

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 4, 2011

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Parole Board

Sarah J. Possenti

- CONFIRMATION ADVANCED

HOUSE BILL NO. 116 AM

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes by correcting the spellings of 'oxymorphone' and 'lorazepam' and providing an applicability section; and providing for an effective date."

- MOVED HB 116 AM OUT OF COMMITTEE

SENATE BILL NO. 78

"An Act relating to liability of certain limited liability organizations holding liquor licenses."

- MOVED CSSB 78(JUD) OUT OF COMMITTEE

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 & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 78

SHORT TITLE: LIQUOR LICENSE HOLDER LIABILITY

SPONSOR(s): SENATOR(s) MCGUIRE BY REQUEST

02/04/11 (S) READ THE FIRST TIME - REFERRALS
02/04/11 (S) L&C, JUD
03/22/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/22/11 (S) Heard & Held
03/22/11 (S) MINUTE(L&C)
03/29/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/29/11 (S) Moved SB 78 Out of Committee
03/29/11 (S) MINUTE(L&C)
03/30/11 (S) L&C RPT 5DP
03/30/11 (S) DP: EGAN, GIESSEL, DAVIS, PASKVAN,
MENARD
04/01/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/01/11 (S) Heard & Held
04/01/11 (S) MINUTE(JUD)
04/04/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 116

SHORT TITLE: CORRECT SPELLING OF LORAZEPAM/OXYMORPHONE

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/21/11 (H) READ THE FIRST TIME - REFERRALS
01/21/11 (H) JUD
02/16/11 (H) JUD AT 1:00 PM CAPITOL 120
02/16/11 (H) Moved Out of Committee
02/16/11 (H) MINUTE(JUD)
02/18/11 (H) JUD RPT 5DP
02/18/11 (H) DP: LYNN, THOMPSON, PRUITT, KELLER,
GATTO
03/25/11 (H) TRANSMITTED TO (S)
03/25/11 (H) VERSION: HB 116 AM
03/28/11 (S) READ THE FIRST TIME - REFERRALS
03/28/11 (S) JUD
04/04/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(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)
02/28/11 (S) Heard & Held
02/28/11 (S) MINUTE(JUD)
03/18/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/11 (S) Heard & Held
03/18/11 (S) MINUTE(JUD)
03/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/11 (S) Moved CSSB 30(JUD) Out of Committee
03/21/11 (S) MINUTE(JUD)
03/22/11 (S) JUD RPT CS 2DP 2NR NEW TITLE
03/22/11 (S) DP: FRENCH, COGHILL
03/22/11 (S) NR: WIELECHOWSKI, PASKVAN
03/22/11 (S) FIN REFERRAL ADDED AFTER JUD
03/25/11 (S) RETURNED TO JUD COMMITTEE
04/04/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SARAH POSSENTI, Appointee
Parole Board
Anchorage, AK

POSITION STATEMENT: Testified as appointee to the Parole Board

JERRY LUCKHAUPT, Assistant Revisor of Statutes
Alaska Legal Services
Legislative Affairs Agency

POSITION STATEMENT: Introduced HB 116 on behalf of Rules by request of Legislative Council.

DOUGLAS MOODY, Deputy Public Defender
Public Defender Agency
Anchorage, AK

POSITION STATEMENT: Suggested a change to SB 30.

CHARLES KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained the amendment that DOL suggested to SB 30.

ANNE CARPENETI, Assistant Attorney General
Criminal Division

Department of Law (DOL) said Attorney General Burns believes that the language in subsection

POSITION STATEMENT: Testified that the language in subsection (d) of version D for SB 30 is too restrictive.

DOUGLAS MOODY, Assistant Public Defender
Public Defender Agency

said he believes that

POSITION STATEMENT: Offered his belief that the language in subsection (c)(2) of SB 30 will breed problems.

ACTION NARRATIVE

[1:33:37 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Senators Coghill, Wielechowski, Paskvan, McGuire, and French were present at the call to order.

CONFIRMATION HEARING

PAROLE BOARD

[1:34:12 PM](#)

CHAIR FRENCH announced the first order of business would be a confirmation hearing. He asked Ms. Possenti to tell the committee about her interest in serving on the Parole Board.

[1:34:32 PM](#)

SARAH POSSENTI, Appointee, Parole Board, stated that she was born and raised in Fairbanks and received bachelors' degrees in criminal justice and social work at UAF. She was a probation/parole officer for 11 years and after she reduced her work hours she became interested in serving on the parole board.

CHAIR FRENCH asked if she has attended Parole Board hearings in the capacity of a member.

MS. POSSENTI replied she has observed hearings.

CHAIR FRENCH asked if all her time as a probation/parole officer was spent in the Fairbanks area.

MS. POSSENTI said yes; she specialized in supervising sex offenders for eight years when she was in the field office and she worked in an institution as a probation officer the last three years.

CHAIR FRENCH asked if she made recommendations for and against granting parole or simply provided information when she appeared before the Parole Board as a probation officer.

MS. POSSENTI replied she made recommendations both when she worked in the field office and when she worked in the institution. When she was in the field office she went before the Parole Board primarily for parole violations. She would make recommendations about release, treatment, halfway houses, or some combination. As an institutional parole officer she would write reports and make recommendations about granting discretionary parole.

[1:38:05 PM](#)

CHAIR FRENCH said he's pleased that she has extensive experience working with sex offenders and can bring insight into their behavior.

MS. POSSENTI added that when she worked in the sex offender unit she co-facilitated the treatment groups and attended numerous trainings. When polygraphs were implemented in Fairbanks she worked with the Colorado unit and learned about wraparound services that ensure that all areas of a sex offender's life are being watched.

CHAIR FRENCH noted that Senator McGuire was an early proponent of the containment model and spent considerable time educating others to its benefits. Finding no further questions, he asked for a motion.

[1:39:54 PM](#)

SENATOR WIELECHOWSKI moved to forward the name Sarah Possenti to the full body for consideration. There being no objection, it was so ordered.

CHAIR FRENCH noted that Senator Coghill asked to speak to the previous name that the committee forwarded.

[1:40:28 PM](#)

SENATOR COGHILL said he wanted to apologize to the committee for voting "Yes" on the appointment of Don Haase when the motion was for the committee to vote "No" on the appointment. He said he

removed his objection thinking that the motion was for individual recommendations. He extended apologizes to the committee and to Mr. Haase who he does support.

CHAIR FRENCH said no apology is necessary and everyone is free to vote as they like on the floor.

HB 116-CORRECT SPELLING OF LORAZEPAM/OXYMORPHONE

[1:41:47 PM](#)

CHAIR FRENCH announced the consideration of HB 116 and asked Mr. Luckhaupt to tell the committee why this needs to be a bill.

[1:42:12 PM](#)

JERRY LUCKHAUPT, Assistant Revisor of Statutes, Alaska Legal Services, Legislative Affairs Agency, explained that these drugs were misspelled in the initial 1981 drafting request. He intended to correct the misspellings in the regular revisor's bill, but he had to insert an applicability section and decided it was better to address the issue separately. The intention is to do no harm to the criminal law and express that the Legislature did not intend to criminalize the possession of something that doesn't exist. It appears that the Legislature intended to include these other drugs back then, he stated.

CHAIR FRENCH asked Mr. Moody if anyone was prosecuted under these misspellings or if it was grounds for dismissal.

[1:44:07 PM](#)

DOUGLAS MOODY, Deputy Public Defender, Public Defender Agency, said he doesn't recall the misspellings being an issue, but he can't say with 100 percent certainty that no case was ever dismissed because of the misspelling. "I certainly would have argued it if I'd had a lorazepam case and realized that the statute was misspelled," he added.

CHAIR FRENCH asked Mr. Luckhaupt if he's absolutely certain that lorazepam and oxymorphone are spelled correctly this time.

MR. LUCKHAUPT answered yes and added that oxymorphone is spelled both ways on the DEA website so it took more than a little research to get that one straight.

[1:45:44 PM](#)

SENATOR WIELECHOWSKI referenced the applicability section on page 4 and questioned the legality of applying it to crimes committed before, on, or after the effective date.

MR. LUCKHAUPT explained that this attempts to clarify that this is what the Legislature meant when it added the drugs to the statutes in 1982. Both lorazepam and oxymorphone were part of the federal schedules at the time and this clarification is an attempt to avoid calling into question anyone who may have been prosecuted under the misspellings. It states the intent then, the intent now, and the intent in the future.

CHAIR FRENCH asked to what oxymorphone refers.

MR. LUCKHAUPT replied it's a semi-synthetic opioid that is often used intravenously as a pain medication. Lorazepam is marketed under the name "Ativan" and is used to relieve anxiety.

CHAIR FRENCH commented that in high doses it's a tranquilizer.

CHAIR FRENCH found no further questions, discussion, or concern and asked for a motion.

[1:49:02 PM](#)

SENATOR WIELECHOWSKI moved to report HB 116 am from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, HB 116 am moved from the Senate Judiciary Standing Committee.

At ease from 1:49 p.m. to 1:50 p.m.

SB 78-LIQUOR LICENSE HOLDER LIABILITY

[1:50:33 PM](#)

CHAIR FRENCH announced the consideration of SB 78 and noted that Senator Paskvan had an amendment to offer. He removed his objection to the adoption of the CS that was pending from the previous hearing and announced that version B was before the committee.

[1:51:12 PM](#)

SENATOR PASKVAN moved to adopt Amendment 1, labeled 27-LS0282\B.1.

CHAIR FRENCH objected for discussion purposes.

SENATOR PASKVAN explained that the purpose of the amendment is to limit the liability exposure to the owner's insurance policy and/or the taxicab or limousine company's insurance policy under

SB 78. The service doesn't fall entirely under the Good Samaritan concept because the professional company is being paid for the service it provides. Professional drivers are engaged and it makes sense that the company's insurance coverage should respond if their drivers hurt someone.

CHAIR FRENCH summarized that this puts the taxicab company's insurance in place if the vehicle owner's insurance isn't in place when a driver delivers the vehicle home.

SENATOR PASKVAN clarified that it's potentially both policies.

CHAIR FRENCH asked Senator McGuire if she'd looked at the amendment.

[1:52:48 PM](#)

SENATOR MCGUIRE said she doesn't know the implications for the program, but at this stage she's willing to accept it and move forward.

CHAIR FRENCH said he'd like to know if it jeopardizes the program. He added that he initially wasn't aware that the companies are paid to drive these cars home. Because they are being paid and these are professional drivers, it seems less likely that the taxicab company would object to having their insurance in place.

CHAIR FRENCH removed his objection and announced that with no further objection Amendment 1 is adopted. Finding no further discussion, he asked for a motion.

[1:54:06 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 78, version B as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 78(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:54 p.m. to 1:56 p.m.

SB 30-RETURN OF SEIZED PROPERTY

[1:56:04 PM](#)

CHAIR FRENCH announced the consideration of SB 30 and asked for a motion to adopt the proposed committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt the proposed CS for SB 30, labeled 27-LS0344\E, as the working document.

CHAIR FRENCH objected for discussion purposes and asked the sponsor to tell the committee what the new CS does.

[1:56:47 PM](#)

SENATOR FRED DYSON, sponsor of SB 30, stated that the committee reported the bill from committee on 3/21/11 and subsequent to that the Department of Law (DOL) contacted him to suggest a change in language. He agreed and the bill was returned to this committee to potentially adopt the proposed amendment.

[1:57:21 PM](#)

CHARLES KOPP, staff to Senator Fred Dyson, explained that the amendment makes the following changes to version D:

Page 2, line 6, insert the following sentence at the beginning of subsection (c): "At the hearing, a party that objects to the return of the property shall state the reason on the record."

Page 2, line 11, delete the words "is authorized" and insert the word "needs"

Page 2, line 12, following the word "property" insert the phrase "for evidentiary purposes as authorized in this chapter."

Page 2, lines 13-18, delete the language in subsection (d) and insert the following language:

If the court orders the return of the property to the crime victim, the court may impose reasonable conditions on the return. Those conditions may include an order that the crime victim retain and store the property so that the property is available for future court hearings, requiring photographs of the property to be taken, or any other condition the court considers necessary to maintain the evidentiary integrity of the property.

[1:59:45 PM](#)

CHAIR FRENCH asked Ms. Carpeneti to discuss DOL's reasoning in suggesting the changes.

[2:00:09 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL) said Attorney General Burns believes that the language in subsection (d) of version D is too

restrictive. DOL agreed and suggested a redraft to give the court more discretion in ordering conditions for the return of evidence in individual cases.

CHAIR FRENCH noted a letter of support from the National Federation of Independent Businesses. He asked Mr. Moody if he had reviewed the bill and had any suggestions to offer.

DOUGLAS MOODY, Assistant Public Defender, Public Defender Agency, said he believes that the language in subsection (c)(2) on page 2 will breed problems because the law enforcement agency and the defense are frequently at odds as to whether the evidence should be retained. The defense should be able to make its own case at the hearing.

CHAIR FRENCH asked what he is suggesting.

MR. MOODY suggested the following language:

the law enforcement agency for the defendant in a criminal case fails to prove by a preponderance of the evidence that the agency, the defendant, or another interested party ...

We don't want DOL to carry our water, he said. It's our need and our burden and it should fall on us.

[2:05:10 PM](#)

CHAIR FRENCH asked the sponsor to respond.

MR. KOPP said he hasn't discussed this with the sponsor, but the suggested language seems to be consistent with the language in subsection (b) on page 1 as to who gets notice.

SENATOR DYSON said he sees no harm listing the defense in the first paragraph on page 1.

[2:07:53 PM](#)

CHAIR FRENCH called an at ease from 2:07 p.m. to 2:10 p.m.

[2:10:57 PM](#)

CHAIR FRENCH said there's a suggestion to add both the prosecution and the defense on page 2, line 11.

MR. KOPP pointed out that page 2, line 6, says that anyone who objects to the return of the evidence shall state the reason on the record. The inference is that it's coming before the court.

CHAIR FRENCH said he believes it needs to be redrafted to say that the court has found that in the interest of justice it's appropriate to release the property. It seems odd to say all three have to overcome their own burden.

[2:12:11 PM](#)

SENATOR WIELECHOWSKI said another suggestion is to replace "the law enforcement agency" with "the party that objects" to put the burden of the preponderance of the evidence onto that party.

CHAIR FRENCH said that makes it clear.

SENATOR PASKVAN said he agrees with that.

CHAIR FRENCH asked Ms. Carpeneti what she thinks about Senator Wielechowski's suggested language. It keeps non interested parties from having to do anything.

MS. CARPENETI said she'd prefer it says, "a party that objects" because there could be two parties.

SENATOR WIELECHOWSKI asked about adding "and a court finds that it is in the best interest to return..." because the judge may believe that the evidence should be retained even if no one came forward.

CHAIR FRENCH said subsection (d) takes care of that when it says the court may impose reasonable conditions.

SENATOR WIELECHOWSKI asked if this gives the court sufficient latitude. For example, if a pro se defendant doesn't show up for the hearing they haven't proved by a preponderance of the evidence but the court may still believe that it's in the best interest to retain the evidence.

CHAIR FRENCH said judges aren't supposed to do that and the law enforcement agency will be present in any case.

SENATOR DYSON reminded the committee that the bill relates to property crimes and it seeks to keep the victim from being victimized a second time. If there's a disagreement as to whether the property is returned, the judge decides.

[2:16:03 PM](#)

CHAIR FRENCH announced he would hold SB 30 in committee awaiting a new draft.

2:16:53 PM

There being no further business to come before the committee,
Chair French adjourned the meeting at 2:16 p.m.