

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 24, 2010

3:40 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Mark Neuman, Vice Chair
Representative Mike Chenault
Representative Bob Lynn
Representative Tammie Wilson
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 415

"An Act relating to 911 call recordings and the release of information regarding 911 calls."

- HEARD & HELD

HOUSE BILL NO. 416

"An Act adopting and relating to the Uniform Prudent Management of Institutional Funds Act; relating to the investment of money for charitable purposes by institutions, including governmental institutions; and relating to the University of Alaska."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 415

SHORT TITLE: 911 CALL RECORDINGS

SPONSOR(s): LABOR & COMMERCE

03/15/10	(H)	READ THE FIRST TIME - REFERRALS
03/15/10	(H)	L&C, JUD
03/24/10	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

JENNIFER SENETTE, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 415 behalf of the sponsor, the House Labor and Commerce Committee; Representative Kurt Olson, Chair.

JOHN MCKAY
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 415.

RODNEY DIAL, Lieutenant;
Deputy Commander, A Detachment
Division of Alaska State Troopers (AST)
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions on HB 415.

TAMMY GOGGIA, Dispatcher
Kenai Peninsula Borough
Soldotna, Alaska

POSITION STATEMENT: Testified during the discussion of HB 415.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 415.

SUE STANCLIFF, Legislative Liaison
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 415.

ACTION NARRATIVE

[3:40:20 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:40 p.m.

[3:40:26 PM](#)

Representatives Buch, Holmes, Lynn, T. Wilson, and Olson were present at the call to order. Representatives Chenault and Neuman arrived as the meeting was in progress.

HB 415-911 CALL RECORDINGS

3:40:50 PM

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 415, "An Act relating to 911 call recordings and the release of information regarding 911 calls."

3:41:00 PM

JENNIFER SENETTE, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the prime sponsor, the House Labor and Commerce Committee, Representative Kurt Olson, Chair, related that we have all heard frantic 911 calls. These calls are frequently broadcast on 24-hour news channels. She paraphrased from the sponsor statement, as follows, which read [original punctuation provided]:

Public records disclosure is an essential tool for Alaskans to track the performance of state agencies. 911 transcripts and audio recordings are among the public records available for citizen inspection.

Access to these records serves a legitimate public purpose; playing actual calls over the airwaves does not. The growing practice of broadcasting 911 recordings on the radio, television, and internet is a disturbing trend that not only serves little public value, but violates the privacy rights of the Alaskans making those calls. In an effort to protect the privacy of 911 callers, House Bill 415 bars recordings of 911 calls from being played over broadcast media. Emergency calls are often desperate cries from vulnerable individuals and placing such a call should not consent to the caller's extremely private moments being splashed over the airwaves. Transcripts and call audio will remain open to the public, thus balancing the public's right to know with the privacy rights of the caller.

Widespread unease at the public airing of 911 calls has spurred legislative action across the country.

Five states keep 911 recordings confidential, and an additional four place restrictions on the release of tapes. Four more states have legislation pending addressing the issue.

House Bill 415 strikes the appropriate balance between the public interest and the privacy of 911 callers. There is little public value in airing the distressed voices of 911 callers, and Alaskans should have the expectation that the extremely personal and often distressed calls they place to 911 will not be fodder for the evening news.

[3:42:45 PM](#)

MS. SENETTE explained that media outlets often replay audio or transcripts of 911 calls, which are considered public record. She acknowledged it is a legitimate purpose to have these recordings as public records. Thus, HB 415 would only prohibit the airing of recordings on the broadcast media. The bill would make it a crime to play a recording of a 911 call on broadcast media. The penalty for a person convicted of airing broadcast media would be a class A misdemeanor, punishable by up to \$10,000. She offered that the news media provides a constant stream of sensational stories. She related several instances in which people have heard their own family's calls played in the media, including a North Carolina woman whose daughter was killed and an Alaska teenager who mauled by a bear. Those calls were broadcast repeatedly and the families had to relive the anguish of the emergency calls.

[3:47:22 PM](#)

CHAIR OLSON related this bill has a further referral to the House Judiciary Standing Committee.

[3:48:00 PM](#)

REPRESENTATIVE LYNN offered that he shares some of the sponsor's concerns. He asked whether the bill "bumps up against" Federal Communication Commission (FCC) rules. Broadcasting 911 calls would end up being illegal in Alaska if the bill passes but may not be illegal in other states. Additionally, some people may be broadcasting newsworthy stories so he was uncertain how news stories would be affected by the bill.

MS. SENETTE answered that five states have similar laws, five states have pending laws, and four other states have restrictions.

REPRESENTATIVE LYNN asked whether legal challenges have been made in those states.

MS. SENETTE offered her belief that the four states are currently working through the issues.

REPRESENTATIVE LYNN characterized the issue of broadcasting 911 calls as "like trying to put toothpaste back into the tube."

[3:50:02 PM](#)

REPRESENTATIVE HOLMES reported that she has already requested a legal opinion on the constitutional issues. She related that the language of the bill implies members of the public and the media would only have access to transcripts of the 911 calls. She recalled previous testimony that the public or media could get copies of the tapes. She referred to the fiscal note and asked whether the Alaska State Troopers (AST) would have to transcribe the calls or if the tapes would be distributed.

MS. SENETTE deferred to Lieutenant Dial, AST to answer questions on the fiscal note. She related that the intent of the bill is to allow the 911 audio be privately listened to by the public, but the bill would restrict broadcasting the 911 recording.

REPRESENTATIVE HOLMES was not certain HB 415 will accomplish what the sponsor intended it to do and thought the bill may need to be "tweaked."

[3:52:25 PM](#)

CHAIR OLSON related that he worked with the legislative legal drafter and discussed the bill with the AST prior to introduction of the bill. He anticipated there would be some cost for transcription of the 911 calls.

REPRESENTATIVE HOLMES asked whether the intent of HB 415 is that people could listen to the 911 tapes or if people would only have access to the transcripts of the calls.

CHAIR OLSON preferred that the public would have access to only transcripts of the 911 call and not the recording. He expressed concern for the privacy of family and friends of those involved

in emergency situations, but he related he does not want to violate any privileges that Alaskans and Americans enjoy. He said it appears that a verbatim transcript may provide some balance.

[3:54:07 PM](#)

REPRESENTATIVE CHENAULT asked whether "push back" on the bill is coming from the public or the Alaska State Troopers (AST).

MS. SENETTE answered that the "push back" has come from the media organizations in other states. She has not heard any negative comments from the public or the police in Alaska.

REPRESENTATIVE CHENAULT commented that sometimes emergencies happen in which children save siblings or parents. He agreed that he did not want to see people hurt by 911 recordings being aired but offered that some good press releases can sometimes result from airing 911 calls.

[3:55:30 PM](#)

REPRESENTATIVE BUCH recalled a former legislative member who represented victim's rights. He anticipated some first amendment right concerns with the bill. He wanted to ensure that people suffering trauma do not suffer more from the media's actions yet still protect individual rights. He offered his belief that it is a matter of civility but he did not want people to profit from other people's emergencies, which he thought is difficult to capture and pinpoint in legislation.

[3:58:23 PM](#)

REPRESENTATIVE LYNN asked, "When does news stop being news?" He thought the immediacy of news would be lost if people had to wait for a transcript. He asked whether this bill would apply to instances in which someone shoots a video, a cell phone video, or snapshots and subsequently releases or sells it to the media during a catastrophe such as 9/11. He also recalled seeing horrendous photos of caskets of soldiers. He said he did not know the answer, but would like to be sensitive to the victims and their families.

[3:59:49 PM](#)

REPRESENTATIVE NEUMAN remarked on some legislative members' work on behalf of victims.

4:00:19 PM

REPRESENTATIVE T. WILSON asked whether people can currently obtain a transcript of a 911 call.

MS. SENETTE answered yes. People can obtain copies of public records so long as the records are not confidential records.

REPRESENTATIVE T. WILSON referred to the fiscal note and remarked on the AST's need for 2.5 people to address the requests for 911 transcripts.

4:01:14 PM

JOHN MCKAY stated that he teaches a class at the University of Alaska but that is testifying today on behalf of himself. He just found out about the bill, he stated. He asked the committee not to pass out the bill. He stated that the fiscal note he reviewed was a zero fiscal note so he was not certain he had the most current information. He asked how quickly transcripts could be prepared and expressed concern that if the work was not done quickly whether the transcripts would be meaningful alternatives. He offered his belief that the bill is unconstitutional. He is sympathetic to the concerns the bill's sponsor is raising. However, he agreed that 911 calls broadcast by the media are not much different than other news circumstances. He did not see the need for this bill or for an urgent change to the current law. He believed adequate laws for privacy exist. He referred to the 911 calls and stated that these are public records and to remove a whole category of public records from public access would be a mistake. He agreed that some good things come out of these kinds of records. He offered that it is difficult to predict the future, but restated that the few instances of inappropriate use should not result in a whole category of public records should be removed. He cited his 30 years of experience in the news media demonstrates to him that the balancing of rights of access and constitutional rights of individuals is something that courts and records custodians already perform. He emphasized that there is no particular need for the bill. The few instances of misuse can be countered with instances of positive effects. He related a scenario in which a foreigner called 911 during an emergency but could not be understood. The man swept up his daughter and took her to the emergency room but she died. The outcome was the responsible agency replayed the message and the outcome led to reform, including better access to translators during emergencies. He

suggested that the circumstances could be dealt with on a case-by-case basis.

[4:07:56 PM](#)

CHAIR OLSON offered that the bill has several other committee referrals so Mr. McKay would have time to consider the bill.

[4:08:19 PM](#)

REPRESENTATIVE NEUMAN asked if he thought it was appropriate to teach his students that the 911 calls of a personal nature made by the emergency responders should be released to the media and replayed on broadcast media.

MR. MCKAY answered that he teaches his student that editorial choices are made by newspaper editors and broadcast news media rather than by government. He related that there is a balance of interests between statutory rights and freedoms. With respect to public records, there is a constitutional right to privacy which the courts have employed and balanced on a case-by-case basis rather than making a whole category of public records unavailable. Public records laws are important to allow citizens the opportunity to monitor the activities of government agencies. The public recordings help demonstrate that law enforcement officers are performing their duties appropriately and properly. He suggested the committee "look at the overall picture and not be carried away to make changes in the law based on a few very unfortunate situations." Some news stories are excessive or lacking in taste and dignity, but we should not say stories cannot be aired.

[4:11:21 PM](#)

REPRESENTATIVE NEUMAN noted the bill is limited to 911 calls. He remarked that legislation like this is important.

[4:11:48 PM](#)

RODNEY DIAL, Lieutenant; Deputy Commander, A Detachment, Division of Alaska State Troopers (AST), Department of Public Safety (DPS), stated that the Department of Public Safety is neutral on the bill. He related that the DPS supports the sponsor's intent. He said that the bill would impose additional duties on the department. He explained that due to the Victim Rights Act of 1991, Alaska statutes AS 40.25.120 (c), and the DPS's inability to redact audio from audio files, the DPS holds

the position that protected information will not be released in any form. The DPS believes that transcribing and redacting audio files is the only method to ensure that protected information, such as addresses, is not released. He emphasized that if the DPS released a 911 audio tape that contained protected information, it could be in violation of the Victim Rights Act.

LT. DIAL pointed out that some AST detachments receive thousands of 911 calls per month. The DPS receives some requests for 911 audio but very rarely does the department release any of the recordings. In order to comply with HB 415, the DPS would have to transcribe numerous recordings. One emergency incident can actually result in numerous 911 recordings since various members of the public report the same accidents. He envisioned the DPS would need to set up a clearinghouse to process requests for the 911 recordings.

[4:15:52 PM](#)

REPRESENTATIVE CHENAULT asked for the current process the department uses when someone requests a copy of a 911 audio call.

LT. DIAL explained that in most instances the DPS will not furnish a copy of the 911 call except to a law enforcement agency or to the Department of Law since the DPS does not have the ability to redact from audio files. The audio files are protected in a manner to ensure the integrity of the file in case the file needs to be used as evidence in court proceedings. He remarked that the AST's Ketchikan office does not currently have the ability to redact the information. He summarized that the department will not release the audio without a subpoena.

REPRESENTATIVE CHENAULT related the DPS follows the Victims Rights Act. He asked the reason the department would need 2.5 people to accomplish the work.

LT. DIAL replied that 911 recordings are not currently given out due to provisions in the statutes and the Victims Rights Act. However, if the bill were to pass, the DPS would view the bill as requiring the DPS to transcribe and release the information.

[4:19:00 PM](#)

REPRESENTATIVE HOLMES offered her belief that HB 415 would make it harder for people to gain access to the recordings. She

related her understanding that the 911 recordings are not currently public records and the bill would make it easier to obtain the calls.

LT. DIAL agreed. He said that the AST does not currently release 911 recordings. He explained the process the department would use if HB 415 passed and people had the right to obtain a transcript. The DPS would have someone type the recording and a supervisor would redact the information. Thus, the recording would be available to the public in the redacted form.

4:20:24 PM

REPRESENTATIVE T. WILSON asked how often 911 recordings are currently released.

LT. DIAL recalled recently receiving a request from an attorney. The DPS's response was that the 911 recording contained protected information and that the attorney would need a subpoena to obtain the information. He related high activity of 911 calls in some offices, noting the multiple phone lines and numerous dispatch centers. The DPS has made some exceptions to its policy and has released 911 recordings to families, in special circumstances, such as when a family member wants to hear the last few minutes of a call from a loved one who died. The process the AST uses in those circumstances is to bring in the person and allow him/her to listen to the recording at the AST Detachment office. The bill would impact the DPS due to the sheer magnitude of statewide 911 calls. He envisioned transcript requests from the media and from people who may wish to file civil lawsuits.

4:22:05 PM

REPRESENTATIVE T. WILSON asked whether a transcript would be provided to a person who requests one.

LT. DIAL answered the DPS would not currently honor the request.

REPRESENTATIVE T. WILSON asked whether a mechanism exists to charge people a fee for a transcript.

LT. DIAL said he thought it was possible, but this aspect has not yet been addressed by the department.

REPRESENTATIVE T. WILSON referred to the fiscal note and asked how many transcript requests the DPS anticipated in a year.

LT. DIAL explained that when the DPS prepared the fiscal note, the DPS estimated it may need two staff to transcribe 911 calls based on the time it currently takes to transcribe criminal interviews. He said he does not know for certain the number of requests, but anticipated that local news media may routinely request transcripts on all major cases if the transcripts were available. In further response to Representative T. Wilson, he thought the department currently receives several hundred requests per year. He was not certain whether an increase in the number of requests would happen if the bill passed.

[4:25:37 PM](#)

CHAIR OLSON recalled a bear attack in Anchorage and asked if DPS was the agency.

LT. DIAL did not recall the Anchorage teenager who was bicycling, relating the responder would have been the Anchorage Police Department.

[4:26:09 PM](#)

REPRESENTATIVE LYNN remarked that police scanners are available. He asked whether there is currently a prohibition against recording those calls.

CHAIR OLSON believed the AST information is currently encrypted and cannot be recorded.

REPRESENTATIVE LYNN stated police scanners are readily available. He asked where line would be drawn if the bill passed.

CHAIR OLSON stated the bill specifically limits the prohibition to 911 calls.

REPRESENTATIVE T. WILSON asked whether the municipalities would be affected.

LT. DIAL related some municipalities rely on AS 45.25.120 (c). He offered his belief that the municipalities would not release any 911 recording without a subpoena. He said that the protected information cannot be altered in an audio recording at this time. He restated that all of the municipalities that he is familiar with do not currently release recordings to the general public.

REPRESENTATIVE T. WILSON asked whether the DPS would support removing the AST from the bill.

LT. DIAL answered that if AST were exempted from HB 415, that it would effectively eliminate the fiscal note.

[4:28:59 PM](#)

LT. DIAL recalled a personal incident for members to illustrate the 911 calls. He referred to a case involving Timothy Treadwell, who was a bear enthusiast who lived among the coastal brown bears at Katmai National Park for 13 years. He and his girlfriend were killed and a video tape recorded the graphic deaths. The DPS obtained the video, during its investigation. The video contained only an audio file since the lens cap was on the camera. The department released the tapes to the family. He offered that the department attempts to be understanding of the victims and not add to their grief. The department also works to help the press, but must also follow the Victims Rights Act. Thus, the DPS will not release protected information to the press or the general public.

[4:31:00 PM](#)

REPRESENTATIVE T. WILSON asked how municipalities handle requests for 911 audio recordings.

[4:31:26 PM](#)

TAMMY GOGGIA, Dispatcher, Kenai Peninsula Borough, stated that she has been employed for 19 years at a joint dispatch office for the Kenai Peninsula Borough and the AST. She stated that a person must produce a subpoena before a 911 recording would be released. She offered that the Kenai office would comply with AS 40.25.120 (a) (6) (A)-(G). The 911 system is owned by the Kenai Peninsula Borough so the request would also be reviewed by the Kenai Peninsula Borough's attorney before a 911 recording would be released.

CHAIR OLSON stated he did not intend to move the bill today.

[4:32:52 PM](#)

REPRESENTATIVE T. WILSON asked whether the 911 tape could be obtained by a person but the call just could not be broadcast on the media.

4:33:21 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), clarified that municipalities are covered under the Public Records law.

4:34:02 PM

MS. GOGGIA stated that some exceptions exist. She related that when a baby is delivered and the delivery is recorded in a 911 call that if the parents asked for a tape it is possible that the tape would be released to them as a means to celebrate the birth.

REPRESENTATIVE BUCH asked for clarification of AS 40.25.120 (a) (6) (A)-(G).

MS. CARPENETI related that these statutes are the exceptions. These statutes pertain to public records that are excepted from the public records disclosure requirements. She related that AS 40.25.120 (a) (6) (A)-(G) generally refers to law enforcement or public health records. Thus, records compiled for law enforcement purposes are not subject to disclosure.

REPRESENTATIVE BUCH related to the specifics of 911 emergency calls. He asked for references that would include 911 calls.

MS. CARPENETI answered that if a 911 call reported a crime that any disclosure may interfere with an ongoing investigation.

4:37:16 PM

REPRESENTATIVE BUCH recalled Lt. Dial's testimony indicated that the calls are not disclosed. He asked whether this law also applies to municipalities.

MS. CARPENETI related she is not an expert on the Public Records law, but the definition in AS 45.25.200 is a pretty broad definition of who is bound by the public records statutes since it defines public agencies, including political subdivisions, departments, boards, and divisions. She offered to have an expert come before the committee, if desired.

CHAIR OLSON asked whether municipalities are covered in this statute.

MS. CARPENETI said she could not say for certain.

REPRESENTATIVE T. WILSON offered that it seems like one interpretation is that HB 415 would allow transcripts to be released that currently are not available. She asked for clarification.

MS. CARPENETI said she thought the bill was a little confusing since it specifically cross references the exceptions to public disclosure under AS 40.25.120 (a)(6), but does not reference other exceptions in the subsection. She said she was not certain about the drafting since it seemed confusing. She thought that it was not clear if the other exceptions applied to the transcripts in question.

[4:40:11 PM](#)

REPRESENTATIVE HOLMES thought it may be helpful to obtain the current policy and specific statute cites that the AST and other municipalities currently use for releasing 911 calls.

[4:41:08 PM](#)

REPRESENTATIVE LYNN thought it may be helpful to find out from some of the media outlets how the specific organizations are currently obtaining the recordings of the 911 calls.

CHAIR OLSON agreed that requesting information from Anchorage, Fairbanks, Juneau, and Soldotna would likely provide a range of information.

REPRESENTATIVE LYNN restated his question.

SUE STANCLIFF, Legislative Liaison, Department of Public Safety (DPS), stated that the Department of Public Safety (DPS) takes public information requests very seriously, since it affects privacy, investigations, and many other considerations. The DPS attorney developed a document, the "Public Records Request Decision Key" to identify 17 pages of circumstances that apply to the decision making key. She offered to request the Assistant Attorney General who developed the key to participate on-line to answer questions. Currently, the department processes written requests for public information on a form, evaluates the request, and determines whether the information can be released by using the key. In most instances the request is not authorized. The DPS routinely processes discovery requests through the district attorney's office. The DPS uses a

State of Alaska Records Retention schedule to determine how long to retain its 911 records, which are typically retained longer than required under AS 09.10.070. The DPS does not currently redact any 911 information, but under the bill the DPS would transcribe the recording and redact the information. She explained the DPS put considerable thought into the fiscal impact of HB 415 when preparing the fiscal note.

MS. STANCLIFF offered to provide a copy of the Public Records Request Decision Key to the committee.

MS. STANCLIFF explained that a complaint would be routed to the manager and all complaints would be referred to the Office of Professional Standards.

[4:48:23 PM](#)

MS. STANCLIFF, in response to Representative T. Wilson, interpreted that recordings would not be released, but the bill would require the DPS to transcribe and redact the information.

REPRESENTATIVE T. WILSON asked for further clarification.

MS. STANCLIFF answered that the DPS currently does not release the recordings.

REPRESENTATIVE T. WILSON asked whether it would help to clarify the language in the bill to state that if a party is successful in obtaining a 911 audio tape that the party cannot broadcast the tape.

[4:51:03 PM](#)

LT. DIAL answered that if an audio tape of a 911 call was released it would violate the Victim Right's Act of 1991 and AS 40.25.120 (c). In essence, the compact disc (CD) of the 911 call would contain information that is private information. The 911 call is currently a public record and a process exists to release the information. If this bill passed, the only way to ensure that the protected information would not be released is to transcribe the 911 call and review the information contained on the CD, he stated.

REPRESENTATIVE T. WILSON related her understanding that the bill would really only apply to the one percent of the people who currently are authorized to obtain the tape. She understood

that the person would be prohibited from using the information on broadcast media.

LT. DIAL answered that in most cases when people obtain a 911 tape it does not contain any protected information, which is the reason the department is able to release the audio tape of the 911 call. He maintained that the DPS believes that it must abide by the Victim Rights Act and in most instances releasing a 911 recording would likely violate that act.

4:53:59 PM

REPRESENTATIVE HOLMES related that she is interested in examining the legal aspects of AS 40.25.120 so she would like to obtain the statute cites law enforcement agencies currently use.

REPRESENTATIVE CHENAULT asked whether everyone, including the media, private citizens, district attorneys, and prosecuting attorneys, uses the same form and the same criterion is used to determine release of the 911 recording.

MS. STANCLIFF answered yes. However, she pointed out that the District Attorney and the Department of Law use a subpoena to obtain the information. She suggested perhaps Lt. Dial could elaborate further.

REPRESENTATIVE CHENAULT thought there were probably confidentiality issues addressed with subpoenas.

[HB 415 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:56 p.m.