

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 13, 2007

9:04 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

CONFIRMATION HEARING: State Commission for Human Rights
Karen Rhoades
CONFIRMATION ADVANCED

CONFIRMATION HEARING: Alaska Public Offices Commission
Shirley Dean
CONFIRMATION ADVANCED

SENATE BILL NO. 92

"An Act relating to ignition interlock requirements; relating to limited driver's license privileges for persons convicted of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and requiring certain persons to utilize ignition interlock devices to qualify for a limited driver's license; relating to probation for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, and refusal to submit to a chemical test; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 33

"An Act relating to DNA samples from persons charged with felonies."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 92

SHORT TITLE: LIMITED LICENSE IGNITION INTERLOCK
SPONSOR(S): SENATOR(S) FRENCH

02/21/07 (S) READ THE FIRST TIME - REFERRALS
02/21/07 (S) STA, JUD, FIN
03/13/07 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 33

SHORT TITLE: DNA FROM PERSONS CHARGED WITH FELONIES
SPONSOR(S): SENATOR(S) BUNDE

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
03/13/07 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

KAREN RHOADES, Appointee
State Commission for Human Rights
Wasilla, Alaska

POSITION STATEMENT: Answered questions regarding appointment.

SHIRLEY R. DEAN, Appointee
Alaska Public Offices Commission
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding appointment.

MS. BABETTE MILLER, Owner
Smart Start Alaska
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SB 92.

RODNEY DIAL, Lieutenant
Alaska State Troopers
Ketchikan, Alaska

POSITION STATEMENT: Spoke in favor of SB 92.

JANE ALBERTS, Staff
to Senator Con Bunde
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 33 on behalf of Senator Bunde,
Sponsor.

MICHELLE COLLINS, Criminologist
Alaska State Crime Lab

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SB 33.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Committee meeting to order at [9:04:00 AM](#). Senators McGuire, French, Green, Bunde, and Stevens were present at the call to order.

[9:04:58 AM](#)

Confirmation Hearing: State Commission for Human Rights

CHAIR MCGUIRE announced consideration of Karen Rhoads for a seat on the State Commission for Human Rights. She asked Ms. Rhoads why she wants the position.

KAREN RHOADES, Appointee, State Commission for Human Rights, said the biggest reason is she is friends with the governor who "knows of my passion for justice." It's sad that there is still a need to address discrimination. It would be honorable to "educate people and change people's minds and opinions about minorities, or in the workplace, or in the public arena."

[9:05:51 AM](#)

SENATOR GREEN asked about the balance between unjust claims and unethical actions against an employee.

MS. RHOADES said she would weigh the evidence, including the history of the employer. There are two sides to every story, and she will have to learn how to judge the truthfulness of claims. She said she is an employer, so she knows how it would feel to be falsely charged.

SENATOR FRENCH asked if she has had prior experience with the commission and if she understands how it works.

MS. RHOADES said she has not been to one of the meetings, but she had a briefing with the executive director.

SENATOR FRENCH asked how much time her duties will take.

[9:08:19 AM](#)

MS. RHOADES said the commission meets three to four times a year, and active participation would be periodic. Once cases are vetted, certain files might be farmed out to commissioners to review prior to the committee meetings, she surmised.

SENATOR FRENCH asked how many decisions are issued each year.

MS. RHOADES said it appears to average four to six.

SENATOR BUNDE said some people accept appointments but don't participate on a regular basis, and he asked if there is anything that would keep her from attending the meetings.

MS. RHOADES said she makes commitments and keeps them. She said she has high regard for the governor and would not want to dishonor her in that way.

SENATOR BUNDE asked if she can make the hard decisions of telling people no, even in a racially tinged situation.

MS. RHOADES said she would not have a problem if it was a fair decision.

[9:10:35 AM](#)

CHAIR MCGUIRE asked if she is aware of the backlog of cases and the issues surrounding the backlog.

MS. RHOADES said she knows that two staff positions were cut causing a serious backlog. The positions have been restored.

CHAIR MCGUIRE asked if she is committed to keeping pace.

MS. RHOADES said that is the desire. It is difficult for a person to wait a long time for justice. Witnesses and others move on, so it is difficult to bring justice after a long time.

[9:11:23 AM](#)

CHAIR MCGUIRE said if Ms. Rhoads is confirmed, she would like her to keep in touch with the committee on the backlog issue. Both the employer and the others need certainty in order to move forward. It has been frustrating on both sides. She moved to forward the name of Karen Rhoads to a joint session for consideration for appointment to the State Commission for Human Rights. Hearing no objection, it was so ordered.

The committee took an at-ease from [9:12:32 AM](#) to [9:14:02 AM](#).

Confirmation Hearing: Alaska Public Offices Commission

CHAIR MCGUIRE announced consideration of Shirley Dean for a seat on the Alaska Public Offices Commission (APOC). She asked Ms. Dean why on earth she wants the position.

[9:14:07 AM](#)

SHIRLEY R. DEAN, Appointee, Alaska Public Offices Commission, said she is honored to be chosen and she strongly supports APOC's mission of accountability and of effective and efficient government. She said she just retired and has the time as well.

SENATOR STEVENS said the system is not working, and he noted the ongoing FBI investigations of some possibly enormous issues. The state misses those, but it is catching the little things, like fining the rules chair \$50 for not reporting something on time. "So we're catching those little things and missing the big picture. Do you see something..wrong with our ethics approach, our whole reason for APOC...and what do we do to improve that?"

MS. DEAN said she doesn't feel capable of answering that.

SENATOR FRENCH asked about her background.

MS. DEAN said she was raised in Ketchikan and worked in the Ketchikan Police Department. She then worked on the Alaska pipeline and did labor activities. She worked for the legislature in the 1980s, and then she became an investigator for the human rights commission and for child support.

[9:16:44 AM](#)

SENATOR FRENCH said he agreed with Senator Stevens, and APOC is a complaint-driven commission without investigators, but there may be a request for an investigator in the budget. He asked what political activity Ms. Dean has participated in.

MS. DEAN said she is trained in impartiality. She is a Democrat and was a state delegate in the early days, but she hasn't been involved in party politics for seven years.

[9:18:59 AM](#)

SENATOR FRENCH asked how much commission work she will do.

MS. DEAN said she is just one of five volunteer commission members, and she will represent Southeast Alaska.

SENATOR BUNDE said perhaps she will have the opportunity to balance Mr. Dapcevich's strong opinions. Choosing to run for office makes a person suspect and guilty until proven innocent,

he said, so he is pleased to hear that she was a police officer and an investigator and will assume someone is innocent until proven guilty. It will be a challenge with so much cynicism, and he looks forward to her being an advocate for public service.

[9:21:12 AM](#)

MS. DEAN said she believes in public service, and she has served on the Council on Domestic Violence and Sexual Assault.

SENATOR BUNDE suggested requiring public servants to serve like one serves on jury duty--no unexcused absences.

CHAIR MCGUIRE said her interactions with APOC have been very positive. She doesn't know all the issues that Ms. Dean will be deliberating on, but members can pick up the phone and call and get help with rules and with filing correctly. The Anchorage office has been very helpful. APOC has an enforcement role and a supportive, educational role, she stated.

[9:22:37 AM](#)

CHAIR MCGUIRE moved to recommend that the name of Shirley Dean be forwarded to a joint session for consideration for appointment to the Alaska Public Offices Commission. Hearing no objection, it was so ordered.

The committee took an at-ease from 9:23 to [9:25:13 AM](#).

SB 92-LIMITED LICENSE IGNITION INTERLOCK

CHAIR MCGUIRE announced the consideration of SB 92.

SENATOR FRENCH said the ignition interlock device is an automatic check to prove that drivers are sober before driving their cars. The idea is to put something between repeat drunk drivers and their cars. SB 92 uses modern technology to combat drunk driving in Alaska, which has one of the highest DUI [driving under the influence] rates in the country. Many convicted drivers are multiple offenders. In 2006, nearly one third of Alaska's DUI cases involved a person that had been convicted in the past. The device would be required during probation for repeat DUI offenders and for first-time offenders with a blood-alcohol level of over 0.15. In order for a repeat offender to drive, the car must be equipped with the device, and the cost of the device will be borne by the offender. If a judge grants a limited license privilege to an offender during the period of license revocation, the bill will require the device.

No one will argue that Alaska needs to lower its DUI statistics, he stated, and SB 92 is a proactive step.

9:27:14 AM

SENATOR FRENCH said there are places in the state where it might be impossible to install the device, and the bill leaves it to the commissioner to delegate where its use is feasible. He noted that in Unalaska the cost of the device would be over \$1,000. The idea is to get as many people as possible, and he suggested that the use of the device will be feasible in the Railbelt and other cities that can support the necessary technician. It is not a magic bullet--there is always a way for someone to get around the law--but Alaska needs to make it more difficult for someone to drive drunk. The device will also allow someone who is sober back behind the wheel, he concluded.

9:29:06 AM

SENATOR BUNDE said he supports the goal, and he has looked into it before, but he was discouraged by the scofflaws that could get around the system. He asked about cheating in other states.

MS. BABETTE MILLER, Owner, Smart Start, said she doesn't have those numbers, but she can get them.

SENATOR BUNDE said the new interlocks are more sophisticated, and he asked how they work.

MS. MILLER said the interlock system works by blowing and humming into the unit for seven seconds. A voice detector prevents someone from using an air tank.

9:31:19 AM

SENATOR STEVENS asked if the system detects that particular individual, and what the costs are.

MS. MILLER said there is a new unit that takes a picture of the individual blowing into the unit to verify identity, but it is not approved for Alaska yet. She said her company charges \$100 for installation and \$125 a month for the lease.

SENATOR BUNDE said when someone builds a better lock, someone finds a better hacksaw. He asked about a person required to use an interlock in one town who went to another town to buy a car.

9:33:11 AM

SENATOR FRENCH said it is not a matter of where the car is registered, but where the person will be driving. He assumes the

department will consider everything when granting a waiver to drive. There are ways of checking where a person lives, he said.

9:34:07 AM

SENATOR BUNDE asked if the department will do a case by case analysis of who will get a waiver.

SENATOR FRENCH said it could be a hybrid, and someone could be exempted because of the disproportionate costs, and he anticipates that there will be regional exemptions.

SENATOR BUNDE said some people will claim poverty, forcing the state to pick up the tab.

SENATOR FRENCH said driving is a privilege not a right, and the state will not pay. If a person can't afford a car, the state doesn't offer a car. Likewise, if a person can't satisfy the condition of the sentence, he or she will need to use public transportation. There is a huge cost involved, but his sympathy is with the ones hurt by drunk drivers.

SENATOR BUNDE said he agrees that the perpetrator must bare the costs, and the state should not pay for the program.

SENATOR GREEN asked when the infraction actually occurs. She asked if driving a different car is an offence.

9:36:36 AM

SENATOR FRENCH said the onus would be on the person; if driving, he or she must be behind the wheel of a car with the device. Family members can drive that car or a car without a device.

RODNEY DIAL, Lieutenant, Alaska State Troopers, said the Department of Public Safety fully supports SB 92. Having this device is not only a reminder to the driver; it is also an indication to the rider. He has made hundreds of DUI arrests and is constantly amazed at the number of drunk drivers who have a sober passenger. "We are fairly excited about this, that this will reduce some of the impaired drivers on our roads and make Alaska highways safer," he stated.

9:39:26 AM

SENATOR BUNDE noted the sponsor's intention of exempting remote areas because of the added costs. "If you can't afford an interlock that's going to cost you \$1,000, maybe you ought not to drink." He noted there are places where bootlegged alcohol

costs hundreds of dollars a gallon, and "perhaps there is the money available if there is the will."

[9:40:24 AM](#)

SENATOR FRENCH said one study shows repeat offenses are decreased 80 percent in the first year of using the interlock device. He pointed out one letter in support of SB 92 that notes the harm done by repeat offenders. We can eliminate the killing of innocent people--or keep downward pressure, he said.

SENATOR GREEN noted that court-imposed fines don't vary by region and why Senator French is concerned about the variation in the cost of the interlock device.

[9:41:57 AM](#)

SENATOR FRENCH said the fines are uniform. "We don't fine people in Bethel \$5,000 and people in Anchorage \$1,000." If an ignition interlock can be many times more expensive, "there has to be some allowance for the fact that it is just not available statewide." He said it may be feasible with future technology, but for now, the disproportion costs need to be considered.

SENATOR STEVENS asked if it applies to other vehicles such as snow machines.

MS. MILLER said the unit cannot be installed where it can't be protected from the environment.

[9:44:03 AM](#)

CHAIR MCGUIRE said the legislature needs to continue the pressure of getting the interlock devices in the communities. [The bill] doesn't mention the cost of the device, she said. Driving is a privilege, and the interlock device absolutely reduces recurrence rates. It is incumbent on the legislature to encourage the use and availability of the devices in outlying areas. "Whatever it takes," she stated.

SENATOR BUNDE moved Amendment 1, as follows: Delete lines 12-15 on page 10, which give the Department of Administration the ability to determine that interlocks are not available in some places. With fines as high as \$6,000, "it seems as if the cost of another \$1,000 for an interlock is not substantial." This is a very broad allowance for the department to determine if the device is unavailable. Someone in Talkeetna could make that claim, he suggested.

CHAIR MCGUIRE said the net effect would be that someone who didn't get the device would not be able to drive.

[9:46:57 AM](#)

SENATOR GREEN noted other references to the same thing.

SENATOR BUNDE withdrew his amendment and instead moved conceptual Amendment 1 to "remove all references to making the interlock device optional."

[9:48:13 AM](#)

CHAIR MCGUIRE said the drafter can look for any reference, and she noted the references on page 2, 7, and 10. She said she will object in order to hear Senator French's response.

SENATOR FRENCH said it boils down to proportionality. It is not fair to charge one person \$125 and another \$1,000. He is willing to wait for the technology to catch up with the rest of the state and focus on the Railbelt and other urban areas.

SENATOR STEVENS said he has some concerns with the remote villages that he is not familiar with. Villages don't have public transportation, he noted.

[9:50:08 AM](#)

CHAIR MCGUIRE asked if the Smart Start Company is in Alaska now.

MS. MILLER said yes, and the company goes to remote areas once there are four to five people that need the service. The airfare is not charged to them. "We bite that cost," she stated. "We do that with approximately two remote areas at a time. We are currently...expanding into as many areas as we can." She said she is hiring contractors in outlying areas, including Dillingham, Kodiak, Sitka, Ketchikan, and Juneau. There is a competitor in Bethel, she added. The company tries to cover as many areas as it can. There are two people on a list in Unalaska, "and once we pull out of another area that we're in at a loss, if that area still needs the service, we will go in to that area and install the units and try to find a contractor there."

SENATOR BUNDE said the level of alcohol abuse in rural Alaska exceeds the high abuse in urban Alaska. The bill deals with traffic laws and only applies to state roads. Small villages may not have state roads, he said, and asked if it would apply.

[9:52:42 AM](#)

SENATOR FRENCH said there are insurance laws that don't apply, but you can get a DUI while sitting in a parking lot or in a driveway. It is all encompassing, he said. He then asked Ms. Miller if she charges the same fee throughout the state.

MS. MILLER said the installation cost is \$50 more when flying to an area, and the monthly price is same.

SENATOR STEVENS asked if the waiver is removed and if a person in a place without access to the device drives sober, would he or she would be in violation. He thinks the waiver should be left in for the time being.

[9:54:19 AM](#)

SENATOR FRENCH suggested holding the bill until the department figures out where the device will be required. It is important to keep in mind that the bill is about repeat offenders.

[9:55:09 AM](#)

CHAIR MCGUIRE said the limited license is a privilege within a privilege: "you're a repeat offender; you've broken the law multiple times, and now we're allowing you to drive on a limited basis, and in exchange for that very gracious privilege, we're asking that an interlock device be installed to put you in between your drinking problem and the wheel of your car." She said she is leaning toward the amendment because of the privilege part and that the interlock is maybe the only thing that separates that alcoholic from the car and the drinking.

SENATOR BUNDE asked if a remote location adds an extra \$50 for installation, but the monthly fee is the same throughout the state. He noted that a \$1000 installation fee isn't reality.

MS. MILLER said that is true, but her competitor passes on the airfare. Her company gives the option of paying the airfare if an individual doesn't want to wait for four or five others needing the service in the area.

[9:57:29 AM](#)

SENATOR STEVENS asked for the statistics of DUIs around the state, because some villages may not have any DUIs.

CHAIR MCGUIRE requested information on airline costs and the other company's policies.

SB 92 was held over.

SB 33-DNA FROM PERSONS CHARGED WITH FELONIES

[9:59:01 AM](#)

CHAIR MCGUIRE announced the consideration of SB 33.

SENATOR GREEN moved to adopt the committee substitute (CS) for SB 33, labeled 25-LS0260\C, as the working draft. Hearing no objections, Version C was before the committee.

SENATOR BUNDE said DNA is the 21st Century version of finger prints. He said DNA is collected with a swab of the cheek. SB 33 would allow a sample to be collected at the time of someone's arrest for a felony or a crime against a person, "along with fingerprints that are already a matter of course." When people are arrested, "all too often that's not their first crime." There are examples in other states where this is working well, he noted. He said he had a DNA sample taken and he could do it himself; it is not threatening or highly invasive. The suspect can be involved in unsolved crimes, but DNA is also exonerating people who are falsely accused. Crimes can be solved faster, freeing up the criminal justice system. If charges are dropped, the sample will be destroyed, he explained, and the DNA will only be used for law enforcement purposes. Federal law provides up to a \$250,000 fine for the intentional misuse of DNA data, so the system will protect privacy while still providing for the public's safety by "getting the bad guys off the street."

[10:03:28 AM](#)

JANE ALBERTS, Staff to Senator Bunde, added that there is federal funding available for lab expansion.

SENATOR BUNDE said there is a fiscal note for over \$300,000 initially and "a couple hundred thousand" per year. He said it is the price of public safety.

SENATOR GREEN said this is an amendment of a current law, and it just expands when DNA samples can be taken.

SENATOR BUNDE said people who are convicted are required to give DNA samples, and SB 33 expands that to people who are arrested for a felony or a crime against a person. It won't apply to shoplifters. He said he hears no outcry of fingerprinting being an invasion of privacy, and DNA is far more accurate.

[10:05:46 AM](#)

CHAIR MCGUIRE said the Senate Judiciary Committee has been enacting DNA laws every few years. The initial implementation

was a compromise that emphasized the power of DNA to exonerate as well as incriminate people. The law was expanded to collect DNA from individuals imprisoned for life, "and to be blunt it was aimed at the Butcher/Baker scenario." There has been an ongoing question of when DNA can be retrieved. She noted Senator Bunde's remark about crimes against a person, and Title 11 actually involves quite a few things, including offenses against persons, property, family, public administration, public order, health and decency, controlled substances, and miscellaneous offenses.

[10:07:47 AM](#)

SENATOR BUNDE said he intended to match the existing net that is cast on DNA sampling. He was asked by a prosecutor to include crimes against a person because that is in the existing DNA law.

CHAIR MCGUIRE said shoplifting at a felony level would be included, because it is Title 11. She asked what is meant by: "or a law or ordinance with elements similar to a crime."

MS. ALBERTS said it was drafted that way to mirror what is done for convicted felons.

CHAIR MCGUIRE said she thinks that might refer to a municipal crime or a federal crime.

[10:09:40 AM](#)

SENATOR FRENCH surmised that the bill picks up all felonies and misdemeanor domestic violence and assaults. All white collar crimes would be included as long as they are felonies, including \$500 or more shoplifting cases.

CHAIR MCGUIRE surmised that the lessor crimes are only the crimes against the person and not the other parts of Title 11.

SENATOR FRENCH said that his interpretation.

CHAIR MCGUIRE said Title 11 crimes will be included, but the lessor crimes are only the crimes against a person.

SENATOR BUNDE said he "didn't broaden the net, we just added where the sample would be taken."

SENATOR FRENCH said people are innocent until proven guilty, and he agrees there is a parallel between a fingerprint and DNA, but it isn't a perfect parallel. Some people are concerned about unique genetic identifiers being disseminated, he noted.

[10:12:32 AM](#)

SENATOR BUNDE said it isn't more invasive than a fingerprint, and there is a strong prohibition against misuse. If charges are dropped, that information is destroyed, he explained.

SENATOR GREEN asked for an update on DNA usage to solve crimes.

CHAIR MCGUIRE said she understands. DNA is a little different from a fingerprint in that it contains elements of private family history, and the more research that is done, the more interesting it becomes.

[10:15:19 AM](#)

SENATOR BUNDE said Virginia began collecting DNA from arrestees in 2003 and solved 222 crimes linked to those very people. A Chicago study documented that 60 violent crimes could have been prevented if DNA samples were required during an arrest.

CHAIR MCGUIRE noted a presentation showing some incredible trends and advocating this kind of law. "The further you go, the more crimes you end up solving," she stated.

SENATOR STEVENS asked how the information is retracted once it is broadcast around the country, if the person is innocent.

[10:17:27 AM](#)

SENATOR BUNDE said he didn't think the DNA information was broadcast, nor are family history or health issues analyzed.

MICHELLE COLLINS, Criminologist, Alaska State Crime Lab, said the lab is looking at just a few portions of the DNA that have no relation to health history.

SENATOR STEVENS asked about the DNA being broadcast around the county to check on crimes, and how that is then removed.

[10:20:20 AM](#)

MS. COLLINS said the samples are uploaded to a national data base held and governed by the FBI. The FBI has the link to the other states, so there is no direct link between states. When charges are dropped or a conviction is overturned, the court orders the lab to destroy the sample and remove the profile. It is removed at the state level and at the national lab. It is never housed in another state, she explained.

CHAIR MCGUIRE said once that sample is uploaded into CODIS, she assumes the states begin a process to see if it matches other samples even prior to the resolution of the charge.

MS. COLLINS said the samples are allowed to be searched, but only by the FBI. The state is notified if there is a match.

[10:22:36 AM](#)

MS. COLLINS said CODIS stands for Combined DNA Index System, and it is the database that was created and is regulated by the FBI.

SENATOR FRENCH asked once the sample is uploaded into CODIS, are searches continually run.

[10:23:41 AM](#)

MS. COLLINS said the FBI searches the national index once a week. In response to Senator French, she said once the match is made, it cannot be undone. There is a parallel system for fingerprints, she said.

SENATOR STEVENS asked if an arrest was made for one crime and the sample solved another crime, would it be considered a false arrest.

[10:26:30 AM](#)

SENATOR FRENCH said as long as it was a valid arrest, which 99 percent are, it would be hard to undo the match, but there may be other perspectives.

CHAIR MCGUIRE said it would be interesting to know if someone's DNA matched a crime but the underlying arrest was dismissed if the DNA should not be allowed as evidence. "My hunch is that they'll get the evidence some way."

[10:28:16 AM](#)

SENATOR BUNDE said if it was a trumped-up charge that led to the initial arrest, the sample could not be used.

CHAIR MCGUIRE noted that there are good cops and bad cops, and she referred to the search and seizure laws.

She announced she would hold SB 33 over.

CHAIR MCGUIRE adjourned the meeting at [10:29:40 AM](#).