

**ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE**

March 31, 2014

8:05 a.m.

MEMBERS PRESENT

Representative Lynn Gattis, Chair
Representative Gabrielle LeDoux
Representative Dan Saddler
Representative Paul Seaton
Representative Peggy Wilson
Representative Harriet Drummond

MEMBERS ABSENT

Representative Lora Reinbold, Vice Chair
Representative Sam Kito III (Alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 45

"An Act relating to harassment, intimidation, or bullying by students attending a public school in the state."

- MOVED HB 45 OUT OF COMMITTEE

HOUSE BILL NO. 189

"An Act relating to hazing."

- MOVED CSHB 189(EDC) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 45

SHORT TITLE: ELECTRONIC BULLYING IN SCHOOLS

SPONSOR(S): REPRESENTATIVE(S) COSTELLO, GATTIS, HUGHES,
JOSEPHSON

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	EDC, JUD
03/21/14	(H)	EDC AT 8:00 AM CAPITOL 106
03/21/14	(H)	Heard & Held
03/21/14	(H)	MINUTE(EDC)
03/31/14	(H)	EDC AT 8:00 AM CAPITOL 106

BILL: HB 189

SHORT TITLE: HAZING

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

03/27/13	(H)	READ THE FIRST TIME - REFERRALS
03/27/13	(H)	EDC, JUD
04/08/13	(H)	EDC AT 8:00 AM CAPITOL 106
04/08/13	(H)	<Bill Hearing Canceled>
04/10/13	(H)	EDC AT 9:00 AM CAPITOL 106
04/10/13	(H)	Heard & Held
04/10/13	(H)	MINUTE(EDC)
03/31/14	(H)	EDC AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE MIA COSTELLO

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as a joint prime sponsor of HB 45.

SARAH PAGE, Staff

Representative Mia Costello

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of one of the joint prime sponsors of HB 45, Representative Mia Costello.

REBECCA HATTAN, Assistant Attorney General

Labor and State Affairs Section

Department of Law

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 45.

REPRESENTATIVE JONATHAN KREISS-TOMKINS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 189.

LES MORSE, Deputy Commissioner

Office of the Commissioner

Department of Education and Early Development (EED)

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 189.

TONY NEUMAN, Program Officer
Division of Juvenile Justice
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 189.

ACTION NARRATIVE

[8:05:33 AM](#)

CHAIR LYNN GATTIS called the House Education Standing Committee meeting to order at 8:05 a.m. Representatives Seaton, Drummond, Saddler, P. Wilson, LeDoux, and Gattis were present at the call to order.

[8:05:53 AM](#)

HB 45-ELECTRONIC BULLYING IN SCHOOLS

[8:06:07 AM](#)

CHAIR GATTIS announced that the first order of business would be HOUSE BILL NO. 45, "An Act relating to harassment, intimidation, or bullying by students attending a public school in the state."

[8:06:21 AM](#)

REPRESENTATIVE MIA COSTELLO, Alaska State Legislature, as a joint prime sponsor of HB 45, reiterated that this would add language to a definition portion of statute [language related to electronic communication].

[8:07:14 AM](#)

SARAH PAGE, Staff, Representative Mia Costello, Alaska State Legislature, on behalf of one of the joint sponsors of HB 45, Representative Mia Costello, explained that this bill would change the definition in statute related to bullying, by inserting "electronic" and "communication" into the types of communicative acts that could be considered as bullying, harassment, or intimidation. This bill specifically addresses bullying in public schools in Alaska.

[8:08:28 AM](#)

REPRESENTATIVE SEATON referred to page 2 of the memo from Legislative Legal Services dated December 31, 2012 from Jean M. Mischel, which read:

An "intentional written, oral, or physical act" does not, in my opinion, exclude threats spoken through a telephone or voice messaging system.

REPRESENTATIVE SEATON asked whether the Department of Law agrees with the legislature's legal services in terms of the extent of the current law.

REBECCA HATTAN, Assistant Attorney General, Labor and State Affairs Section, Department of Law, answered that she has read Ms. Mischel's memo regarding HB 45. She said Ms. Mischel makes an excellent point that she largely agrees with. This bill would provide additional clarity that might make moot a legal argument that the definition doesn't extend to electronic acts which might not have been contemplated by the legislature when the enabling legislation was passed. She offered her belief that passage of HB 45 would make that argument moot.

[8:10:10 AM](#)

REPRESENTATIVE SADDLER asked about the specific distinction between oral communication and physical act. He referred to page 1, line 11 and asked for further clarification on the effect of eliminating "communication", so the definition would then read, "means an intentional written, electronic, oral or physical act," He further asked whether "communication" is essential to this language.

MS. HATTAN deferred to the sponsor to clarify, but said it seems that the language captures the ways students communicate with each other continually evolves and this language recognizes new forms of communication as it develops electronically.

[8:11:28 AM](#)

REPRESENTATIVE P. WILSON inquired about the scope of bullying, for example, whether the activity needs to happen during school or if evening or electronic communication can also be considered.

MS. HATTAN acknowledged the importance of this question. She characterized this as a complex question that has been the subject of litigation in federal and state courts for many

decades. A 1969 U.S. Supreme Court case, *Tinker vs. Des Moines*, is still used to answer that question. She said there is a famous quote in which the high court agreed that students' free rights should be protected and said, "Students don't shed their constitutional rights at the school house gates." She said that First Amendment rights exist; however, as a counterweight, schools have a strong interest in promoting order and instilling certain values in their students.

MS. HATTAN stated that a more recent U.S. Supreme Court case, *Morse v. Frederick*, 2007 - the Juneau "Bong Hits for Jesus" case asked a similar question. The speech at issue in that case did not take place on school grounds but occurred during a school-sponsored event held during school hours. The court held that enough of a connection existed between the speech and the school day that punishment was considered legitimate. The *Morse Case* has been used in several cases throughout the U.S. related to cyberbullying. These cases use the test in the *Morse case* to answer the very question, "How tangential is this connection or how substantial is this connection between the school day and the speech." For example, a student may be so devastated by comments made on Facebook or with other communication devices that the student feels threatened by his/her peers; however, these rules aren't clearly defined. She said that the cases have been factually specific, noting that the Alaska Supreme Court has yet to weigh in.

[8:15:05 AM](#)

REPRESENTATIVE LEDOUX asked how important the school hours were in *Morse v. Frederick*.

MS. HATTAN answered that it was relevant. The most important consideration was the value or lack thereof since people weren't able to ascertain what the student tried to say with a strange slogan unfurled on a banner ["Bong Hits for Jesus"]. In terms of upholding the school district's right to mete out punishment, the factors cited were that it took place during school hours at a school-sponsored event. However, some of the more recent U.S. Supreme Court decisions used the *Morse v. Frederick* ruling to uphold school punishments that happened at home outside of school hours.

[8:16:14 AM](#)

CHAIR GATTIS reported having attended a forum where students brought this as a topic, and while some were not supportive of

HB 45, others remarked that they were being bullied. Although the teenagers didn't want to give up any First Amendment rights, these students also agreed that something needed to be done since bullying harmed other students.

[8:17:37 AM](#)

REPRESENTATIVE SADDLER said it is important to note that this bill does not make "cyberbullying" a crime but the offense would be reportable to a school official. He asked how often any type of bullying is reported.

MS. HATTAN didn't know, but she deferred to the department.

REPRESENTATIVE P. WILSON suggested that schools may need to decide how to handle these situations at a local level based on the facts, but this bill will lead to schools taking action.

CHAIR GATTIS commented that HB 45 brings us forward to the world of cyberspace.

[8:19:33 AM](#)

CHAIR GATTIS, after first determining no one else wished to testify, closed public testimony on HB 45.

[8:19:39 AM](#)

REPRESENTATIVE SEATON referred to page 3, item 3, of the aforementioned Legislative Legal memo, which read, "Whether accomplished through electronic or other methods, bullying is not described as a specific crime under our Model Penal Code structure;...." He said this brings it back to the nexus of school enforcement policies. He expressed concern that if it isn't clear that school enforcement policies can control cyberbullying that students could be charged with harassment under the penal code. He preferred to have this matter handled by the schools rather than to have students face criminal charges. He stated support for the bill.

[8:21:04 AM](#)

REPRESENTATIVE SADDLER stated the sponsor statement indicates HB 45 will require school districts to create a policy against electronic bullying, commonly known as cyberbullying. He said he did not see this requirement in the bill and asked for further clarification on what is being recommended.

[8:21:27 AM](#)

REPRESENTATIVE COSTELLO clarified that the bill further defines the statute by adding "electronic" as a means of harassment, intimidation or bullying. If school districts currently have policies on bullying, it would require the districts to recognize electronic or cyberbullying. These policies are school district decisions, but the statute indicates the need to recognize electronic communication. She related that she introduced the bill on behalf of a high school student and the Dimond High School student government classes have passed a resolution supporting HB 45. These high school students recognize that the school environment includes electronic communications and it helps to have a policy.

[8:23:22 AM](#)

REPRESENTATIVE SADDLER acknowledged the current statutory language.

[8:23:41 AM](#)

REPRESENTATIVE SADDLER moved to report HB 45 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 45 was reported from the House Education Standing Committee. The committee took a brief at-ease.

HB 189-HAZING

[8:24:06 AM](#)

CHAIR GATTIS announced that the final order of business would be HOUSE BILL NO. 189, "An Act relating to hazing." [Before the committee was Version 0, adopted 4/10/13.]

[8:26:45 AM](#)

REPRESENTATIVE JONATHAN KREISS-TOMKINS, Alaska State Legislature, as prime sponsor of HB 189, stated that the intent of the bill is to address hazing, noting HB 189 would add hazing to school district policies, not unlike the previous bill, but would also define hazing in the penal code for cases resulting in death or serious physical injury. He said the characteristic of hazing that differentiates it from other crimes, such as harassment or assault, is that hazing constitutes a crime even

if the victim consented to or acquiesced to the situation. This makes hazing a unique and potentially troublesome action. Hazing happens when someone in authority or power manipulates a subordinate and takes advantage of him/her. He clarified that Version 0 is before the committee.

[8:28:43 AM](#)

REPRESENTATIVE LEDOUX referred to how battery or assault occurs in the current criminal code. First, she didn't understand how a victim would agree to something that would result in serious injury or death. Second, she suggested crimes that result in serious injury or death are already covered in the penal code.

REPRESENTATIVE KREISS-TOMKINS answered that a victim could easily consent to an initiation process, which means agreeing to an unknown. For example, a person may consent to get on a van that takes him/her to an initiation spot; however it is difficult to pinpoint when consent does or does not occur.

REPRESENTATIVE LEDOUX asked whether any cases have occurred where someone has been injured or killed during a hazing process and the case wasn't prosecuted due to a defense that the victim consented or agreed to the hazing.

REPRESENTATIVE KREISS-TOMKINS answered no; not to his knowledge. No one has been killed in Alaska but serious injuries have occurred, although he was unsure how those cases were resolved. The concept for HB 189 was brought to him by a teacher and Alaska would be the 45th of 50 states to adopt similar legislation. He offered his belief that hazing should be included in district policy manuals and also in the penal code to address serious hazing.

[8:32:02 AM](#)

REPRESENTATIVE P. WILSON asked whether the previous bill, HB 45, would cover hazing.

REPRESENTATIVE KREISS-TOMKINS answered no; it would not, since the distinction is that hazing takes place when someone in power manipulates someone who is not in power to become part of an organization or team.

REPRESENTATIVE P. WILSON asked for further clarification on whether schools are subject to mandatory reporting of hazing incidents.

[CHAIR GATTIS left the meeting room momentarily.]

8:33:45 AM

REPRESENTATIVE KREISS-TOMKINS anticipated that 99 percent of the instances would be handled internally and hazing would be added to school district policy manuals to heighten awareness that this type of activity is not allowed.

8:34:28 AM

REPRESENTATIVE P. WILSON asked for further clarification on the reporting aspects of hazing.

REPRESENTATIVE KREISS-TOMKINS answered that students, coaches, administrators or anyone witnessing it would report hazing behavior. In further response to a question, he agreed that the school wouldn't report it to the police.

REPRESENTATIVE P. WILSON asked how the crime of hazing becomes a misdemeanor since the matter would need to come before the police before the person is charged. She further asked whether the school has an obligation to report hazing to the police.

REPRESENTATIVE KREISS-TOMKINS answered that the school would not be required to report hazing to the police. He envisioned this bill will create a tool for prosecutors to use in the one percent of hazing instances that result in serious injury or death. Further, this crime would be used in instances in which it is difficult to determine whether consent occurred. He characterized "consent" as an insidious aspect of hazing, which creates a gray area. He surmised that students who were paddled or razed would report the hazing to the school authorities.

8:36:40 AM

CHAIR GATTIS acknowledged that hazing could occur at the behest of a coach so students should also be able to report hazing to law enforcement.

8:37:54 AM

REPRESENTATIVE SADDLER directed attention to page 1, lines 5-6, which read, " ... causes a situation that subjects a student to a substantial risk of serious physical injury ..." and page 4, line 1, which read, " ... to the risk of physical injury or

severe mental or emotional injury," He asked for further clarification since this appears to be two different definitions.

REPRESENTATIVE KREISS-TOMKINS answered that page 1 involves situations in which law enforcement is involved and page 4 refers to less egregious hazing that uses an internal process.

[8:39:27 AM](#)

REPRESENTATIVE SADDLER related his understanding that the language on page 1, AS 11.61.115 (a), relates to the crime of hazing whereas the language on page 4 line 1 relates to AS 14.33.250 (4). He asked how a situation would create a risk of severe mental or emotional injury and further asked how that would be assessed. He suggested that emotional injury might be more difficult to assess.

REPRESENTATIVE KREISS-TOMKINS related a scenario that occurred in Sitka in which students were left naked in a remote location and had to walk back to town to illustrate the need to report.

[8:40:38 AM](#)

REPRESENTATIVE SADDLER suggested that such a walk and initiation might be an easy task for some to endure, but it could be emotionally challenging for others. He asked for further clarification on the evaluation or assessment that would be used.

REPRESENTATIVE KREISS-TOMKINS said that tough sports and activities, such as football, are not affected by the bill; however, anything that doesn't include day-to-day activities and entails risk, injury, or mental anguish would fall under the definition of hazing.

REPRESENTATIVE SADDLER asked whether any element of community-based standards will be used or if a uniform standard would be applied.

REPRESENTATIVE KREISS-TOMKINS indicated that school districts would determine hazing policies, but he did not envision that typical hazing activities would be in the penal code.

[8:42:50 AM](#)

REPRESENTATIVE LEDOUX noticed that this bill applies to K-12 grades and asked if hazing at the college level is more prevalent.

REPRESENTATIVE KREISS-TOMKINS stated that Sections 2-10 relate to school district policy manuals; however, for serious cases of hazing Section 1 [relating to the criminal code under AS 11.61.115] would apply.

REPRESENTATIVE LEDOUX referring to the previous incident mentioned, leaving someone at the end of a road. She asked whether these are the types of activities encountered on television survivor programs.

REPRESENTATIVE KREISS-TOMKINS answered yes; however, he doubted people's clothing would be removed for survivor programs. In further response, he acknowledged that despite no one getting hurt, the potential for harm existed and frostbite could have occurred.

[8:44:51 AM](#)

REPRESENTATIVE SADDLER referred to page 3 line 16 of Version 0, which read, "appropriate school official; **failure to report shall result in appropriate disciplinary action.**" He said he did not see a definition for appropriate disciplinary action.

REPRESENTATIVE KREISS-TOMKINS offered his belief that appropriate disciplinary action would be determined by school districts. He assumed the disciplinary action would be similar to actions related to harassment or bullying offenses.

[8:46:14 AM](#)

LES MORSE, Deputy Commissioner, Office of the Commissioner, Department of Education and Early Development (EED), said that HB 189 would add to existing school district policies for harassment, intimidation, and bullying. This bill would define hazing and require hazing to be incorporated in the policies. The current statute requires parent and community engagement when writing the policies. Ultimately, the policies would be adopted by individual school boards using a public process. Although school districts develop their own policy manuals, the Alaska Association of School Boards (AASB) has established model policies and many districts, but not all, adopt these model policies.

MR. MORSE described the reporting aspect. Current law requires students and adults in schools to report to the appropriate authority; however, if the authority, such as a coach, instigated the hazing, the next step will be to report to a higher authority, typically the principal. Further, districts report to the department annually on the number of incidents that have resulted in suspension or expulsion from school.

[8:49:09 AM](#)

CHAIR GATTIS asked for further clarification on reporting when an adult, teacher, or coach is involved and for the potential consequences.

MR. MORSE answered that if an adult, teacher, or coach failed to report or was part of the activity, it could result in disciplinary action. In those instances the local district would determine any disciplinary action, but egregious actions would likely result in law enforcement or legal actions. He stated that student and employee handbooks will outline the district and school policies. In most cases personnel actions will be taken if an adult is involved in the incident, he said.

[8:51:01 AM](#)

REPRESENTATIVE P. WILSON referred to page 3, line 16, to the language, "**failure to report shall result in appropriate disciplinary action.**" She asked whether policies are in place to cover disciplinary action.

MR. MORSE answered this language is nested in current law, but "hazing" is added to subsection (b). He explained that current law requires school districts to establish policies for disciplinary action for those who fail to report [harassment, intimidation, or bullying]. He acknowledged that actions for "hazing" would also be handled in these policies.

[8:51:43 AM](#)

REPRESENTATIVE SADDLER asked whether most districts have such a policy.

MR. MORSE answered yes; however, even though school districts have policies regarding reporting, it is not specific to hazing.

[8:52:03 AM](#)

REPRESENTATIVE SADDLER asked whether the Association of Alaska School Boards (AASB) model policies include sanctions for failure to report [hazing, harassment, intimidation, or bullying].

MR. MORSE answered he hasn't specifically reviewed the AASB's model policies regarding reporting but he believes the association's policies are current so he felt comfortable that model language exists.

REPRESENTATIVE SADDLER asked how often reports on hazing and bullying currently occur.

MR. MORSE, speaking from his experience as a principal, said that many of these incidents are not reported to the department. He suspected hazing incidents are more severe at the high school level and generally are reported since the student handbook and rules cover bullying behaviors. Typically, he envisioned that someone will speak out and it would also be rare for an adult to observe hazing and not report it. He recalled during his time as principal of a middle school that reports occurred on a monthly basis.

REPRESENTATIVE SADDLER asked what type of sanctions might be imposed on school staff that fail to report such activity.

MR. MORSE responded that he never encountered any school staff failure to report, but he was aware of an instance in which school staff was put on leave pending an investigation. He indicated possible sanctions could include loss of employment or reporting the activity to legal authorities.

[8:54:45 AM](#)

REPRESENTATIVE SEATON wondered if most hazing would already be reported as harassment, intimidation, or bullying. He asked whether it is useful to include hazing to the current definition to ensure this specific category is covered.

MR. MORSE offered his belief that it will be helpful to have clarity in statute; however, he acknowledged this this is a policy call for the committee and legislature to make.

[8:55:46 AM](#)

REPRESENTATIVE P. WILSON asked whether hazing could be dealt with under the current statutes.

MR. MORSE answered that hazing would have been covered by policies in the two school districts he worked in as principal and teacher, although that was ten years ago.

[8:56:41 AM](#)

REPRESENTATIVE SADDLER noted the relationship in topics between HB 189 and HB 45. He referred to page 3, lines 4-5, of Version O, which read, " ... or at school sponsored or school sanctioned activities" He noted this language explicitly extends the reporting requirement to activities beyond the school and whether this is practical.

MR. MORSE offered his belief that any school sponsored or school sanctioned activities would already be covered since students are required to follow the policies and adults supervising the events must also follow the district's procedures.

REPRESENTATIVE SADDLER understood this language would further clarify it to explicitly extend the reporting requirements to school sanctioned events.

MR. MORSE answered that HB 189 will make the statute more explicit and clear.

[8:58:25 AM](#)

REPRESENTATIVE LEDOUX expressed concern that a fine line exists between "hazing" and an "initiation" into a sport. She related a scenario to illustrate how participation in an Ironman triathlon in a hot climate to join a running club might be considered an extreme activity and raise concerns. She suggested many people might think a person is "a little bit nuts" [participating in such initiation events].

[8:59:52 AM](#)

REPRESENTATIVE KREISS-TOMKINS remarked that he would love to participate in an Ironman. He clarified that the language is relevant because it is context specific. It's important to consider what is reasonable to expect to occur in a program or an activity. Certain things may be acceptable to someone on a track team, but in other situations the same activity would be considered hazing. He referred to his sponsor statement to the aforementioned incident that resulted in frostbite, noting these types of incidents will be handled internally by the district.

REPRESENTATIVE LEDOUX interjected that [hazing] seemed like it would fit in assault and battery charges. She questioned how the development of unique challenges would be allowed to occur since something new wouldn't necessarily fall under the current purview. In response to a question, she clarified that people can't envision some new sport or challenge until it actually transpires.

REPRESENTATIVE KREISS-TOMKINS surmised that most high school sports in Alaska are routine, but if a new sport developed, it would likely be considered as being normal and customary.

REPRESENTATIVE LEDOUX maintained her concern. She questioned how this bill might affect new sports and whether a sport such as boxing would ever have been allowed if HB 189 had been in effect.

[9:04:01 AM](#)

REPRESENTATIVE KREISS-TOMKINS referred to Representative Saddler's question on page 2, Section 3 of Version 0. This section outlines the community based guidelines for hazing, which includes an opportunity for participation by parents or guardians, school employees, students, administrators, and community representatives. Again, this section outlines the current community developed process in statute for developing district policy manuals.

[9:04:53 AM](#)

TONY NEUMAN, Program Officer, Division of Juvenile Justice, Department of Health and Social Services (DHSS), said that the EED spoke well to the process in terms of any school staff or adults committing hazing offenses. He described how a minor would be handled, such that if law enforcement identified a minor committing an offense, the officer would make a referral to the division and to the local probation office, and staff will collectively determine how to proceed ranging from instituting court proceedings or a diversion. Typically, youth would be deferred to youth court and staff may require an apology to the victim or community work service, but not necessarily petition the court to handle the case. In response to a question, he clarified that he is speaking to proposed Section 1 of Version 0 and not to the school policy.

[9:07:10 AM](#)

CHAIR GATTIS closed public testimony on HB 189.

[9:07:16 AM](#)

REPRESENTATIVE SEATON commented that HB 189 adds and improves clarity in existing statute, noting this bill may prevent hazing, thus, he offered his support for HB 189.

[9:08:16 AM](#)

REPRESENTATIVE SEATON moved to report the proposed committee substitute (CS) for HB 189, Version 0, labeled 28-LS0672, Strasbaugh, 4/9/13, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 189(EDC) was reported from the House Education Standing Committee.

[9:08:59 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 9:08 a.m.