control abusive litigation and save the court system and opposing parties the need to respond substantively to meritless and abusive lawsuits.

MS. COX said the DOL has some "frequent filers" and she personally has a number of cases where the judge has subsequently been added as a defendant. "We've had an appeal before the Alaska Supreme Court within the past year in which an argument was made ... that it was time - in a particular case - to set some limits on a particular party's ability to file lawsuits against judges." The court recognized it as a problem and said that there is inherent authority in the court system to control the problem, but it had to be raised at the trial court level first. We've attempted to do that and have a case on appeal that will be argued in April, she said. But it would be more advantageous to have a statutory framework within which to work and a uniform approach to the problem.

[2:48:25 PM](#)

CHAIR FRENCH noted that during the previous hearing one person said this would violate the First Amendment because it restricts a person's right to go to court and get redress of grievances. The bill packet contains a court case upholding the California vexatious litigant statute. That case discusses a US Supreme Court holding that baseless litigation is not protected by the First Amendment right to petition because it does not involve a bona fide grievance. It says, "The First Amendment interests

involved are not advanced when the litigation is based on intentional falsehoods or on knowingly frivolous claims." I imagine that an Alaska court would rule similarly, he said, but you can't be positive.

[2:49:58 PM](#)

MS. COX added that there are statutes that impose conditions on filing of litigation by inmates. A number of those requirements have been challenged on constitutional grounds and have been upheld. "The Alaska Supreme Court has certainly indicated a willingness to consider reasonable restrictions on the right to access the courts." A similar result is expected here. Also, the Ninth Circuit upheld the California statutes in Wolf v. George on First Amendment and other constitutional grounds.

CHAIR FRENCH commented that it's a lengthy decision.

[2:51:11 PM](#)

SENATOR HUGGINS said the definition of vexatious litigant is a person who is acting without the assistance of an attorney. He referred to a previous comment that, "we have other ways to deal with that" and asked what they are.

MS. COX explained that attorneys are bound by Civil Procedure Rule 11. When they sign pleadings, they are certifying that they believe the filing has merit and is worthy of the court's attention. If attorneys act inappropriately the bar association can exert its control. DOL has found that in cases of repeated pro se litigation the threat of adverse attorney fee awards is not a sufficient deterrent. For some people it's almost recreation. "This bill is aimed at those who file things that are frivolous and without the use of counsel for that reason."

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SENATOR WIELECHOWSKI asked if this would apply to an attorney acting pro se.

MS. COX recalled some discussion of that during the drafting. It isn't mentioned specifically but if an attorney was acting without assistance of counsel then it would apply, she said.

SENATOR WIELECHOWSKI said an attorney acting pro se still faces court discipline for filing an improper pleading.

MS. COX replied an attorney would be in a slightly different situation than the average pro se litigant. She hasn't

encountered an attorney who has filed repeated or multiple actions.

SENATOR McGUIRE commented that exempting attorneys who are acting pro se would cause problems. "If you're pro se, you're pro se." She would be uncomfortable exempting a licensed attorney.

CHAIR FRENCH said he shares her concern. It's anyone without assistance of counsel and it could be a lawyer without a lawyer.

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CHAIR FRENCH closed public testimony. Noting that this is the second hearing and the bill has a finance referral, he asked for the will of the committee.

SENATOR McGUIRE motioned to report SB 226 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, SB 226 is moved from committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:57:21 PM](#).