

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 3, 2011

9:00 a.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Chair
Senator Kevin Meyer
Senator Catherine Giessel

MEMBERS ABSENT

Senator Joe Paskvan, Vice Chair
Senator Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 7

"An Act relating to the civil rights of felons."

- HEARD AND HELD

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

PREVIOUS COMMITTEE ACTION

BILL: SB 7

SHORT TITLE: FELONS' RIGHT TO VOTE OR BE JURORS

SPONSOR(s): SENATOR(s) DAVIS

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

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

WITNESS REGISTER

SENATOR BETTYE DAVIS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 7.

TOM OBERMEYER, Staff to Senator Bettye Davis
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 7 for the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK

POSITION STATEMENT: Answered questions regarding SB 7.

ALPHEUS BULLARD, Attorney
Legal Services
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Answered questions regarding SB 7.

CARMEN GUTIERREZ, Deputy Commissioner
Department of Corrections
Anchorage, AK

POSITION STATEMENT: Explained provisions of SB 7.

DR. ALONZO PATTERSON, Pastor
Shiloh Baptist Church
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 7.

CAL WILLIAMS, Vice President
NAACP of Anchorage
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 7.

TROY BUCKNER, President
Anchorage Urban League
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 7.

SENATOR FRED DYSON
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Sponsor of SB 30.

CHUCK KOPP, Staff to Senator Fred Dyson
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Explained provisions of SB 30.

VICTOR KESTER, Executive Director
Alaska Office of Victims Rights
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 30.

LIEUTENANT RODNEY DIAL
Alaska State Troopers
Juneau, AK
POSITION STATEMENT: Answered questions concerning SB 30.

ACTION NARRATIVE

[9:00:07 AM](#)

CHAIR BILL WIELECHOWSKI called the Senate State Affairs Standing Committee meeting to order at 9:00 a.m. Present at the call to order were Senators Giessel, Meyer, and Chair Wielechowski. Senators Paskvan and Kookesh were excused.

SB 7-FELONS' RIGHT TO VOTE OR BE JURORS

[9:00:42 AM](#)

CHAIR WIELECHOWSKI announced the first order of business would be SB 7.

SENATOR DAVIS, sponsor of SB 7, stated this is not the first time this bill has been introduced, but it is an important issue.

[9:01:19 AM](#)

TOM OBERMEYER, staff to Senator Bettye Davis, noted that currently the right to vote remains suspended from the date of a felony conviction to the date of release from all provisions of the sentence, including probation and parole. Harsher sentencing laws have allowed the prison population to balloon, while reducing rehabilitative programs to almost nonexistent. Article 1, Section 12, of the Alaska Constitution requires that criminal administration shall be based upon the philosophy of

reformation. He stated that in 2009 more than 10,000 Alaskans were ineligible to vote pursuant to this provision. In Alaska the prison population increased from 800 prisoners in 1984 to over 5,000 prisoners in 2008, an increase of over 600 percent. Of those incarcerated in Alaska, 48 percent were Caucasian and 52 percent were minorities.

MR. OBERMEYER said that felons face discrimination as they try to reenter society, and that restoring the right to vote is critical to successful reentry into society after incarceration, and is consistent with the modern ideal of universal suffrage. He added that SB 7 would limit disenfranchisement to those actually incarcerated, and would give felons the right to vote upon release. Felon disenfranchisement standards rest on outdated practices, and former U.S. Supreme Court Justice Marshall said it is doubtful whether any state can demonstrate a compelling interest in denying felons the right to vote.

MR. OBERMEYER noted that the bill has a zero fiscal note.

[9:06:54 AM](#)

SENATOR MEYER asked how "moral turpitude" is defined.

MR. OBERMEYER replied it is defined under AS 15.80.010(9) [AS 15.05.030(a)] as "those crimes that are immoral or wrong themselves, such as murder." There appears to be no statutory reference to felonies not involving moral turpitude.

SENATOR MEYER then asked for a definition of "unconditional discharge."

[9:09:18 AM](#)

MR. OBERMEYER responded that is a better question for Ms. Gutierrez, but the purpose of SB 7 is to let felony offenders vote immediately upon release from prison, regardless of unconditional discharge.

SENATOR MEYER asked if a person still on probation has served his or her full sentence.

MR. OBERMEYER responded that probation is a historic process of allowing people to perform while out of prison. The only way to easily administer this bill is to give released felons the right to vote immediately. He noted that if they are reincarcerated, then their voting rights can be taken away again. They have served good time in order to get parole, and hopefully are better citizens when they are released.

SENATOR MEYER stated concern that a person still on parole could serve on a jury if SB 7 passes.

[9:12:40 AM](#)

MR. OBERMEYER replied that there is no way to know what people will do once released; but hopefully they want to do the right thing, and that continued retribution hinders the process of reintegrating into society.

SENATOR GIESSEL said that some of the felonies that involve moral turpitude are sexual abuse, incest, perjury, child pornography, endangering the welfare of a minor, and misuse of controlled substances. Some of these have high recidivism rates, and she is concerned about giving felons the right to vote while on probation. Current law says that after a felon has completed parole or probation, their rights are restored; in fact, more than 17,000 felons had their voting rights restored in 2008-2009.

[9:14:35 AM](#)

MR. OBERMEYER said he doesn't see this as a problem, and noted that some states don't even take voting rights away upon a felony conviction. He further stated that the Alaska constitution is pointing toward a model of rehabilitation and reformation. People must have their civil rights restored in order to be able to vote. With modern procedures, the Division of Elections can change a person's status on-line. Mr. Obermeyer also said that the ACLU cites a study indicating that the numbers of people who have been re-enfranchised shows a link between voting participation and re-offense; those who vote are half as likely to be re-arrested.

[9:18:53 AM](#)

CHAIR WIELECHOWSKI noted this is a good discussion to have, because recidivism is a revolving door and the costs to the state are enormous.

[9:19:26 AM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL), stated the department's concerns with SB 7 are legal, not philosophical, although the criminal division does have concerns about people who are recently released from incarceration serving on juries. Philosophically, the DOL shares the sponsor's concerns. She explained that the legal issue is difficult, because the constitution is very clear; there is no right to vote until the person's civil rights

are restored. Serving on a jury or possessing a handgun, for instance, are civil rights and being on probation or parole does restrict a person's civil rights.

[9:21:50 AM](#)

SENATOR MEYER asked if being on probation is part of a person's sentence.

MS. CARPENETI replied yes, probation is still part of the sentence and the conditions of probation do limit a person's civil rights.

[9:22:38 AM](#)

SENATOR MEYER stated the voting part doesn't bother him as much as someone serving on a jury while still on probation.

MS. CARPENETI responded that a person becomes part of the jury pool by virtue of applying for a PFD.

SENATOR MEYER asked if a person serving a sentence may receive a PFD.

MS. CARPENETI replied that PFDs are suspended for most felons. She emphasized that the Department of Law does not have a position on SB 7 at this point, but there are practical issues that need to be considered.

[9:24:03 AM](#)

CHAIR WIELECHOWSKI asked what part of the constitution she was referring to.

MS. CARPENETI said that it was Article 5, Section 2.

CHAIR WIELECHOWSKI read from that document, "No person may vote who has been convicted of a felony, until that person's civil rights have been restored." So the question remains, at what point a person's civil rights are restored.

MS. CARPENETI responded that under current law, a person who has been convicted of a felony can vote when the conditions of probation and parole have been satisfied. She noted that definition is in statute.

[9:25:20 AM](#)

CHAIR WIELECHOWSKI asked if restoration is automatic or part of a process.

MS. CARPENETI responded that she believes they can just go to the Division of Elections and register.

CHAIR WIELECHOWSKI asked Mr. Obermeyer to walk the committee through the bill.

[9:26:20 AM](#)

MR. OBERMEYER said that Section 1 would change AS 9.20.020(2) from a person being disqualified from serving as a juror until unconditional discharge to being disqualified until release from prison.

CHAIR WIELECHOWSKI asked if unconditional discharge is automatic.

MR. OBERMEYER answered that the disability has to be removed by the Department of Corrections, and they send information to the Division of Elections, then the person has to go the Division of Elections and reapply. In the past, this happened after unconditional discharge. He noted that in some cases, restitution is also involved, which makes it more difficult for people to have their civil rights restored.

[9:29:35 AM](#)

He further explained that Section 2 changes AS 15.05.30(a) to provide that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law will be advised of voter registration requirements and procedures upon release, and the Division of Corrections will notify the Division of Elections that the person is entitled to be registered as a voter. Section 3 changes AS 15.07.135 to provide that the voter registration of a person convicted of a crime involving moral turpitude will be cancelled only while that person is incarcerated, instead of until that person's unconditional discharge from custody. Section 4 changes AS 33.30.241(a) to provide that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law is disqualified from voting while incarcerated instead of being disqualified from voting until the person's unconditional discharge.

[9:30:58 AM](#)

CHAIR WIELECHOWSKI asked why SB 7 includes federal law.

MR. OBEMEYER responded that many felony offenders, including most drug offenses, wind up in federal prisons. He further stated that Section 5 changes AS 33.30.241(b) as it relates to

jury duty, and Section 6 repeals AS 15.60.010(39), a definition of unconditional discharge, and AS 33.30.241(c), a definition of unconditional discharge.

[9:32:31 AM](#)

ALPHEUS BULLARD, Attorney, Legal Services, Alaska State Legislature, explained that "federal" is added on page 2, line 28, to create a consistent standard. If someone is able to vote for governor or for mayor, they should be able to vote for their senator as well.

CHAIR WIELECHOWSKI asked what the current law is.

MR. BULLARD replied he believes a convicted felon who has not been unconditionally discharged is unable to vote in a federal election.

CHAIR WIELECHOWSKI asked what is being repealed in Section 6, with the reference to AS 33.30.241(c).

MR. BULLARD responded that it is a conforming reference to the definition of unconditional discharge that is found at AS 12.55.185.

CHAIR WIELECHOWSKI asked, "In your opinion is there a constitutional issue with this bill?"

MR. BULLARD stated that he does not have a legal opinion on that issue. He further stated that Article 5, Section 2 of the Alaska State Constitution provides that a person who has convicted of a felony cannot vote until his civil rights have been restored. What "civil rights being restored" means for the purpose of this clause has not been explored by our state's courts.

[9:36:19 AM](#)

CARMEN GUTIERREZ, Deputy Commissioner, Department of Corrections (DOC), explained she is responsible for prisoner rehabilitation and re-entry. She said that DOC is committed to upholding its constitutional responsibility to provide reform and rehabilitation for persons under its jurisdiction, and she emphasized that they are trying to provide rehabilitative services in their institutions, and are very supportive of efforts to reintegrate prisoners into the community. She noted that in 2008 the DOC released 287 convicted felons every month. If these people are not successfully reintegrated they come back; Alaska's recidivism rate is 66 percent, and most are within the first year of release.

MS. GUTIERREZ further noted that page 2 of SB 7, under (b), states "the commissioner of corrections shall notify the director that the person is entitled to be registered." She said this language makes it appear that the commissioner is being asked to render a legal opinion, and it may be better stated that the person has been released from custody.

MS. GUTIERREZ also said that, with regard to the impact of SB 7 on the department, when an individual is unconditionally discharged from probation, meaning he or she has satisfied all conditions of probation DOC issues a notice both to the probationer and the Division of Elections. She noted it may be helpful at this point to understand the differences between parole and probation, and between mandatory and discretionary parole. Discretionary parole is when an individual asks for early release; if the parole board finds it appropriate, the person will be released early. Mandatory parole comes when an offender receives the benefit of good time credit, which most offenders do; one-quarter of their sentence is reduced for good behavior. She further explained that probation is usually part of a person's sentence, and that mandatory parole and probation are served at the same time; probation can be anywhere from three to five to ten years. In 2008 the DOC released just over 1,700 people on to parole and almost 7,000 on to probation. Today the DOC has about 6,000 individuals on probation, and approximately 850 are on abscond status, meaning they are no longer reporting, and warrants have been issued for their arrest.

[9:44:04 AM](#)

MS. GUTIERREZ further explained that the second issue for consideration is the filing of petitions to revoke because of failure to comply with probation requirements. Over a six month period, a snapshot review showed the Anchorage probation department filed 178 - 200 revocation petitions every month. When a petition to revoke probation is filed, she said, sometimes the person is arrested quickly, sometimes not. So there could be some record keeping logistics in terms of verifying who is incarcerated and who is not. She emphasized that this is something to be aware of, but the DOC remains supportive of all efforts to rehabilitate, consistent with preserving public safety.

[9:46:25 AM](#)

CHAIR WIELECHOWSKI noted the ACLU says that recent research finds a link between voting participation and re-offense, in

which people who voted after release were half as likely to be re-arrested as those who didn't. He asked if the DOC agrees.

MS. GUTIERREZ stated she was unaware of this research, and her consultant was unaware of it, but she would like to review the research. She finds it very interesting and compelling, but can't yet comment on it.

CHAIR WIELECHOWSKI responded that if restoration of voting rights can reduce recidivism, then we are talking about a huge savings to state.

MS. GUTIERREZ stated that recidivism can be reduced by just 10 percent it would be a huge savings to the state and to the citizens, because fewer new victims would be created and our communities would be safer and healthier.

CHAIR WIELECHOWSKI asked Ms. Gutierrez to check with her consultants and see if they agreed with this research, because that would be a very compelling reason to pass SB 7. Reducing recidivism and preventing future crimes, he stated, would have a very positive impact on the state. He then asked if a person is automatically discharged once they have completed the conditions of their probation and parole.

MS. GUTIERREZ replied that when a person has satisfied the conditions of their probation or parole, they are given a document that states they are unconditionally discharged, and at that point they can register to vote.

CHAIR WIELECHOWSKI asked if the DOC has any problems with providing written notification of the unconditional release.

MS. GUTIERREZ replied that the DOC is already doing that.

[9:50:32 AM](#)

DR. ALONZO PATTERSON, Pastor, Shiloh Baptist Church, Anchorage, said he has served with the parole system for thirteen years and that he supports SB 7 to help people being released from prison feel they are a part of society. When a person is released, the institution says they are rehabilitated, but fulfilling their obligations can go on for years, in some cases because of a technicality. Dr. Patterson stated that he is supportive of felons having the right to vote as soon as they are released from jail.

[9:55:17 AM](#)

CAL WILLIAMS, Vice President, NAACP of Anchorage, stated that he served as a commissioner on the prison industry commission, and that the right to vote is a key factor in reducing recidivism. He further stated that the NAACP stands for rehabilitation and reintegration into society, and that the NAACP of Anchorage supports SB 7.

TROY BUCKNER, President, Anchorage Urban League, said the League's focus is economic and educational parity for people of color and poor people, and that the Anchorage Urban League supports SB 7.

[10:00:25 AM](#)

CHAIR WIELECHOWSKI announced that SB 7 would be set aside for further consideration.

SB 30-RETURN OF SEIZED PROPERTY

[10:01:15 AM](#)

CHAIR WIELECHOWSKI announced consideration of SB 30.

SENATOR FRED DYSON, sponsor of SB 30, said the bill is about restorative justice. Last year an identical bill, SB 297, made it through the Judiciary Committee but no further. He said SB 30 is designed to further enhance the process of returning property to victims whose property has been seized as a result of a crime. In AS 12.36.020, the legislature added a separate paragraph stating that if commercial fishing nets have been stolen, those need to be returned right away. He knows of a custom boat builder who was building a \$300,000 boat, and one night \$40,000 worth of electronics disappeared. The builder got about two-thirds back through visiting pawnshops and Craigslist, but the police took it as evidence and he had to repurchase \$40,000 worth of gear. To avoid this situation, he said, some people don't report the theft of equipment; instead, they repossess it themselves.

[10:05:19 AM](#)

CHUCK KOPP, Staff to Senator Fred Dyson, said SB 30 gives property owners the right to request a hearing for the return of their property from police custody, and also requires that the hearing request be submitted to the court. The court may order return of the property upon satisfactory proof of ownership. As the law changes, the agency could be in a position to show the court that they can or cannot have the property returned. He further explained that SB 30 provides the court may impose

reasonable conditions on an owner reclaiming property. Police are often cast in the role of advocates for business owners, and would like to return property to the owner as soon as possible, but the defense may resist for various reasons. The court may say you can use the property, but not lease or sell it. This right of hearing for property owners is not currently provided in law, which imposes a heavy burden on victims. Mr. Kopp added that SB 30 is supported by the Alaska Peace Officers Association and the Office of Victims Rights, and that the intent is not to jeopardize prosecutions, but to make sure that evidence is only held as long as absolutely necessary.

[10:10:28 AM](#)

CHAIR WIELECHOWSKI brought up the case in the Mat-Su Valley where dogs were seized and are currently in custody, and asked if the owner in that case could request return of the dogs.

MR. KOPP responded that under SB 30, the owner could request return of the dogs, but he did not believe a judge would allow them to be returned. In that case, the judge would probably calendar a hearing after the trial date.

CHAIR WIELECHOWSKI asked what would be the standard for a judge analyzing cases.

MR. KOPP replied that the court often makes determinations by talking to both counsel and looking at the weight of evidence; nothing in SB 30 prevents the court from making individual determinations.

CHAIR WIELECHOWSKI noted that currently a person can file a civil lawsuit requesting return of property, and asked what SB 30 changes.

MR. KOPP said an owner may request return of his property without filing a lawsuit, and the court may impose reasonable conditions on an order claiming property under this section.

CHAIR WIELECHOWSKI asked what agency would be involved.

MR. KOPP answered any agency which is responsible for the enforcement or the prosecution of the law, such as state troopers or municipal police, and the Department of Law.

CHAIR WIELECHOWSKI asked if the DOL would be required to go to court.

MR. KOPP explained that the DOL would be required to file the request for a hearing, and court could calendar the hearing at its discretion.

CHAIR WIELECHOWSKI asked why SB 30 has an undetermined fiscal note.

[10:15:48 AM](#)

MR. KOPP replied that the fiscal note is undetermined at present, because the Department of Law doesn't know how many people will request hearings; however, they do not expect a rush of hearing requests.

CHAIR WIELECHOWSKI opened public testimony.

VICTOR KESTER, Executive Director, Office of Victims Rights (OVR), testified in support of SB 30. The OVR believes SB 30 provides an important mechanism for property owners, because often property crime victims have to wait months if not years for return of their property. SB 30 would allow a victim to request a hearing before a judge, and work with others to determine the best interests of justice. Mr. Kester noted that the OVR believes in the principle of restorative justice, and said that SB 30 appropriately balances the interests of those involved.

[10:19:15 AM](#)

CHAIR WIELECHOWSKI asked if anyone was present from the Alaska State Troopers or the Court System.

RODNEY DIAL, Lieutenant, Alaska State Troopers, Department of Public Safety (DPS), said the DPS is officially neutral on SB 30, and that the standard practice is to return property as quickly as possible. Sometimes ownership is contested, so in that case a court hearing would be good thing. He has supervised evidence facilities and can't think of a case where someone has needed property back immediately and did not receive it; they always try to find means to make that happen, such as photographing property.

CHAIR WIELECHOWSKI asked how many cases involve taking possession of evidence.

LIEUTENANT DIAL replied that most cases result in evidence being taken in some manner; maybe 10,000 cases per year, statewide, result in property being seized and put into facilities. The goal is always to get the property returned as soon as possible.

In some cases, the property is forfeited to the state, or destroyed because it is contraband. He further stated that he has supervised evidence facilities in Southeast Alaska for six years, and can't remember a case where he was not able to quickly get critical equipment or property returned to an owner.

CHAIR WIELECHOWSKI stated one concern is that, if you have 10,000 cases where evidence is seized, and if even ten percent of people ask for hearings, there is potential for thousands of cases going to court.

LIEUTENANT DIAL said the request would probably go through him, as a facilities manager, and he would probably call the district attorney to resolve the problem; if SB 30 passed, he would do the same thing, and the DA's office would have to determine if it wanted to request a hearing or return the evidence. He would not expect the request for a court hearing to be made in most cases.

CHAIR WIELECHOWSKI asked what kind of evidence is typically seized.

LIEUTENANT DIAL answered that the vast majority is physical evidence, such as recordings and photos. In a property crime they would seize stolen property that they recover. If it is stolen property, they would prefer to retain the item for trial, and most people agree.

CHAIR WIELECHOWSKI asked if he was aware of cases where people were forced to file a civil suit.

LIEUTENANT DIAL replied that in 20 years he has not seen that.

CHAIR WIELECHOWSKI asked if it was a problem in other jurisdictions.

LIEUTENANT DIAL said he has been stationed at every geographic location in the state and has not seen a problem, because the policy is always to return evidence as soon as possible.

[10:27:44 AM](#)

SENATOR GIESSEL asked him to define "as soon as possible."

LIEUTENANT DIAL said the idea is to return the property immediately. There are cases where it's possible to photograph the property on scene and return it right away; in more complex cases, such as felony cases, it can be a matter of days.

10:28:46 AM

CHAIR WIELECHOWSKI announced he would hold SB 30 for further consideration.

10:29:09 AM

There being no further business to come before the committee, Chair Wielechowski adjourned the Senate State Affairs Standing Committee meeting at 10:29 a.m.