

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 31, 2014
2:30 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Gabrielle LeDoux
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster
Representative Charisse Millett

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 110(JUD)

"An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency."

- MOVED OUT OF COMMITTEE

SENATE BILL NO. 186

"An Act relating to the Controlled Substances Advisory Committee and providing for mandatory meetings of the committee at least twice a year."

- MOVED OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 110

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(S): SENATOR(S) DYSON

01/22/14	(S)	PREFILE RELEASED 1/10/14
01/22/14	(S)	READ THE FIRST TIME - REFERRALS
01/22/14	(S)	JUD
02/19/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/19/14	(S)	Heard & Held

02/19/14 (S) MINUTE(JUD)
02/21/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/21/14 (S) Moved CSSB 110(JUD) Out of Committee
02/21/14 (S) MINUTE(JUD)
02/24/14 (S) JUD RPT CS 2DP 1NR SAME TITLE
02/24/14 (S) DP: COGHILL, DYSON
02/24/14 (S) NR: OLSON
03/10/14 (S) TRANSMITTED TO (H)
03/10/14 (S) VERSION: CSSB 110(JUD)
03/12/14 (H) READ THE FIRST TIME - REFERRALS
03/12/14 (H) JUD
03/31/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 186

SHORT TITLE: CONTROLLED SUBSTANCES ADVISORY COMMITTEE
SPONSOR(s): SENATOR(s) DYSON

02/21/14 (S) READ THE FIRST TIME - REFERRALS
02/21/14 (S) JUD
03/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/12/14 (S) Moved SB 186 Out of Committee
03/12/14 (S) MINUTE(JUD)
03/14/14 (S) JUD RPT 4DP 1NR
03/14/14 (S) DP: COGHILL, WIELECHOWSKI, MCGUIRE,
DYSON
03/14/14 (S) NR: OLSON
03/21/14 (S) TRANSMITTED TO (H)
03/21/14 (S) VERSION: SB 186
03/24/14 (H) READ THE FIRST TIME - REFERRALS
03/24/14 (H) JUD
03/31/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR FRED DYSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 110 as sponsor.

CHARLES KOPP, Staff
Senator Fred Dyson
Alaska State Legislature

POSITION STATEMENT: Presented SB 110 on behalf of Senator Dyson.

NANCY MEADE, General Counsel
Alaska Court System
Department of Administration

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SB 110.

SENATOR FRED DYSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented SB 186 as sponsor.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section

Criminal Division

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 186.

CHARLES KOPP, Staff

Senator Fred Dyson

Alaska State Legislature

POSITION STATEMENT: Answered questions regarding SB 186.

ACTION NARRATIVE

[2:30:59 PM](#)

VICE CHAIR BOB LYNN called the House Judiciary Standing Committee meeting to order at 2:30 p.m. Representatives LeDoux, Pruitt, Gruenberg, and Lynn were present at the call to order. Chair Keller arrived as the meeting was in progress.

SB 110-RETURN OF SEIZED PROPERTY

VICE CHAIR LYNN announced that the first order of business would be CS FOR SENATE BILL NO. 110(JUD), "An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency."

[2:31:49 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, said SB 110 probably looks familiar. A bill went through last year to facilitate the process of returning property to victims, and he feels that it should never have needed to be done. Authorities ought to be giving innocent people back their property as soon as possible, he opined. He said that last year's bill provided a process for a victim to get property back after the

authorities had completed a chain of custody, but people have told him that the process was not working well with some authorities. He noted that SB 110 is a modification that gives the victim advocate the authority to go and get the property back. The bill gives an agency or a person who has the victim's interest at heart the authority to pursue those interests and get the property returned, he explained.

[2:33:55 PM](#)

CHARLES KOPP, Staff, Senator Fred Dyson, stated that in 2012 the legislature passed SB 30, which established a process in Title 12 of the Alaska Code of Criminal Procedure for property crime victims to petition the court for relief in recovering their property that was held as evidence. This was brought to the attention of the bill's sponsor by numerous businesses—particularly small businesses—and individuals who had had property seized and had no recourse other than suing the state to get their property back. He said SB 30 put a process in place for the crime victim to petition a law enforcement agency through a victim's advocate to have the property returned. The petition went through the victim's advocate because advocates are very familiar with the Code of Criminal Procedure and Chapter 36 of Title 12, which deals with the disposition of recovered and seized property.

[2:35:53 PM](#)

MR. KOPP said the victims' advocate would review the laws of evidence and see if the victim was eligible to take back property. Once the advocate petitioned the law enforcement agency, the agency would have 10 days to either return the property or to request a hearing before the court to determine if the property should be released to the crime victim. "We thought that was all going well," he said, but there was a misunderstanding. The Department of Law requested clarification whether it was the law enforcement agency that was supposed to be asking the court for the hearing, rather than the victims' advocate, he stated. After the clarification request came from Mr. [Richard] Svobodny [Deputy Attorney General, Department of Law] in March 2013, the court system researched the testimony and said that there was no question that the law enforcement agency was the entity to request the hearing for the return of property. The victims' advocate requested that he or she be given the authority to request the hearing in addition to the law enforcement agency, which would empower the crime victim, he explained.

[2:38:18 PM](#)

MR. KOPP said that SB 110 improves the standing of the crime victim by allowing the victims' advocate to directly appeal to the court for the hearing if the law enforcement agency does not do it within the deadline prescribed under existing law. The bill is very brief, he noted. Section 1 just adds a new subsection (f) to return the property by hearing and to provide that the Office of Victims' Rights may request a hearing before the court if the law enforcement agency fails to act within ten days after receiving the request. Section 2 just amends Title 24, which is the victims' advocate authorizing language.

VICE CHAIR Lynn passed the gavel to Chair Keller.

[2:41:05 PM](#)

REPRESENTATIVE GRUENBERG said SB 110's purpose is to give the victims' advocate standing to file a motion with the court for a hearing to get the victim's property back. He asked if the sponsor would have any problem with allowing the victims, themselves, to file that motion. He said he could see a situation where there is an acrimonious divorce and some property is removed and found, and there would not be a reason for an advocate to file.

[2:42:45 PM](#)

MR. KOPP said the bill amends Title 12, which is the Code of Criminal Procedure and would not pertain to a divorce court property hearing. It specifically pertains to crime victims, he added. The reason why the request is to go through the Office of Victims' Rights is because the victim advocate is trained in the law to know all of the procedures and different rules that come into play depending on the crime. Additionally, it could open a floodgate for individuals to make requests without knowing the legal process, he said. "It kind of acts as a gatekeeper," he said.

[2:46:10 PM](#)

REPRESENTATIVE LEDOUX expressed doubt that the effect would be to open up the floodgates, and she noted that at times there is both a criminal prosecution and a civil suit. It would make a lot of sense to also allow a victim's counsel to ask for a

hearing, she stated, and the counsel would be as knowledgeable as the victims' advocate.

MR. KOPP said that the counsel to parties can always ask the court outside of this law, and SB 110 allows an unrepresented crime victim, working through the Office of Victims' Rights, to request the court for a hearing. The judge can make the determination if the victim has more of a right to the property than there is a need for the state, the defense, or another third party to keep hold of it. The issue might be better understood by looking at the context of the entire AS 12.36.070, Return of Property by Hearing, which already has a process in place, he said. "Your question is already envisioned in the entirety of the law," he stated. A civil suit will come under civil law, he explained. There is nothing to prevent counsel from asking the court for a return of property. Under SB 110, if no criminal case is pending regarding the property, the hearing shall be before a district or superior court where the property is located. If it is a criminal case, it will be the court of jurisdiction, he explained. At the hearing, the party that is objecting to the return of the property will state the reason on the record. He said the court may order the return of the property if the crime victim, by the preponderance of the evidence, provides satisfactory proof of ownership and the party that objects fails to prove, by a preponderance of the evidence, that the property must be retained for evidentiary purposes.

[2:51:17 PM](#)

MR. KOPP said that if the court orders the return of the property to the crime victim, the court may impose reasonable conditions on the return, such as requiring that the victim retain the property to be available for future court hearings or requiring photographs of the property.

[2:52:01 PM](#)

REPRESENTATIVE LEDOUX said she is really confused, and perhaps someone from the Department of Law or the court system can help. She said she is muddling through the civil rules. In a civil case, Rule 24, persons claiming the right to property can intervene, "but, as far as I know, just because somebody has an attorney in a civil suit, that doesn't allow that attorney to intervene, as the law stands now, in the criminal action, and it would be the criminal action that we're talking about here."

[2:53:13 PM](#)

SENATOR DYSON said this mostly has to do with evidentiary property. What has happened is that there would be a suspected crime with property seized and held for evidence, "and months and years will go by and it doesn't get returned," he stated. It has always been in the statutes that as soon as property has been analyzed and evidence has been gathered, it should be returned to the rightful owner. He said that the prosecutor has often said, "No, we might need it." Or there may be appeals, so the property sits in an evidence locker or yard. Remedy always was for the victim of a crime to go get counsel and go into court to try to get property back. He said he has about six cases where that has not worked, and that is why he came up with a process in 2012. It has been working, "but they've come back to us and said please clarify this bill, and I could spend the afternoon telling you horror stories, but that's what it's about."

[2:54:48 PM](#)

REPRESENTATIVE LEDOUX said she has experienced this and thinks it is a great idea. She suggested that some people may choose not to use a victims' advocate and would rather call their counsel to intervene to get property back.

[2:55:39 PM](#)

SENATOR DYSON said, "That's always been true, it's still true, and it still hasn't worked."

MR. KOPP said the option that Representative LeDoux is referring to has always been in the law, and it has been ineffective. This gives someone who does not have counsel that opportunity as well, he added.

NANCY MEADE, General Counsel, Alaska Court System, Department of Administration, said there is no way to intervene in a criminal case; criminal cases are a state prosecuting authority against a defendant. Civil cases have a means for intervening, and the court weighs whether the non-party has an interest in the suit. She surmised that what the sponsor was speaking of is an instance where a law enforcement agency is holding property, and a victim who has an attorney (for other purposes or for this purpose) would file a case that is not an intervention in that criminal case, but the victim has standing to say that the troopers are keeping his or her car that was stolen. It would be a separate action, she explained.

2:57:16 PM

REPRESENTATIVE LEDOUX surmised that without SB 110, a person with an attorney has to file a separate case, and SB 110 will allow the victims' advocate to intervene in the criminal case. "My concern is maybe we should also let the lawyer for the other side, as well as the victims' rights advocate, whoever the victim chooses to have represent them, be able to intervene in this criminal case."

2:58:09 PM

MS. MEADE pointed out that the standing that is granted to the victims' advocate under Section 1 of the bill is very limited. It is just to ask for the hearing and to advocate for the return of the property—the advocate is not granted intervener status.

REPRESENTATIVE GRUENBERG said that "this tail could wag the dog" in some cases. There could be a very valuable jewel and a lot of money involved. He further opined that there are many good judges in Alaska, and a judge should be qualified to decide whether to allow an unrepresented person in a given case to [file] or to direct the person to the Office of Victims' Rights. If a person has an attorney, that attorney may have more time and more familiarity than the victims' rights lawyer, he said. "I don't see any down side in giving the judge the opportunity to entertain a motion," he stated. If it were considered to be an intervention motion, it would be for a limited time and a limited purpose simply for the release of the property. He gave the scenario of a stolen good being claimed by two people in a divorce situation.

3:00:55 PM

MS. MEADE said she would have to think a little about Representative Gruenberg's comments. She noted that the Department of Law would have a view on whether there should be others who are allowed to intervene even for a limited purpose in a criminal case because of time frames and confidentiality issues. She said the sponsor's goal is limited just to victims, and the Office of Victims' Rights has not said that there is not time to handle the work.

REPRESENTATIVE GRUENBERG referenced a memo to Ms. Meade from Adam Keller about the meaning of "agency" as it appears in the

bill. He asked if there should be an amendment to the definitional statute.

[3:03:01 PM](#)

MS. MEADE said that the memo was prepared by her request regarding SB 110 to clear up confusion from SB 30 in 2012 as to which agency could ask for the hearing. She said she did not think that the definition of the word, agency, was unclear, it was just which agency the legislation referred to [which was the law enforcement agency]. It is now Senator Dyson's intent to let the Office of Victims' Rights also have the standing to request the hearing.

CHAIR KELLER closed public testimony.

The committee took an at-ease from 3:04:32 PM to 3:06:44 PM.

[3:06:44 PM](#)

REPRESENTATIVE LEDOUX said she is not offering an amendment because it is a good bill, and it was late in the session.

REPRESENTATIVE LYNN moved to report CSSB 110(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 110(JUD) was reported from the House Judiciary Standing Committee.

[3:07:14 PM](#)

The committee took an at-ease from 3:07:14 PM to 3:08:17 PM.

[3:08:17 PM](#)

SB 186-CONTROLLED SUBSTANCES ADVISORY COMMITTEE

CHAIR KELLER announced that the next order of business would be SENATE BILL NO. 186, "An Act relating to the Controlled Substances Advisory Committee and providing for mandatory meetings of the committee at least twice a year."

SENATOR FRED DYSON, Alaska State Legislature, said that SB 186 is small but it is not simple. "In 1982, one of the last things that Governor [Jay] Hammond did—and this was originally the whole section of the code on controlled substance, scheduled substances, was a part of the Governor's package." He said it originated in the House and sets up "that whole section." The

first part sets up a Controlled Substance Advisory Committee, he said, and it is extraordinary how wisely it was done. "[The section] had the right people with the right kind of knowledge and experience, and challenges them to watch over how we handle controlled substances," he stated. He spoke of [the committee members] having knowledge of the effects of the substances, effectiveness of treatments, economics, appropriateness of sentences, and diversionary ways of handling people with drug problems.

[3:09:32 PM](#)

SENATOR DYSON said, "It commands that they meet twice a year." The bill passed with a \$170,000 fiscal note, which the legislature approved, "and nothing happened." Governor Hammond returned to Lake Clark and Bella went back to set-netting at Naknek Point, and nothing happened, he reiterated. He said his office is working on some sentencing and criminal justice issues as well as the complex restorative justice issue. He stated that he has had some experience and a lot of frustration with administrations not following clear legislative intent or the statute. Everyone was ignorant of what was done in 1982, he opined. In the fall of 2013, an attorney saw SB 56, which is now in House Finance, and represented in court that if this commission had been put in place and had been followed, her client would not be facing a draconian sentence that he was getting. The attorney requested that the whole section of the law be thrown out, but that was unacceptable to the Department of Law, he noted. The Assistant Attorney General actually argued in court that the administration did not need to pay attention to what the legislature put in code, because if it meant it, there would have been a penalty for noncompliance.

[3:11:53 PM](#)

SENATOR DYSON said it is unacceptable that for 32 years successive administrations have failed to do this very reasonable thing of evaluating our war on drugs and treatment programs. He noted his very good efforts at getting things into law, but nothing happened in the way he anticipated. "So what you have on this page ... this is what our [legislative attorney] tells us is the necessary words to make sure that it is clear in the statute that we mean what we say." He told the committee to "watch these things," and make sure that the intention of the legislature is followed. If the language he proposes does not make that happen, he has some draft language

that says, "Failure of compliance will mean class C felony and these four PCNs [position control numbers] go away."

SENATOR DYSON said all he is asking is to change a couple of words so that it becomes clearer that what the legislature said in 1982 is followed.

[3:13:46 PM](#)

REPRESENTATIVE LEDOUX said if the administration has argued that it does not have to follow the law unless there is a penalty, why is there no penalty?

SENATOR DYSON answered that the current administration did not know that "this stuff was in the law," and it is supportive of the legislation. He did not put in a penalty because he has been told that his wording will work, but the Department of Law and the Attorney General "were really between a rock and hard place." They had to generate a defense of why the entire section of the code should not be thrown out, so he does not believe that it is the position of this administration that "we need to make it more draconian, but I am asking you ... to watch this stuff."

[3:15:30 PM](#)

REPRESENTATIVE LEDOUX said the legislature does not always make the laws for the good people; sometimes laws are made because there are some people who do not listen unless there is a penalty. She noted that other administrations apparently have not complied because there was no penalty. "To me, the old language looks pretty much like the new language," so she is not sure what the bill accomplishes.

CHAIR KELLER said the committee will take an at-ease so that Representative LeDoux can talk to the sponsor. He stated that getting the discussion on the record will have a big impact, and "it's part of our job to keep track of this stuff, and sometimes we fail."

[3:16:28 PM](#)

SENATOR DYSON said that the Department of Law is supportive, and Anne Carpeneti can explain what went on in that court case.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), stated that

there is not much difference between the old language and the new language in SB 186, but the language in the amendment is more demanding than current law. Senator Dyson is correct; the Department of Law was not aware of this [Controlled Substances Advisory Committee], and there are probably others that DOL is unaware of. She said she is sure that the committee has not been funded since the law was originally passed. She explained that the reason the state took the position that it did in the aforementioned litigation was that the plaintiffs were trying to get the statutes set aside and not followed. The legislature had adopted these laws, so the state's position was that the law could not be set aside just because the [committee] had not been formed.

[3:19:02 PM](#)

REPRESENTATIVE LEDOUX asked what happened to the \$170,000.

MS. CARPENETI said she believes that monies not expended are returned to the general fund.

REPRESENTATIVE GRUENBERG asked if the commission is within DOL.

CHARLES KOPP, Staff, Senator Fred Dyson, said the Controlled Substances Advisory Committee is within the Department of Law, and the Attorney General is the chair.

[3:20:50 PM](#)

REPRESENTATIVE GRUENBERG asked why the committee has not been meeting.

CHAIR KELLER said the DOL did not know it existed.

REPRESENTATIVE GRUENBERG asked if the committee will now meet. If the commission is not beneficial, "maybe we don't need it."

MS. CARPENETI said that she believes that a periodic review of Alaska laws is a good thing.

[3:22:21 PM](#)

SENATOR DYSON said that is an inadequate answer. The law requires the committee to meet twice a year and it is rigorously required to do analysis and report to the governor. "And it says the governor shall initiate legislation to deal with inadequate sentencing, changes in the drugs that are coming

after us, evaluating diversion programs, i.e. therapeutic courts, and so on and so forth, and treatment programs." He said he is really glad that this administration has been quite positive about getting after this, but he does not want anyone going out of this meeting thinking that he is calling for a nice group of people to get together every once in a while and work on this. "I want the rigorous process that Governor Hammond and his team laid out then," he stated. That includes formal meetings, reports, and recommendations to the governor.

CHAIR KELLER said he is grateful that this has been brought forward. It has affected people's lives because it has not been in place. He added that he is grateful to the DOL for picking up the baton and making it happen from here on out.

[3:24:12 PM](#)

CHAIR KELLER closed public testimony.

REPRESENTATIVE LYNN moved to report SB 186 out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objection, SB 186 was reported from the House Judiciary Standing Committee.

CHAIR KELLER noted that amendments to the crime bill are due by 2:00 PM tomorrow.

[3:26:01 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:26 P.M.