

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

January 23, 2007

9:01 a.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator Gary Stevens, Vice Chair  
Senator Hollis French  
Senator Lyda Green  
Senator Con Bunde

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 55

"An Act relating to executive clemency."

MOVED SB 55 OUT OF COMMITTEE

SENATE BILL NO. 49

"An Act relating to commemorative license plates celebrating Alaska's 50th anniversary as a state; and providing for an effective date."

MOVED CSSB 49(STA) OUT OF COMMITTEE

SENATE BILL NO. 36

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

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 55

SHORT TITLE: NOTIFY CRIME VICTIM OF EXECUTIVE CLEMENCY

SPONSOR(S): SENATOR(S) GREEN

|          |     |                                 |
|----------|-----|---------------------------------|
| 01/16/07 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/16/07 | (S) | STA, JUD, FIN                   |
| 01/23/07 | (S) | STA AT 9:00 AM BELTZ 211        |

BILL: SB 49

SHORT TITLE: COMMEMORATIVE PLATES: STATEHOOD ANIV.

SPONSOR(S): SENATOR(S) STEVENS

01/16/07 (S) READ THE FIRST TIME - REFERRALS  
01/16/07 (S) STA, TRA, FIN  
01/23/07 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 36

SHORT TITLE: SENTENCING FOR ALCOHOL-RELATED CRIMES

SPONSOR(S): SENATOR(S) THERRIAULT

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

**WITNESS REGISTER**

PORTIA BABCOCK, staff  
to Senator Lyda Green  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 55 on behalf of Senator Green,  
sponsor.

LARRY JONES, Executive Director  
Parole Board  
Department of Corrections  
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 55.

DUANE BANNOCK, Director  
Division of Motor Vehicles  
Department of Administration  
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 49.

GAIL PHILLIPS, Chair  
Alaska Statehood Celebration Commission  
Department of Commerce, Community, and Economic Development  
Homer, Alaska

POSITION STATEMENT: Spoke in favor of SB 49.

DAVE STANCLIFF, staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 36 on behalf of Senator Therriault, sponsor.

SENATOR GENE THERRIAULT  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 36.

ANGELA SALERNO, Advocacy Coordinator  
Advisory Board on Alcoholism and Drug Abuse  
Department of Health and Social Services  
Juneau, Alaska

POSITION STATEMENT: Spoke in opposition to SB 36.

#### **ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the Senate State Affairs Standing Committee meeting to order at [9:01:27 AM](#). Senators Green, Stevens, French, Bunde, and McGuire were present.

[9:01:42 AM](#)

#### **SB 55-NOTIFY CRIME VICTIM OF EXECUTIVE CLEMENCY**

CHAIR MCGUIRE announced the consideration of SB 55.

[9:01:52 AM](#)

PORTIA BABCOCK, staff to Senator Lyda Green, said SB 55 clarifies that the governor "shall" go through a process [regarding executive clemency] that is outlined in statute, instead of "may" go through the process. The current process begins with a clemency application to the parole board for processing, and the application then goes to the governor. "But there's no requirement that that happen, and there's also no requirement in statute that the victim be notified that the application is being considered." The victim rights law of 1994 balances the rights of victims with the right of the governor to grant pardons or clemency, she said. She noted that the situation comes up rarely so "it hasn't been an issue until recently." [A recent incident] showed that the statute is behind the times in making sure victims are included in the process if they so choose. This process is different from other victim notification processes where anyone can sign up to get notification of a prisoner's change in status. She said that occurs because the offender is incarcerated and in the system. Because executive clemency and pardons can occur after a long

period of time, "that process doesn't really fit in." The applicant may have already served time and be out of custody.

9:04:53 AM

MS. BABCOCK said Section 2 of the bill requires that the board shall send notice of an application for executive clemency to the Department of Law and the Office of Victims Rights. "One of the considerations that has come up there is to add in 'and the victim' to make sure that the victim is also notified." The bill also states that the governor may not act until 60 days have lapsed from the time the notification took place. She said there is zero fiscal impact.

9:05:39 AM

SENATOR BUNDE asked about notification and the transience of Alaska's population. "When do you stop trying?"

MS. BABCOCK said the sponsor is still working with the Department of Law to determine what is reasonable in locating and notifying victims. The drafters of the bill are trying to come up with a description of "reasonable effort." The internet makes it easier, but a reasonable standard needs to be created.

CHAIR MCGUIRE said that could be done in the regulations.

9:07:33 AM

SENATOR STEVENS asked about including the victim in the process. "What does the victim have that they don't have right now?"

MS. BABCOCK said the bill would require that the victim be notified before any action takes place. Currently victims are notified if they have requested it. The participation would be the same; there would just be broader notification. The victims can comment in writing to the parole board, giving the executive that additional information when making a clemency decision.

9:08:56 AM

SENATOR FRENCH asked when victims need to tell the parole board they want to be notified about executive clemency. "When in the criminal process would we expect the victims to become aware that there might be some future application for clemency and that they have a statutory right, if they request to do so, to be notified?"

9:09:42 AM

MS. BABCOCK said she is not sure if that occurs at the same time the victims request to be notified of any action. She suggested

asking the parole board what happens currently when the victim is requesting notification of clemency.

[9:10:21 AM](#)

SENATOR FRENCH asked about line 13 regarding the victim's request for notification, and he said most victims will likely not take advantage of it. He said the intent is not waiting for the victim to approach the state, "but actually reaching out to the victim and saying you need to know this is happening in case you want to do something about it."

[9:11:17 AM](#)

CHAIR MCGUIRE said that she, along with Representatives Samuels and Stoltz, passed a bill into law that requires victims' rights to be read at the scene of a crime. There is a pamphlet to give to victims on their constitutional rights, but there are "a fair number of people that it would probably pass by."

[9:11:54 AM](#)

LARRY JONES, Executive Director, Parole Board, Department of Corrections, stated that the important part of the bill is the "shall" replacing the "will." Recently the governor has not come to the parole board. "Because of the 'may' they were handled totally internally within the office of the executive—the governor." Clemency requests getting to the point of application are relatively rare, he said, but the discussion of this issue in the media has prompted more persons to request a pardon. He said the board staff has never "taken the tack" that victims had to have requested notification. "We have always tried to find a way to contact the victim." He said one pardon in a previous administration was from a crime in the 1940s. The Office of Victims Rights does not always represent everyone, and victims must make the request. He said the board has attempted to contact victims for "person crimes." Sometimes it is the broader community that is the victim.

[9:14:31 AM](#)

SENATOR BUNDE asked about the definition of a victim.

MS. BABCOCK said it is the definition given in AS 12.55.185, which includes family members if the victim is a minor, incapacitated, or deceased.

[9:15:31 AM](#)

SENATOR FRENCH said it sounds like Mr. Jones is reaching out to contact victims. He asked if additional language requiring

reasonable efforts to contact the victim would be a burden to the board.

MR. JONES said it would not be a burden because it is something the parole board does already. He added that "the board is quite familiar with this because for all discretionary parole considerations--and again those persons are still incarcerated--victims have the right to physically attend those hearings." The board is involved with the victims regularly, he stated.

[9:16:51 AM](#)

The committee took a brief at-ease.

[There is a disruption in the sound recording until 9:34 a.m.]

[9:17:49 AM](#)

CHAIR MCGUIRE asked for further public testimony.

SENATOR GREEN moved to report SB 55 from committee with attached fiscal notes and individual recommendations.

SENATOR BUNDE suggested further refinements.

CHAIR MCGUIRE said the committee should pass SB 55 to the judiciary committee.

SENATOR BUNDE objected.

[9:19:16 AM](#)

A roll call vote was taken on the motion of passing SB 55 out of committee. Senators French, Green, Stevens and McGuire voted in favor and Senator Bunde voted against. Therefore SB 55 and the attached fiscal notes moved from committee with individual recommendations.

**SB 49-COMMEMORATIVE PLATES: STATEHOOD ANIV.**

CHAIR MCGUIRE announced the consideration of SB 49.

[9:19:48 AM](#)

SENATOR STEVENS noted that 2009 is the 50th anniversary of Alaska's statehood. The legislature created the Alaska Statehood Celebration Commission, which recommended the issuance of a special vehicle license plate for the anniversary. The commission will help design the plate. He noted an amendment to SB 49 changing the issue date of the plate to January 1, 2008,

and he added that he had a letter of support from Gail Phillips who is the chair of the commission. There is a zero fiscal note.

[9:21:29 AM](#)

DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration, said the administration is in full support of SB 49. He said he supports the amendment that changes the issuance date so the orders will be delivered by January 2, 2008. This plate will remain the state's plate for two years and then revert back to the current plate design, he explained.

SENATOR BUNDE asked if commemorative plates can be purchased.

MR. BANNOCK said if a vehicle owner wanted to replace his or her current license plate, it would cost five dollars.

[9:23:53 AM](#)

SENATOR FRENCH asked if the "last frontier" plates would also be available during those two years.

MR. BANNOCK said no, but a person could get the traditional plate in the personalized variety.

[9:25:01 AM](#)

SENATOR FRENCH spoke of his hesitance because the legislature could not review the new design.

MR. BANNOCK said he has seen the design and told the senators to request it from the commission.

GAIL PHILLIPS, Chair, Alaska Statehood Celebration Commission, said the commission has been working to get the plate design approved, but it is not finalized. She offered to provide the committee with the design that the commission has chosen.

[9:27:14 AM](#)

SENATOR GREEN asked if the design is like a poster she has seen.

MS. PHILLIPS said there were similarities, but there needed to be specifications so the design would fit on a license plate.

SENATOR BUNDE asked if Ms. Phillips is part of the design decision.

MS. PHILLIPS said the commission is working with the Division of Motor Vehicles.

SENATOR BUNDE noted Ms. Phillips' dislike of the bear design used on a past license plate.

[9:28:19 AM](#)

CHAIR MCGUIRE said she liked the plate with the bear design.

SENATOR STEVENS moved Amendment 1, as follows:

Page 1, line 10, strike "August 1, 2007"  
Insert "January 1, 2008"

Hearing no objection, it was so ordered.

SENATOR STEVENS moved SB 49 as amended with attached fiscal notes and individual recommendations. Hearing no objection, CSSB 49(STA) passed from committee.

[9:29:29 AM](#)

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

CHAIR MCGUIRE announced the consideration of SB 36.

[9:29:41 AM](#)

DAVE STANCLIFF, staff to Senator Gene Therriault, noted that legislation similar to SB 36 was before the Senate last year. Senator French added language during the Senate Judiciary Committee hearings, he said. SB 36 is based on the premise that certain members of society are transformed under the influence of alcohol, predisposing them to drive under the influence and commit acts of domestic and sexual abuse. If these people had not used alcohol, their lives would be very different, he stated. Prohibiting alcohol as a condition of probation allows some of these people to live productive lives--until the probation is over. "A very, very sad saga for some folks," he commented. SB 36 will allow "the person that is sitting in judgment of these offenders" to impose up to a lifetime ban on the use of alcohol. The bill only includes those who commit serious crimes, felonies, have more than two accounts of driving under the influence, or who caused serious damage while driving under the influence. Mr. Stancliff gave an example where a domestic abuse victim could report an offender when drinking begins instead of after a crime is committed. If law enforcement is called, interdiction can occur before the crime, he stated.

[9:33:23 AM](#)

MR. STANCLIFF said the bill will protect the person that is back in the society--not just during probation--but for life. The fiscal notes are indeterminate, he said, but there is reason to believe that SB 36 will cause some people to go back "into the system" and others to stay out. He said SB 36 is designed for model citizens who become monsters after alcohol consumption.

[9:36:56 AM](#)

SENATOR GENE THERRIAULT, Alaska State Legislature, sponsor of SB 36, said the bill started with a lifetime ban on alcohol consumption and now provides for "up to" a lifetime ban. Drunken driving offenses and other irresponsible actions result in state expenditures, he said.

[9:36:16 AM](#)

CHAIR MCGUIRE asked how the bill is different from the suspended imposition of sentences where a court can modify a sentence to reflect certain conditions. She gave the example of suspending part of a sentence if the offender stops using alcohol. She asked why that isn't working.

SENATOR THERRIAULT said current sentencing can't go beyond what the statute allows. Allowing a prohibition of alcohol consumption for a lifetime is longer than any current sentencing guidelines, he surmised. SB 36 is not a replacement, but another tool to use. He said he imagines the law being used in instances where a person completely changes with alcohol consumption.

[9:37:57 AM](#)

SENATOR BUNDE said not all people who abuse alcohol are alcoholics. He asked about other drugs, like "crack."

SENATOR THERRIAULT said alcohol is not illegal, crack is. If a person's first drink leads to bad consequences, the courts will be able to impose "this extra step."

SENATOR BUNDE said marijuana is quasi legal in Alaska. The bill is intended to keep people from hurting themselves and he asked about the use of seatbelts.

SENATOR THERRIAULT said SB 36 is aimed at protecting others.

[9:39:50 AM](#)

ANGELA SALERNO, Advocacy Coordinator, Advisory Board on Alcoholism and Drug Abuse, Department of Health and Social Services, said the board is not in favor of SB 36. Further criminalization and incarceration of people with alcohol

addiction will not be an effective strategy. Alcoholism is a chronic disorder, she noted. Studies have shown that 54 percent of all alcohol abuse patients can be expected to relapse, and 61 percent of those will have multiple relapses. She said those are statistics for people who were lucky enough to get treatment, and 35,000 Alaskans who needed treatment did not get it in 2004. "We've dropped the ball," she stated. State funding for treatment has dropped by over \$18 million between 2002 and 2007. In fiscal year 2004, funding for substance abuse treatment in Alaska's prisons was slashed, and fifteen programs disappeared. "Prisoners with alcohol addictions hit the street without treatment or support for successful re-entry." Criminalizing and incarcerating has the potential to make things worse. If criminality is driven by addiction to alcohol, there is no way to break the cycle. The prisons are already full. She recommended treatment for these criminals. Alaska's drug courts are the beginning, but it is a small, small step, she said.

[9:43:04 AM](#)

MS. SALERNO recommended California's 2000 voter-initiative model, which requires that offenders of nonviolent, drug-related crime be offered probation and community-based treatment in lieu of prison. Outcomes of this model show that more than 140,000 people were diverted from incarceration to treatment during the first four years, and half were getting treated for the first time. The number of people incarcerated in state prisons for drug possession fell by 32 percent and negated the construction of a new prison. It saved the state over half a billion dollars. For every dollar invested in treatment, four dollars are saved in the costs of the criminal justice system. She said treatment works, and asked the committee not to take "this expensive and ineffective path."

[9:44:31 AM](#)

MS. SALERNO said the board finds it alarming how much the state has dropped the ball on treatment for alcohol abuse. Medicaid does not cover the treatment, so the state has to cover it. She said it will save money in the long run and help families and communities in addressing this serious public health problem.

[9:45:06 AM](#)

SENATOR BUNDE said he helped cut the treatment programs because they weren't effective. He said people who voluntarily join a program like AA had higher success rates than people who went into the state program. The state programs had low success rates, he said. He said the California model has "kept them out of prison, but I don't know if it kept them sober."

SENATOR FRENCH said the California program is aimed at nonviolent offenders, but SB 36 is aimed at violent offenders. He asked for a reevaluation.

MS. SALERNO said she believes that "we are addressing the issue of prevention." She said crimes fueled by alcohol become worse because the individual has not been given treatment. She said she is not against punishment to those who are a threat to society, but many people are in prison because of inadequate treatment resources. Treatment works, relapse happens, but many people find recovery, she concluded.

[9:47:33 AM](#)

CHAIR MCGUIRE asked for committee discussion.

SENATOR GREEN said she opposed the legislation last year and she agrees with Ms. Salerno. She expressed concerned that the law will be unenforceable. It doesn't work to tell an alcoholic not to drink, she said, so she is not supporting the bill.

[9:48:41 AM](#)

SENATOR BUNDE said people who are forced into programs by courts have a low success rate. Drunk drivers and domestic violence offenders create new victims, so he wants the state to put its money into incarceration instead of ineffective rehabilitation. He said he will support SB 36.

[9:49:20 AM](#)

SENATOR FRENCH said the bill is not a magic bullet, but may help prosecutors to "stack the deck so heavily against an offender that that person is then forced into treatment." An individual on probation for a second driving-while-intoxicated offence may be offered a six-month suspension and is facing 18 months in jail for having a drink, he said. It is a good tool for a prosecutor striking a deal for someone to get treatment.

[9:51:12 AM](#)

SENATOR GREEN asked if that is what the drug court is designed for--to strike that bargain. She said that prohibiting drinking "are just lost words" to an alcoholic.

[9:52:04 AM](#)

SENATOR FRENCH said there are no words to change the heart of an alcoholic. The consequences of the addiction are so severe that "at some level I think we just have to strike a balance and a trade off between what may not be the perfect tool and doing

something." He said drug courts are the preferred model, but they are not available everywhere and to everyone in the state, and this bill is at least doing something.

[9:53:10 AM](#)

SENATOR GREEN asked if the drug court is for felonies.

SENATOR FRENCH said the drug court is for felonies and the therapeutic court is for misdemeanors.

CHAIR MCGUIRE asked if Senator Therriault "considered making it a misdemeanor."

SENATOR FRENCH said his understanding is that the first offense is a misdemeanor and the second offense is a felony.

[9:53:56 AM](#)

SENATOR THERRIAULT said SB 36 is not a tool available to the court for all crimes that involve alcohol; it is for "specific cases where there's been an attack on another person or multiple drunk driving cases." It cannot be applied indiscriminately but where alcohol triggers gross irresponsibility or aggression. The judge would be able to use it as a tool for someone who goes on an abusive bender, for example, but who is not an alcoholic. The court would want testimony to determine if someone changes dramatically when drinking, "like flipping a switch." The prosecutor could use it in sentencing as a permissive tool and not to be applied to every alcohol-related case.

[9:56:32 AM](#)

CHAIR MCGUIRE suggested SB 36 would include crimes where there is serious bodily injury, assaults, and repeated drunk driving. The opposing sides agree on the harm caused, but the question is what to do about it. She asked if other states have used it with success, or are there just more people in jail who come out and drink again and "get their next felony."

[9:57:21 AM](#)

SENATOR THERRIAULT said there is no other state that has used this tool, but Alaska has a severe alcohol problem. Other states watch to see what Alaska does, he noted. SB 36 is an opportunity to put this in Alaska's tool box. Alaska citizens are looking for creative ways to solve the state's big alcohol problem.

[9:59:00 AM](#)

CHAIR MCGUIRE said her reservation is that crimes of alcoholism disease are dealt with by imprisonment, and she asked if it

breaks the cycle or just gets the person further from recovery. Therapeutic courts were created because the same people would keep going back to jail because of alcoholism. It was the innovative approach of mandatory treatment to cure the underlying disease. She expressed concern that SB 36 might not do that. She will hold the bill until Thursday to let committee members mull it over. She said she gets the point, and certainly the victims of the crimes should not suffer because the criminal has a disease. Chair McGuire asked if there should be more money in Alaska's therapeutic courts instead. "What is the likelihood that you're going to get treatment, or are we just going to put you in another jail and you're going to mark the days until you get out to have your next drink and commit your next crime."

[10:01:19 AM](#)

SENATOR THERRIAULT said the bill is not in place of treatment; a person can still be encouraged to get treatment.

SENATOR GREEN asked about an exemption or alternate treatment for those with alcoholism and co-occurring disorders. That needs to be looked at, she said.

SENATOR THERRIAULT said the court would have that information on the defendant. This is a permissive tool and not automatic. It can be tailored to the individual. This tool can be used on those with a history of violent crimes.

SB 36 was held in committee.

CHAIR MCGUIRE adjourned the Senate State Affairs meeting at [10:03:20 AM](#).