

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 6, 2012

1:04 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Mike Hawker (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 269

"An Act relating to the amendment of a declaration that creates a common interest community."

- MOVED CSHB 269(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 151(JUD)

"An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

- MOVED CSSB 151(JUD) OUT OF COMMITTEE

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 367

"An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 269

SHORT TITLE: COMMON INTEREST COMMUNITIES

SPONSOR(S): REPRESENTATIVE(S) HOLMES

01/17/12 (H) PREFILE RELEASED 1/13/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) L&C, JUD
03/14/12 (H) L&C AT 3:15 PM BARNES 124
03/14/12 (H) Heard & Held
03/14/12 (H) MINUTE(L&C)
03/30/12 (H) L&C AT 3:15 PM BARNES 124
03/30/12 (H) Moved Out of Committee
03/30/12 (H) MINUTE(L&C)
04/02/12 (H) L&C RPT 5DP 1NR
04/02/12 (H) DP: THOMPSON, SADDLER, HOLMES, MILLER,
OLSON
04/02/12 (H) NR: JOHNSON
04/04/12 (H) JUD AT 1:00 PM CAPITOL 120
04/04/12 (H) Heard & Held
04/04/12 (H) MINUTE(JUD)
04/06/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 151

SHORT TITLE: FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

SPONSOR(S): SENATOR(S) MEYER

01/17/12 (S) PREFILE RELEASED 1/13/12
01/17/12 (S) READ THE FIRST TIME - REFERRALS
01/17/12 (S) HSS, JUD
03/05/12 (S) HSS AT 1:30 PM BUTROVICH 205
03/05/12 (S) Moved CSSB 151(HSS) Out of Committee
03/05/12 (S) MINUTE(HSS)
03/06/12 (S) HSS RPT CS 4DP NEW TITLE
03/06/12 (S) DP: DAVIS, DYSON, MEYER, EGAN
03/12/12 (S) JUD AT 12:30 AM BELTZ 105 (TSBldg)
03/12/12 (S) Heard & Held
03/12/12 (S) MINUTE(JUD)
03/21/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/12 (S) Moved CSSB 151(JUD) Out of Committee
03/21/12 (S) MINUTE(JUD)
03/23/12 (S) JUD RPT CS 4DP SAME TITLE
03/23/12 (S) DP: FRENCH, COGHILL, PASKVAN,
WIELECHOWSKI
03/23/12 (S) FIN REFERRAL ADDED AFTER JUD
04/02/12 (S) FIN AT 9:00 AM SENATE FINANCE 532

04/02/12 (S) Heard & Held
 04/02/12 (S) MINUTE(FIN)
 04/03/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/03/12 (S) Moved CSSB 151(JUD) Out of Committee
 04/03/12 (S) MINUTE(FIN)
 04/04/12 (S) FIN RPT CS (JUD) 5DP 2NR
 04/04/12 (S) DP: HOFFMAN, THOMAS, EGAN, MCGUIRE,
 ELLIS
 04/04/12 (S) NR: STEDMAN, OLSON
 04/04/12 (S) TRANSMITTED TO (H)
 04/04/12 (S) VERSION: CSSB 151(JUD)
 04/05/12 (H) READ THE FIRST TIME - REFERRALS
 04/05/12 (H) JUD, FIN
 04/06/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JAMES R. WALDO, Staff
 Representative Lindsey Holmes
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute for HB 269, Version M, on behalf of the sponsor, Representative Holmes.

SENATOR KEVIN MEYER
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 151.

CHRISTINE MARASIGAN, Staff
 Senator Kevin Meyer
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of SB 151 on behalf of the sponsor, Senator Meyer.

MICHAEL I. JEFFERY, Judge
 Second Judicial District Barrow
 Alaska Superior Court
 Alaska Court System (ACS);
 Member
 Alaska Juvenile Justice Advisory Committee (AJJAC)
 Division of Juvenile Justice (DJJ)
 Department of Health and Social Services (DHSS);
 Member
 Steering Committee

Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership
Advisory Board on Alcoholism and Drug Abuse (ABADA)
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Barrow, Alaska

POSITION STATEMENT: Testified in support of SB 151 and responded to questions.

TRISH SMITH, Director
Prevention & Intervention Services
Volunteers of America Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 151.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 151.

L. DIANE CASTO, Prevention and Early Intervention Manager
Prevention and Early Intervention Services Section
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 151.

RICHARD SVOBODNY, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 151.

ACTION NARRATIVE

[1:04:17 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Thompson, Lynn, Keller, Gruenberg, and Holmes were present at the call to order. Representative Pruitt arrived as the meeting was in progress. Representative Gatto was excused.

HB 269 - COMMON INTEREST COMMUNITIES

1:05:08 PM

VICE CHAIR THOMPSON announced that the first order of business would be HOUSE BILL NO. 269, "An Act relating to the amendment of a declaration that creates a common interest community."

1:05:30 PM

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 269, Version 27-LS1125\M, Bullock, 4/5/12, as the working document.

REPRESENTATIVE HOLMES, as the sponsor, objected for the purpose of discussion.

1:05:48 PM

JAMES R. WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, on behalf of the sponsor, Representative Holmes, explained that to address a concern expressed at the bill's last hearing, Version M of HB 269 no longer contains language [that would have allowed a condominium development's declaration to stipulate that obtaining 80 percent of the allocated votes would be sufficient for purposes of altering the declaration to prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons that may occupy units]. Version M, he added in conclusion, now addresses the most important concern of those who brought the concept of the bill's proposed changes to the sponsor's attention.

REPRESENTATIVE HOLMES removed her objection to the motion.

VICE CHAIR THOMPSON, after ascertaining that there were no further objections, announced that Version M was before the committee.

1:07:22 PM

REPRESENTATIVE KELLER moved to report the proposed CS for HB 269, Version 27-LS1125\M, Bullock, 4/5/12, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 269(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:07 p.m. to 1:09 p.m.

SB 151 - FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

[SB 151 was treated as the vehicle in lieu of HB 367, the House companion bill.]

[1:09:27 PM](#)

VICE CHAIR THOMPSON announced that the final order of business would be CS FOR SENATE BILL NO. 151(JUD), "An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

VICE CHAIR THOMPSON explained that SB 151 would be treated as the vehicle in lieu of HB 367, the House companion bill.

[1:10:09 PM](#)

SENATOR KEVIN MEYER, Alaska State Legislature, sponsor, first noting that [CSSB 151(JUD) and CSHB 367(HSS)] are identical, explained that SB 151 would add fetal alcohol spectrum disorder (FASD) to the statutory list of possible mitigating factors at sentencing [for felonies]. However, SB 151's proposed mitigating factor would not be available to defendants convicted of [offenses against the person or the crime of arson in the first degree - AS 11.41 or AS 11.46.400, respectively]. The intent of the bill is to provide more appropriate sentencing for those who suffer from a FASD, those who, as a population, are disproportionately represented in Alaska's criminal justice system. For defendants with a FASD, providing for longer prison sentences isn't helpful; instead, providing for longer probation/parole periods, intensive case management, and assisted living services is, and is much less expensive. Providing the court with more sentencing flexibility for defendants with a FASD, as SB 151 is proposing to do, seems appropriate, he remarked, particularly given that Alaska has the highest rate of FASD in the nation. In conclusion, he indicated that the bill has been vetted by the Department of Law (DOL), the Alaska Court System (ACS), the Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership, and numerous other advocates of those with a FASD.

[1:16:39 PM](#)

CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, on behalf of the sponsor, Senator Meyer, and in response to a question, confirmed that in the bill's proposed new AS 12.55.155(d)(20), the wording, "significantly affected the defendant's conduct" refers to the criminal conduct for which the defendant is being sentenced.

SENATOR MEYER concurred, and, in response to another question, relayed that under SB 151 as currently written, the proposed mitigating factor would only be available in situations involving what he termed non-violent crimes, because it was felt that those who commit violent crimes warrant being sentenced under Alaska's existing presumptive sentencing range regardless of whether they suffer from a FASD. He offered his understanding that most of the crimes defendants with a FASD are convicted of and sentenced for are non-violent, and acknowledged that under a previous version, the bill's proposed mitigating factor would have been available for any crime committed by someone with a FASD.

REPRESENTATIVE LYNN expressed disfavor with having SB 151's proposed mitigating factor be available to those convicted of theft crimes.

MS. MARASIGAN concurred with Senator Meyer's remarks, and noted that people with a FASD have impulsive behavior, are easily influenced by their peers, have difficulty making decisions, and are not helped by simply being given longer prison sentences. Instead, providing defendants with a FASD with the proper supervision is what tends to lower their recidivism rates. She noted that the bill's proposed new AS 12.55.155(d)(20) says in part, "except in the case of an offense defined under AS 11.41 or AS 11.46.400", thereby precluding the proposed mitigating factor from being available for any such crime.

SENATOR MEYER added that in terms of sentencing someone with a FASD, providing for a mitigating factor fits better, particularly when the underlying crimes are non-violent and there is more hope for rehabilitation.

[1:22:52 PM](#)

MICHAEL I. JEFFERY, Judge, Second Judicial District Barrow, Alaska Superior Court, Alaska Court System (ACS); Member, Alaska Juvenile Justice Advisory Committee (AJJAC), Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS); Member, Steering Committee, Alaska Fetal Alcohol

Spectrum Disorders (FASD) Partnership, Advisory Board on Alcoholism and Drug Abuse (ABADA), Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), noting first that he was not speaking on behalf of the Alaska Court System (ACS), expressed appreciation for the approach taken by SB 151, that of adding FASD to the list of potential mitigating factors at sentencing. Providing an example involving a defendant with a FASD who'd committed a property crime, he offered his belief that such people aren't helped by longer prison sentences. He then indicated that under the bill, the defendant would first have to prove, by clear and convincing evidence, both that he/she does indeed have a FASD, and that that particular FASD significantly affected his/her conduct; the court could then decide whether or not to impose a sentence below the presumptive range set out in statute. In conclusion, he said he supports SB 151 very much, believing that certain sentences for non-violent offenses committed by defendants with a FASD could be mitigated and become more effective while decreasing costs to the criminal justice system. In response to questions, he relayed that the court wouldn't be treating SB 151's proposed mitigating factor any differently than it treats any of the other mitigating factors already outlined in statute.

REPRESENTATIVE GRUENBERG questioned whether the court has addressed the constitutionality of AS 12.55.155 - the statute pertaining to factors in aggravation and mitigation.

JUDGE JEFFERY noted that the court has upheld the constitutionality of Alaska's presumptive sentencing ranges set out in AS 12.55.125 - the statute pertaining to sentencing for felonies.

MS. MARASIGAN, in response to a question, mentioned that the Public Defender Agency (PDA) submitted a zero fiscal note for SB 151 and provided testimony during the bill's Senate committee hearings, and that the bill as currently written was crafted with input from the PDA.

[1:38:44 PM](#)

TRISH SMITH, Director, Prevention & Intervention Services, Volunteers of America Alaska, said she supports SB 151, considering its adoption necessary in order to help [defendants with a FASD] be successful and avoid reoffending. Offering an example of a defendant with a FASD who wasn't able to understand given directions, she indicated that such people are often

unable to make the same mental connections that others without a FASD make with ease on a regular basis.

[1:43:57 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to questions, recounted his understanding of how the court already addresses mitigating factors; surmised that any defendant correctly found competent enough to stand trial for purposes of being convicted would also be competent enough to prove the existence of the proposed mitigating factor for purposes of sentencing; and predicted that under SB 151, illustrating the required nexus between the condition and the conduct won't be difficult in situations where the defendant is diagnosed with a FASD.

REPRESENTATIVE GRUENBERG referred to the language in proposed new AS 12.55.155(d)(20) that said a FASD "**means a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy**", and questioned how the existence of a FASD would be determined absent any information about or from the mother.

MS. MARASIGAN pointed out that there is already a procedure in place for determining the existence of a mental disease or defect - an existing mitigating factor - and explained that the intention is for the same sort of procedure to be used to determine the existence of a FASD - SB 151's proposed mitigating factor.

[1:53:17 PM](#)

L. DIANE CASTO, Prevention and Early Intervention Manager, Prevention and Early Intervention Services Section, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), after providing some information about how the presence of a FASD is currently being diagnosed via the use of diagnostic teams, added that for purposes of SB 151's proposed mitigating factor, determining the presence of a FASD, and the specific impacts of that FASD on the defendant, is possible even absent information from or about the defendant's mother.

REPRESENTATIVE GRUENBERG noted that the bill also contains language requiring of the FASD that it "**substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life**".

MS. CASTO, in response to further questions, acknowledged that the aforementioned diagnostic teams could serve as expert witnesses, and indicated that obtaining a diagnosis of a FASD would be incumbent on the defendants themselves - or their families or defense counsel - whereas defendants who've already been accurately diagnosed in the past as having a FASD won't have to be re-diagnosed in order to comply with the bill.

[2:06:23 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), in response to questions, explained that just as with an existing mitigating factor, what expert testimony would be required and by whom such testimony shall be presented would be decided by the court on a case-by-case basis and would depend on the specific facts of each case; and surmised that there could be cases in which the question of whether the defendant really does suffer from a FASD must be litigated.

MR. STEINER concurred, but ventured that in the majority of cases, the presence of the FASD will have already been established.

REPRESENTATIVE KELLER asked how often the proposed new mitigating factor would be sought.

MR. SVOBODNY relayed that the DOL was unable to obtain a consistent estimate and therefore submitted an indeterminate fiscal note.

REPRESENTATIVE KELLER surmised that SB 151 would provide the court with options when addressing defendants with an FASD.

MS. CASTO, in response to other questions, said that according to statistics, each year in Alaska approximately 15 babies are born with fetal alcohol syndrome (FAS), and an additional 155-160 babies are born with some level of disability due to prenatal exposure to alcohol, and therefore the total number of people with a FASD is increasing every year regardless that it's completely preventable.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on SB 151.

[2:15:55 PM](#)

REPRESENTATIVE KELLER moved to report CSSB 151(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 151(JUD) was reported from the House Judiciary Standing Committee.

[2:16:18 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:16 p.m.