

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 28, 2011

1:35 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire

MEMBERS ABSENT

Senator John Coghill

COMMITTEE CALENDAR

SENATE BILL NO. 30

"An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

- HEARD AND HELD

SENATE BILL NO. 61

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(S): SENATOR(S) DYSON

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	STA, JUD
02/03/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/03/11	(S)	Heard & Held
02/03/11	(S)	MINUTE(STA)
02/17/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/17/11	(S)	Moved CSSB 30(STA) Out of Committee
02/17/11	(S)	MINUTE(STA)

02/21/11 (S) STA RPT CS 4DP 1NR NEW TITLE
02/21/11 (S) DP: KOOKESH, PASKVAN, MEYER, GIESSEL
02/21/11 (S) NR: WIELECHOWSKI
02/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 61

SHORT TITLE: 2011 REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/24/11 (S) READ THE FIRST TIME - REFERRALS
01/24/11 (S) STA, JUD
02/15/11 (S) STA AT 9:00 AM BUTROVICH 205
02/15/11 (S) Heard & Held
02/15/11 (S) MINUTE(STA)
02/17/11 (S) STA AT 9:00 AM BUTROVICH 205
02/17/11 (S) Moved CSSB 61(STA) Out of Committee
02/17/11 (S) MINUTE(STA)
02/21/11 (S) STA RPT CS 2DP 3NR SAME TITLE
02/21/11 (S) DP: WIELECHOWSKI, MEYER
02/21/11 (S) NR: KOOKESH, PASKVAN, GIESSEL
02/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR DYSON

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 30.

CHUCK KOPP

Staff to Senator Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided information related to SB 30.

VICTOR KESTER, Executive Director

Alaska Office of Victims Rights

POSITION STATEMENT: Testified in support of SB 30.

RODNEY DIAL, Lieutenant

Alaska State Troopers
Department of Public Safety (DPS)

POSITION STATEMENT: Testified that DPS has no concerns with SB 30.

LES SYREN, Attorney

Anchorage, AK

POSITION STATEMENT: Testified on SB 30.

LON LAM, representing himself
Anchorage, AK

POSITION STATEMENT: Testified on SB 30.

KATHRYN KURTZ, Assistant Revisor of Statutes
Legislative Legal Services
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Presented SB 61.

ACTION NARRATIVE

[1:35:22 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Paskvan, McGuire and French. Senator Wielechowski arrived soon thereafter.

SB 30-RETURN OF SEIZED PROPERTY

[1:35:42 PM](#)

CHAIR FRENCH announced the consideration of SB 30.

[1:36:02 PM](#)

SENATOR DYSON, sponsor of SB 30, said the bill is about restorative justice. It is designed to enhance the process of returning property to victims whose property has been seized as a result of a crime. He became interested in the issue after a custom boat builder he knows lost \$40,000 worth of electronics one night. The builder got about two-thirds of his property back by visiting pawnshops and through Craigslist, but the police seized it as evidence and he had to repurchase the electronics. To avoid this situation, he said, some people don't report the theft of equipment; instead, they repossess it themselves.

Several years ago a law was passed so that a fisherman could get his nets back right away. However, a jeweler in Anchorage has been unsuccessful in recovering \$3,500 in inventory that law enforcement seized more than four years ago. He noted a letter from the Home Builder Association indicating the same problem. The Office of Victim Rights has said the same thing. Trooper Dial has testified that returning property in a timely manner is not a problem.

[1:41:07 PM](#)

CHUCK KOPP, staff to Senator Dyson, said the difference between the legislation introduced last year and this bill is that the Office of Victims Rights (OVR) would act as an intermediary to vet the claims to ensure they aren't frivolous. If a person can show a claim to property and the law enforcement agency does not show otherwise, OVR is able to request a hearing. The agency then has 10 days to request the court for a hearing. This gives victims a voice in the process and an opportunity for judicial intervention in the event that there is no resolution in getting their property back.

CHAIR FRENCH said page 2, lines 23-24, defines a crime victim to include any person who is the owner of property that's in the custody of a law enforcement agency, and he likes to call the person that has property in the custody of a law enforcement agency the defendant. He asked if this definition potentially makes all defendants crime victims.

MR. KOPP explained that they did that because the OVR statutes don't include the authority to identify this class of people. If a person was a suspect or defendant, OVR could easily explain why they wouldn't request a hearing for return of the property.

CHAIR FRENCH said we can trust OVR to know the difference.

MR. KOPP said they've been doing good advocacy with respect to the law for a number of years.

SENATOR PASKVAN pointed out that if the defendant was asserting property rights, he or she would have to waive the right to remain silent and that could be a problem.

CHAIR FRENCH said his concern was that OVR might be pestered by requests from defendants claiming to be a victim.

MR. KOPP agreed that could happen, but a defendant who is charged is not be able to get their property back because it's evidence of a crime. Also, with OVR as the intermediary, an automatic request isn't filed.

CHAIR FRENCH said he likes the idea of having OVR act as the clearing house.

[1:46:20 PM](#)

SENATOR WIELECHOWSKI joined the committee.

SENATOR DYSON said DOL suggested including OVR as the intermediary to avoid burdening the judiciary.

[1:47:02 PM](#)

VICTOR KESTER, Executive Director, Alaska Office of Victims Rights, said he was testifying in support of SB 30. It provides a mechanism for crime victims of theft to gain custody of their property in the course of a criminal prosecution. A crime victim may request a court hearing to seek release of his or her property that was recovered by law enforcement and was being held as evidence. The OVR seeks to work cooperatively with criminal justice agencies and other governmental agencies to help crime victims and to promote the interests of justice.

CHAIR FRENCH asked if the definition of "crime victim" on page 2 might pose a problem when OVR screens cases and determines which to pursue. He said he would work with the sponsor and the committee, but he was considering an amendment that says, "but does not include the defendant in a criminal case."

MR. KESTER said he would defer to the committee, but OVR is often asked to make a determination about who it can and cannot help. There have been instances where defendants have sought assistance and OVR has said no; OVR doesn't help criminal defendants. He has confidence that the OVR advocates would not use SB 30 as a way to help defendants get property that law enforcement was holding as evidence.

[1:51:08 PM](#)

CHAIR FRENCH said he would ponder this further.

SENATOR DYSON said sometimes the police seize property when it has nothing to do with the crime. He asked Mr. Kester about excluding a defendant's property if it wasn't related to the crime.

MR. KESTER said the purpose of SB 30 allows a mechanism for an individual to address the court if they make a threshold showing. The OVR functions as a clearing house to determine who meets that threshold requirement. If law enforcement has a position against the OVR position, there is a mechanism where all parties can go to the court and ask a judge for his or her perspective.

[1:54:36 PM](#)

CHAIR FRENCH summarized that both Senator Dyson and Mr. Kester are making the point that if the definition of "crime victim" is

inadvertently too broad, nothing is automatic. It all winds up in front of a judge.

MR. KESTER added that there needs to be a mechanism whereby people whose property wasn't involved in the crime have an expedited process to get access to their property. For example, a laptop may be held for an extended period causing the small business owner to be in a bind professionally.

CHAIR FRENCH asked Trooper Dial why this wasn't a problem for the Troopers.

[1:56:42 PM](#)

RODNEY DIAL, Lieutenant, Alaska State Troopers, Department of Public Safety (DPS) said the department supports the intent of SB 30 and has no concerns. For at least 20 years it's been standard practice to promptly return and dispose of all evidence retained in the trooper facilities. In the few cases that a person seeks to have property returned that the troopers think should be retained, they contact the district attorney's office to look at other options, such as taking photographs. His experience is that they've found some resolution in virtually all those situations. In the last decade the troopers have made a concerted effort to tighten the evidence facilities and insure that evidence is in and out as quickly as possible.

[1:57:59 PM](#)

LES SYREN, Attorney, said he was representing Lon Lam, a jewelry store owner in Anchorage.

LON LAM, representing himself, explained that the police called him in the middle of the night to come to his jewelry store. The police seized about 50 items worth between \$5,000 and \$10,000 because they believed they were related to a burglary.

MR. SYREN added that some of the property was on layaway so Mr. Lam had to return the money to his customers. This occurred in May 2007 and despite several written requests to the police, the property has not been returned. He has since learned that the jewelry is evidence in a criminal case currently on appeal. His clients have nothing to do with the criminal matter and have not been charged, but the jewelry in question somehow ended up in their store and was seized. He wonders why the DA couldn't take pictures of the jewelry or whatever was needed and let his client get his property back.

[2:03:27 PM](#)

CHAIR FRENCH commented that it was surprising that the property had been held for over 3.5 years and that there should be some process for resolution.

[2:04:17 PM](#)

CHAIR FRENCH closed public testimony and announced he would hold SB 30 in committee.

SB 61-2011 REVISOR'S BILL

[2:04:36 PM](#)

CHAIR FRENCH announced the consideration of SB 61.

[2:04:57 PM](#)

KATHRYN KURTZ, Assistant Revisor of Statutes, Legislative Legal Services, said the revisor's bill is called for in AS 01.05.036 and is aimed at revising rather than changing policy. The purpose is to correct or remove deficiencies, conflicts, and obsolete provisions and to otherwise improve the statutes.

The bulk of this year's bill relates to the administrative director of the Alaska Court System and makes the references to the title of that position consistent. The position was established in the constitution, but the title was not, so the bill switches to what the Court System prefers throughout the statutes. That was suggested by the AG's office. The bill also includes: name changes in five sections, renumbering of a couple of federal statutes, dropped references to Sheldon Jackson College because it is going away, a few obsolete date references and a few other miscellaneous changes.

CHAIR FRENCH said when he stressed-tested a few of the references in different sections they looked okay, but he would like an explanation for the name change on page 2, Section 4 to the "International Conference of Funeral Service Examining Boards."

MS. KURTZ explained that the conference changed its name to include "international" in 1997 and this simply makes the change to call them what they call themselves.

CHAIR FRENCH acknowledged that when he Googled "Conference of Funeral Services Examining Boards of the United States, Inc." he found there is a relationship between the two entities.

[2:07:43 PM](#)

SENATOR WIELECHOWSKI noted that the State Affairs Committee removed the provision on vulnerable adults from SB 61 and asked if this committee should consider adding that to one of the bills on vulnerable adults.

MS. KURTZ said after looking at that section again she decided it could conceivably involve a policy change and it would therefore be more appropriate to make the change in a substantive bill dealing with vulnerable adults.

SENATOR WIELECHOWSKI pointed out that there are substantive bills dealing with vulnerable adults before this committee.

MS. KURTZ said she couldn't give specific advice on those bills because she wasn't the drafter.

CHAIR FRENCH asked Senator Wielechowski to bring the information to his staff's attention.

CHAIR FRENCH questioned why page 5, line 10 now says "to report annually" as opposed to the previous direction "to annually report."

MS. KURTZ explained that their legal editors' preference was to avoid split infinitives.

[2:10:26 PM](#)

CHAIR FRENCH announced he would hold SB 61 in committee.

[2:10:47 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:10p.m.