

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 7, 2010
2:43 p.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

Senator Hollis French, Chair
Senator Dennis Egan

COMMITTEE CALENDAR

SENATE BILL NO. 249

"An Act relating to official action by electronic transmission, to records, and to public records."

- MOVED CSSB 249(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 52

"An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 48

Urging the United States Congress to pass the Crime Victims Fund Preservation Act.

- HEARD AND HELD

SENATE BILL NO. 304

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 249

SHORT TITLE: PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS

SPONSOR(s): SENATOR(s) ELLIS

02/01/10 (S) READ THE FIRST TIME - REFERRALS
02/01/10 (S) STA, JUD
03/23/10 (S) STA RPT 5DP
03/23/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,
KOOKESH
03/23/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
03/23/10 (S) Moved SB 249 Out of Committee
03/23/10 (S) MINUTE(STA)
03/31/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/31/10 (S) Heard & Held
03/31/10 (S) MINUTE(JUD)
04/02/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/02/10 (S) Heard & Held
04/02/10 (S) MINUTE(JUD)
04/07/10 (S) JUD AT 8:30 AM BUTROVICH 205
04/07/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 52

SHORT TITLE: POST-TRIAL JUROR COUNSELING

SPONSOR(s): REPRESENTATIVE(s) KERTTULA

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) JUD, FIN
02/26/10 (H) JUD AT 1:00 PM CAPITOL 120
02/26/10 (H) Moved Out of Committee
02/26/10 (H) MINUTE(JUD)
03/01/10 (H) JUD RPT 5DP
03/01/10 (H) DP: LYNN, GRUENBERG, HERRON, DAHLSTROM,
RAMRAS
03/26/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/26/10 (H) Moved Out of Committee
03/26/10 (H) MINUTE(FIN)
03/29/10 (H) FIN RPT 10DP 1NR
03/29/10 (H) DP: THOMAS, GARA, DOOGAN, JOULE,
AUSTERMAN, SALMON, N.FOSTER,
FAIRCLOUGH,
03/29/10 (H) STOLTZE, HAWKER
03/29/10 (H) NR: KELLY
03/31/10 (H) TRANSMITTED TO (S)

03/31/10 (H) VERSION: HB 52
04/01/10 (S) READ THE FIRST TIME - REFERRALS
04/01/10 (S) JUD, FIN
04/07/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HJR 48

SHORT TITLE: CRIME VICTIMS FUND PRESERVATION ACT

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/23/10 (H) READ THE FIRST TIME - REFERRALS
02/23/10 (H) FIN
03/19/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/19/10 (H) Moved Out of Committee
03/19/10 (H) MINUTE(FIN)
03/22/10 (H) FIN RPT 9DP
03/22/10 (H) DP: GARA, DOOGAN, JOULE, KELLY,
AUSTERMAN, N.FOSTER, FAIRCLOUGH,
STOLTZE,
03/22/10 (H) HAWKER
03/25/10 (H) TRANSMITTED TO (S)
03/25/10 (H) VERSION: HJR 48
03/26/10 (S) READ THE FIRST TIME - REFERRALS
03/26/10 (S) JUD
04/07/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

MAX HENSLEY, staff

to Senator Ellis, explained that the

POSITION STATEMENT: Described the changes that the committee substitute (CS) made to SB 249.

REPRESENTATIVE BETH KERTTULA

Alaska State Legislature

Juneau, AK

POSITION STATEMENT: Sponsor of HB 52 and HJR 48.

MINDY LOBAUGH, representing herself

Juneau, AK

POSITION STATEMENT: Testified in strong support for HB 52.

LAUREE MORTON, Program Coordinator

Council on Domestic Violence and Sexual Assault

Department of Public Safety (DPS)

Juneau, AK

POSITION STATEMENT: Testified that she personally supports HB 52 and on behalf of CDVSA in support of HJR 48.

DOUGLAS WOOLIVER, Administrative Attorney
Alaska Court System
Juneau, AK

POSITION STATEMENT: Provided information about what the court might do if HB 52 were to become law.

HANNAH MCCARTY, Staff
to Representative Beth Kerttula
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information related to HB 52 on behalf of the sponsor.

SAMANTHA ENGILSHOE, Intern
for Representative Beth Kerttula
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information related to HJR 48 on behalf of the sponsor.

ACTION NARRATIVE

[2:43:27 PM](#)

VICE-CHAIR BILL WIELECHOWSKI called the Senate Judiciary Standing Committee meeting to order at 2:43 p.m. Present at the call to order were Senators Coghill, McGuire and Wielechowski.

SB 249-PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS

VICE-CHAIR WIELECHOWSKI announced the consideration of SB 249. It was heard previously.

[2:43:43 PM](#)

MAX HENSLEY, staff to Senator Ellis, explained that the committee substitute (CS) for SB 249 responds to the concerns the administration expressed in a memo that was distributed at the previous hearing.

[2:44:07 PM](#)

SENATOR MCGUIRE moved to adopt the work draft CS for SB 249, labeled 26-LS1014\P, as the working document.

CHAIR WIELECHOWSKI objected for discussion purposes.

MR. HENSLEY said he would walk through the changes the CS makes and explain how they reflect the concerns that were raised.

In Section 1 on page 2, line 9, the words "electronic record" were added as part of the list of formats of records. The definition of an electronic transmission was deleted from that section because the Department of Law (DOL) found it to be both too specific and too broad. Subparagraph (B) lists items that are excluded from the definition of "public record" in other places and those are included here for consistency. On page 1, lines 13-14, the phrase "appropriate for preservation" was deleted and the phrase "required by law to be preserved" was inserted. The records retention schedule is outlined in Title 40.21 and DOL thought that more specific description should be preserved.

Section 2 is a new section. It was moved from the Executive Branch Ethics Act to the Personnel Act in the belief that this would be a more appropriate place for the prohibition on the use of private electronic transmission systems. It also rewritten to add a few exceptions to the rule. The administration felt strongly that there are places where use of private emails and other electronic transmissions are appropriate. This mirrors the policy the bill was attempting to put into statute, he said. In particular, subsection (c) says that it does not apply to a public officer who is taking or withholding official action during a public safety emergency.

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MR. HENSLEY said Sections 3 and 7 mirror the changes that are found in Section 1 with respect to the definition of a public record. Sections 4, 5, and 6 refer to the fee schedules for accessing public records. DOL was concerned about the additional cost burden of lowering this fee schedule and the mutually agreed solution was to maintain the current fee schedule for the categories described on page 5, lines 14-16 - for a corporation other than a news media corporation, for an unduly burdensome request, or for a commercial request. If a request is determined to be unduly burdensome, there is language that requires DOL to work with the requester to move them out of that category. He noted that DOL's experience is that most excessively large requests are due to the fact the person making the request may not understand what they are requesting. But with some guidance, they can get the needed information without creating unnecessary work, he said.

Section 7 rewrites AS 40.25.125 to clarify that someone who impairs a public record is subject to prosecution for a criminal offense under the two existing tampering with public records statutes. It was never the sponsor's intent to create new criminal liability, he said. Section 8 makes the same change to the definition of public record as in Sections 1 and 3 thereby providing consistency throughout.

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VICE-CHAIR WIELECHOWSKI, noting that the administration wasn't represented at this hearing, asked Mr. Hensley if he and the sponsor had worked with DOL to address their concerns.

MR. HENSLEY answered yes; the CS represents the points of agreement between the two offices. Although they didn't resolve every concern, they did address a majority of the points that were raised in the letter that was presented to the committee.

CHAIR WIELECHOWSKI removed his objection and found no further objection to the adoption of the CS.

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SENATOR COGHILL moved to report CS for SB 249, version P, from committee with individual recommendations, attached zero fiscal note(s), and the stated intention to find out if there is a fiscal impact since the fiscal notes hadn't been updated for the CS.

VICE-CHAIR WIELECHOWSKI announced that without objection CSSB 249(JUD) moved from the Senate Judiciary Standing Committee.

HB 52-POST-TRIAL JUROR COUNSELING

VICE-CHAIR WIELECHOWSKI announced the consideration of HB 52.

[2:51:30 PM](#)

REPRESENTATIVE BETH KERTTULA, sponsor of HB 52, said this bill came about because a friend came to her after serving on a particularly difficult jury. When the jurors asked the court about counseling they were told there was none to be offered.

She said she worked initially with the court, but ultimately decided that it would be best to introduce legislation. HB 52 would allow up to 10 hours of counseling for jury members who serve on particularly gruesome and graphic cases and are traumatized as a result.

MINDY LOBAUGH, representing herself, Juneau, said that HB 52 represents a bridge, a bridge that she and many other jurors did not have at the end of a traumatic trial. She went on to say:

You arrive at the courthouse; you're given detailed instructions of what is expected of you as a juror and how the process of the trial works. What the court system does not do is transition jurors out of the trial. It is not uncommon to have major criminal trials run for many days. I served as a juror on the Rachelle Waterman trial four years ago. It lasted approximately 10 days. For me, I arrived open and ready to do my civic duty as a juror.

For 10 days, prosecutors went into excruciating detail to help the jurors relive the events of an unsuspecting mother getting abducted from her home, tortured, and finally murdered. It was then our duty to determine if the defendant, her daughter, was guilty of masterminding this tragedy against a woman who was a pillar of her community. By the end of the trial, I left there as a victim, feeling closed, mentally battered, and very traumatized by the burden of knowledge I now carry.

I am here to tell you the media does not even come close to covering the depth of this trial. As a juror, we had access to piles of emails detailing out every various way these men planned to kill the mother; the physical evidence; the photographs; and, of course, the hours of testimony.

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For quite some time during and following that trial, eating, for me, was a near impossibility because of the constant nausea I felt. To my friends and family, I became a stranger, and each night I prayed myself to sleep. One of my fellow jury-mates was pregnant with her second child - she had shared her excitement and the ultrasound pictures with us early on in the trial. By the end of the trial, she lost her baby and had to be excused from the trial. When this trial ended with a hung jury, I turned to the presiding judge and I asked if the courts offer some kind of counseling or process to help jurors deal with the traumatizing information. The answer was no. For me, it was like having a door slammed in my face. There would be no

help in transitioning back to my life before this trial, no bridge. Rather, I would have to move forward with the dark knowledge. It was at this point I felt the court had failed me as a juror doing my civic duty.

Please help me to build the bridge by supporting HB 52 - Post-Trial Jury Counseling. I may not have found closure with respect to this trial, but maybe you can bridge that for future jurors doing their civic duty by passing HB 52.

VICE-CHAIR WIELECHOWSKI thanked her for her compelling testimony.

SENATOR COGHILL asked if she got counseling on her own.

MS. LOBAUGH replied she did, but not immediately. Early on she simply wanted to hide and not talk about it again. Now she realizes that counseling would have helped her understand right away that what she was doing was counterproductive.

SENATOR COGHILL asked if the timeframe suggested in the bill is sufficient to negotiate strategies for dealing with traumatic court cases.

MS. LOBAUGH said she believes that ten hours is a reasonable amount of time to start the process. In that time a juror could be evaluated by a professional and get some tools that would help them get back to their life. For those who are fortunate, ten hours may be enough to finish that process.

SENATOR COGHILL said he asked because she received counseling and would have a good idea about whether or not ten hours is sufficient.

MS. LOBAUGH said she would have found ten hours to be sufficient.

[2:57:53 PM](#)

LAUREE MORTON, Program Coordinator, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety (DPS), said she doesn't believe that CDVSA had looked at HB 52, but as a private citizen she believes that it's very important to help people process traumatic events. When people are willing to come forward to do service, they should have some help after their service is complete if it's needed because most people in their

daily lives aren't exposed what they'll see and hear in a murder or assault or other traumatic trial. It's a fair offering to our citizens, she said.

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DOUGLAS WOOLIVER, Administrative Attorney, Alaska Court System, introduced himself.

SENATOR MCGUIRE asked if he can envision administering this bill. She suggested that jurors who serve on cases involving horrific crimes should automatically receive a handout about services that may be available to help them deal with the trauma they may be experiencing. They shouldn't need to ask for this, she said.

MR. WOOLIVER said he's heard judges say that if this bill were to pass they would speak to the jurors that had served on these kinds of cases and let them know that counseling was available. The court may in fact already have a list of counselors that they've contracted with, he said. But the broader question is if all jurors should be given a handout at the end of every trial because he can imagine that even some run-of-the-mill cases are difficult for some people to sit in on. He said he'd take that suggestion back to the court.

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CHAIR WIELECHOWSKI asked how this would be administered.

MR. WOOLIVER said the court tried this twice in Southeast and because it was a little out of the ordinary it involved a bit of scrambling, but it basically involved going through the small procurement process. If HB 52 were to pass, the court would probably have a list of providers who had agreed to do this work for jurors. He noted that oftentimes it would be on short notice.

SENATOR COGHILL asked if there would be some accommodation for the jurors who say they need more than ten hours of counseling and if there might be some indigent pay.

MR. WOOLIVER replied they pay for a lot of things but none that he can think of that are time limited. This would be similar to insurance coverage that covers X amount of something and beyond that it's not covered. In this situation the state would pay for a certain amount of service, but not beyond that.

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SENATOR COGHILL observed that any time there's a time limit it creates a liability issue because somebody will say they needed more. It appears that this could put the court under a liability and to this point the state hasn't accepted any liability for peoples' reactions to doing their civic duty.

MR. WOOLIVER said he needs to think about that a bit because he isn't sure that it does creates a liability.

SENATOR MCGUIRE said the feedback she's received about jury service is that it's underappreciated. For example, parking isn't provided and nobody seems to care, and then jurors are dismissed from the trial with no closure. Jurors deserve more than that because they are making huge sacrifices and disrupting their lives. I assume you respond to the feedback you get, she said.

3:07:05 PM

MR. WOOLIVER replied the court does get those same complaints and they do respond. It's not the case everywhere, but in Anchorage juror parking is a huge challenge and a constant problem.

SENATOR COGHILL, noting that counseling services might not be available in many of the trial areas outside of Anchorage, Fairbanks and Juneau, asked how the court might handle that circumstance.

REPRESENTATIVE KERTTULA suggested Ms. McCarty answer the question.

HANNAH MCCARTY, staff to Representative Kerttula, reported that she spoke with a counselor in Kotzebue this morning to learn more about what's called "tele-behavioral" health. This involves using Skype to communicate with a counselor in a larger community who can also provide access to the Alaska Psychiatric Institute (API) and a children's center in Seattle. Currently, 11 small remote communities in Representative Joule's district are participating in this program, she said. This technology could be used for trials that are held in Kotzebue.

REPRESENTATIVE KERTTULA said she expects this to be offered statewide. She related that when she started this journey she expected to find that juror counseling was widespread, but that isn't the case. Texas has a program that hasn't been implemented and King County in Washington state allows one hour of counseling. If this passes, Alaska will be the first state to

implement this kind of program, but what's more important is that it makes tremendous sense to help our citizens who help the state do its work, she said.

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SENATOR COGHILL observed that jury service is more than a civic responsibility; it's a civic duty that people are demanded to do. He opined that in particularly tough cases, knowing that counseling would be available afterward may play into how a jury is selected. He asked if that had been anticipated.

REPRESENTATIVE KERTTULA replied she has thought about it and she isn't sure it would impact jury selection. She noted that judges give attorneys different amounts of latitude in voir dire and it's a question an attorney might reasonably ask a juror about beforehand. But in any event, she expects that this would be offered afterward when the judge has recognized that the trial was particularly difficult.

SENATOR COGHILL mentioned questions about previous counseling and family instability and said he can see another realm of questioning that may come to light.

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VICE-CHAIR WIELECHOWSKI closed public testimony and announced he would hold HB 52 for future consideration.

HJR 48-CRIME VICTIMS FUND PRESERVATION ACT

VICE-CHAIR WIELECHOWSKI announced the consideration of HJR 48

[3:12:53 PM](#)

REPRESENTATIVE BETH KERTTULA, sponsor of HJR 48, said this resolution was drafted after a similar National Council of State Legislatures (NCSL) resolution passed unanimously last December. She related that a friend who works with victims recognized that the National Victims of Crime fund was growing, but the money wasn't flowing through to the states. HJR 48 recognizes the effort in Congress to see that the money is used more productively while continuing to sustain the fund.

SAMANTHA ENGILSHOE, First Alaskans Institute fellow and intern for Representative Kerttula, thanked the committee for hearing HJR 48. She reported the following:

For more than 25 years the Victims of Crime Act (VOCA) fund has been a protected and dedicated source of funding for crime victim services. Each year VOCA

dollars are distributed to states to support two important types of programs - crime victim compensation programs and victim assistance programs. The VOCA fund is financed by a collection of fines, forfeitures, and other penalties paid by federal criminal offenders - not by taxpayer revenue.

Because the fund is comprised of offender penalties and fines, the amount deposited into the fund fluctuates from year to year. In 2000, Congress started annual obligations from the fund, saving the amount collected over the cap to ensure the fund's stability. Currently, the VOCA fund has an accumulated balance of nearly 3 billion dollars. Under the VOCA statutory formula for the annual distribution of VOCA funds, state-assisted grants are dependent on the size of the cap and the amount available for those grants is, in effect, whatever remains after other programs have been funded. Unless the cap is high enough, state VOCA assistance grants are cut as other VOCA-dependent costs increase under the cap programs and earmarks are added.

Despite unprecedented deposits into the fund, inadequate caps led to severe cutbacks in VOCA victim assistance grants from 2006 to 2008 causing a devastating impact on programs providing direct services to crime victims. At the same time as those state victim assistance grants were cut by \$87 million, the fund grew more than \$700 million. That balance would have otherwise been available for direct services were the cap minimum higher. Under the Crime Victims Fund Preservation Act, the VOCA statute would establish minimum funding levels for fiscal years 2010 through 2014 steadily drawing down a portion of the accumulated balance. It is projected by the Office of Management and Budget that even with these minimum caps, the fund will have a balance of at least \$1.3 billion at the end of 2014 insuring the fund's sustainability without the need for other revenue sources.

There is strong state support for the Crime Victims Fund Preservation Act including support by the Alaska Department of Health and Social Services, the Alaska Department of Public Safety, and both state Attorney General Dan Sullivan and Congressman Don Young have

signed letters of support for the federal legislation. Representatives from the State of Alaska Violent Crimes Compensation Board and the Council on Domestic Violence and Sexual Assault are here to testify to the importance of additional resources for their statewide efforts.

[3:16:01 PM](#)

LAUREE MORTON, Program Coordinator, Council on Domestic Violence and Sexual Assault, Department of Public Safety (DPS), said she serves as the VOCA assistance coordinator for the state. She explained that VOCA assistance funds are distributed to states on a formula basis - \$500,000 per state and a prorated amount based on population. Alaska typically receives between \$1 million and \$1.2 million annually. During the 2009 federal fiscal year, VOCA funds were used to provide services to 5,779 violent crime victims and in the 2010 state fiscal year, 18 community-based victim service programs are using VOCA funds to fund staff and provide services for victims of violent crimes primarily at AWAKE in Anchorage, IAC in Fairbanks, and AWARE in Juneau. uses VOCA funds to support their legal advocate.

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MS. MORTON provided several examples to demonstrate how VOCA funds are being used. She explained that IAC in Fairbanks is a member of the sexual assault response team that responded to 264 sexual assaults during federal FY09. The IAC VOCA-funded advocate was able to go to the hospital, meet with the victim, and be with her or him during the sexual assault nurse examiner forensic exam. In another example she related how the children-focused VOCA advocate at AWAKE helped a mother who was a victim of domestic violence file a Violent Crimes Compensation Board claim to get counseling for her child who had witnessed the domestic violence and was traumatized and withdrawn. The VOCA advocate worked with the counselor to help the child work through the trauma and ultimately reengage in school and with other children.

MS. MORTON summarized that a graduated cap will allow sustainability of the fund and enough growth to stabilize funds to states. This is important, she concluded.

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CHAIR WIELECHOWSKI closed public testimony and announced he would hold HJR 48 in committee.

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There being no further business to come before the committee,
Vice-Chair Wielechowski adjourned the meeting at 3:20 p.m.