

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 5, 2014

1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair

OTHER LEGISLATOR PRESENT

Senator Dennis Egan

COMMITTEE CALENDAR

SENATE BILL NO. 171

"An Act relating to multidisciplinary child protection teams; and relating to investigation of child abuse or neglect."

- MOVED CSSB 171(JUD) OUT OF COMMITTEE

SENATE BILL NO. 108

"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

- MOVED CSSB 108(JUD) OUT OF COMMITTEE

SENATE BILL NO. 173

"An Act relating to a prohibition on the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs."

- HEARD & HELD

SENATE BILL NO. 176

"An Act relating to the regulation of firearms and knives by the University of Alaska."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 171

SHORT TITLE: MULTIDISCIPLINARY CHILD PROTECTION TEAMS

SPONSOR(s): SENATOR(s) COGHILL

02/12/14 (S) READ THE FIRST TIME - REFERRALS
02/12/14 (S) JUD
02/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/14 (S) Heard & Held
02/24/14 (S) MINUTE(JUD)
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/03/14 (S) Scheduled But Not Heard
03/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 108

SHORT TITLE: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

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, FIN
02/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/14 (S) Heard & Held
02/24/14 (S) MINUTE(JUD)
02/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/28/14 (S) Heard & Held
02/28/14 (S) MINUTE(JUD)
03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/03/14 (S) Heard & Held
03/03/14 (S) MINUTE(JUD)
03/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 173

SHORT TITLE: SYNTHETIC DRUGS

SPONSOR(s): SENATOR(s) MEYER

02/14/14 (S) READ THE FIRST TIME - REFERRALS
02/14/14 (S) JUD
03/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 176

SHORT TITLE: REG. OF FIREARMS/KNIVES BY UNIVERSITY

SPONSOR(s): SENATOR(s) COGHILL

02/14/14 (S) READ THE FIRST TIME - REFERRALS
02/14/14 (S) JUD

03/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/03/14 (S) Heard & Held
03/03/14 (S) MINUTE(JUD)
03/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the changes that appear in Version C of SB 171.

PAM KARALUNAS
Alaska Children's Alliance (ACA)
Chugiak, Alaska

POSITION STATEMENT: Testified in support of SB 171.

CHUCK KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Described the five pertinent changes found in Version Y of SB 108.

KATHY HANSEN, Senior Attorney
Office of Victims' Rights (OVR)
Anchorage, Alaska

POSITION STATEMENT: Testified that she submitted testimony on Version Y of SB 108.

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 173.

EDRA MORLEDGE, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Described the changes between the new CS and Version A for SB 173.

HANS RODVIK, Intern
Senator John Coghill
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided supporting information relevant to SB 176.

BRIAN JUDY, Alaska State Liaison
National Rifle Association (NRA)
Sacramento, California

POSITION STATEMENT: Testified in support of SB 176.

CEEZAR MARTINSON, Vice President
UAA Political Science Association
University of Alaska-Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 176.

MIKE COONS, representing himself
Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 176.

MONTANA WARE, President
Young Americans for Liberty (YAL)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 176.

MATTHEW CARBERRY, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 176.

MICHAEL BUCKLAND, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 176.

ACTION NARRATIVE

[1:34:29 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Dyson, Olson, and Chair Coghill. Senator Wielechowski arrived soon thereafter.

SB 171-MULTIDISCIPLINARY CHILD PROTECTION TEAMS

[1:36:09 PM](#)

CHAIR COGHILL announced the consideration of SB 171. "An Act relating to multidisciplinary child protection teams; and relating to investigation of child abuse or neglect."

[1:36:25 PM](#)

SENATOR DYSON moved to adopt CS for SB 171, labeled 28-LS1416\C, as the working document.

SENATOR WIELECHOWSKI joined the committee.

[1:37:05 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, sponsor of SB 171, explained the changes that appear in Version C.

Section 1, subsection (a), page 1, line 5, the language describing the investigating entity was broadened to "the department or another investigating agency" in order to include local police, tribes, and child advocacy centers.

Section 2, subsection (b), page 2, narrows the expertise of the team established under subsection (a) to ensure they have training and knowledge of child abuse cases.

Section 3, subsection (c), page 3, lines 10-12, language was included at the request of the Department of Law to ensure that the confidentiality of the information is protected. A multidisciplinary team member may only use the information as necessary for the performance of the member's duties.

CHAIR COGHILL removed his objection. Finding no further objection, Version C was adopted. He recapped that the primary purpose of the legislation is to allow these multidisciplinary child protection teams to work for the benefit of the child when the Office of Children's Services isn't involved.

[1:40:30 PM](#)

PAM KARALUNAS, Alaska Children's Alliance (ACA), Chugiak, Alaska testified in support of SB 171. She said ACA appreciates SB 171 because it clarifies misunderstandings of the multidisciplinary team process at child advocacy centers. The bill also updates the statute to reflect best practices.

[1:41:25 PM](#)

SENATOR DYSON moved to report CS for SB 171 with individual recommendations and attached fiscal note.

CHAIR COGHILL announced that, without objection, CSSB 171(JUD) moved from the Senate Judiciary Standing Committee.

[1:42:01 PM](#)

At ease.

SB 108-LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

[1:43:14 PM](#)

CHAIR COGHILL announced the consideration of SB 108. "An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date." He asked for a motion to adopt the new committee substitute (CS), Version Y.

SENATOR DYSON moved to adopt the CS for SB 108, labeled LS-280973\Y, as the working document.

CHAIR COGHILL objected for an explanation of the differences.

[1:43:53 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, sponsor of SB 108, described the five pertinent changes found in Version Y. The first change found on page 1, lines 6-10, introduces a legislative intent section. It asks the court, to the extent practical, to treat as confidential the records of criminal cases disposed of before the effective date of the Act by acquittal or dismissal of some or all of the charges to the same extent that the records are held confidential by this bill.

[1:44:51 PM](#)

At ease to distribute copies of the CS.

[1:45:28 PM](#)

CHAIR COGHILL reconvened the meeting and asked Mr. Kopp to continue.

MR. KOPP explained that the second change is found on page 1, line 13. It changes the time limit from 90 days to 120 days for a court record to become confidential following the date of acquittal or dismissal. This was done at the request of the Department of Law and is consistent with the court rule deadline of 120 days for those petitions. The third change is found on page 2, line 3. It adds language that limits the application of confidential status to dismissals by the prosecuting attorney. This was at the request of the Department of Law and will cover the majority of dismissals.

The fourth change is found on page 2, lines 6-16. At the request of DHSS, DOL and OPA, language was added to allow state agency child protection workers, employees that protect other vulnerable citizens, and Alaska Public Safety Information

Network (APSIN) users to have access to information made confidential. He noted that the courts have advised that the legislature may make such an exception in statute. The fifth and final change is found on page 2, line 22. The effective date of the Act is changed from July 1, 2014 to October 1, 2014. This gives the courts more time to implement the changes.

1:47:15 PM

SENATOR WIELECHOWSKI questioned limiting the confidential designation of cases to the prosecuting authority because it means a dismissal by a judge wouldn't be considered confidential.

MR. KOPP said the sponsor agreed to that inconsistency to move the bill along.

SENATOR WIELECHOWSKI asked if the Department of Law could explain the rationale for the distinction, because a case is dismissed if a judge dismisses it. The question is on the record and he would suggest addressing it in the next committee.

CHAIR COGHILL posited it would be discussed before the bill reaches the floor.

MR. KOPP added that Senator Wielechowski's point is well taken, but this will cover the majority of dismissals.

1:49:19 PM

KATHY HANSEN, Office of Victims' Rights (OVR), said she reviewed the new committee substitute and submitted written testimony that was added to BASIS. The primary concern is that at trials there is a difference between not being convinced that a case has been proved beyond a reasonable doubt and innocence. When a victim of domestic violence, sexual violence, or child sexual abuse speaks up and has the courage to testify and go through an entire trial, it's a disservice to the victim and the public for that record to disappear in the case of an acquittal.

CHAIR COGHILL said the general principle he follows is that a person is innocent until proven guilty.

MR. KOPP said OVR plays a valuable advocacy role and the legislature's role is more balancing: protections of the accused and the interest of justice and public safety. The sponsor has worked hard with a variety of agencies and is satisfied that the bill wisely balances the protections of the public and the need to protect people's privacy and liberty interests, he said.

[1:53:46 PM](#)

CHAIR COGHILL removed his objection. Finding no further objection, Version Y was adopted.

[1:54:02 PM](#)

SENATOR DYSON moved to report CS for SB 108 from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection CSSB 108(JUD) moved from the Senate Judiciary Standing Committee.

[1:54:34 PM](#)

At ease

SB 173-SYNTHETIC DRUGS

[1:55:57 PM](#)

CHAIR COGHILL announced the consideration of SB 173. "An Act relating to a prohibition on the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs." This was the first hearing. He noted the proposed committee substitute, Version N.

He welcomed Senator Egan to the committee.

[1:56:37 PM](#)

SENATOR DYSON moved to adopt CS for SB 173, labeled 28-LS1242\N, as the working document.

CHAIR COGHILL objected for purposes of an explanation.

SENATOR KEVIN MEYER, Alaska State Legislature, Juneau, Alaska, sponsor of SB 173, deferred to his staff to explain the changes found in the committee substitute.

[1:57:34 PM](#)

EDRA MORLEDGE, Staff, Senator Kevin Meyer, highlighted the changes between the new CS and Version A for SB 173. The first change, found on page 3, lines 16-25, changes the enforcement agency from the Department of Health and Social Services (DHSS) to the Department of Public Safety and identifies DHSS as the cooperating agency. The reasoning is that it is more appropriate for DPS to address this because it's a violation and civil infraction. The next change found on page 3, line 21, clarifies that the penalty for violation of this statute is a \$500 fine. The next change, found on page 3, line 29, eliminates the

definition of "department" as the Department of Health and Social Services (DHSS). The final change, found on page 4, line 10-16, clarifies that DHSS shall cooperate with DPS.

[1:59:50 PM](#)

SENATOR WIELECHOWSKI asked if the definition of synthetic drugs would include nicotine for e-cigarettes.

MS. MORLEDGE said she didn't know but there is an FDA ruling that nicotine falls under the Homeopathic Pharmacopeia of the United States, which is included in the statutory definition of "drug."

SENATOR WIELECHOWSKI noted that Wasilla just rejected similar legislation and questioned whether it should be left to individual communities to decide.

SENATOR MEYER said he believes that these substances are dangerous enough to warrant a statewide policy. He said he also believes that the Wasilla Assembly will have a different outcome when it votes again.

SENATOR WIELECHOWSKI asked for clarification that this ordinance is already on the books in Anchorage.

SENATOR MEYER said that's correct.

[2:02:49 PM](#)

SENATOR DYSON expressed appreciation for the balance the legislation strikes.

SENATOR MEYER refreshed the committee's recollection of the bill, speaking to the following sponsor statement: {Original punctuation provided.]

SB 173 intends to help solve the problem of the ever changing chemical make-up of synthetic drugs by targeting the packaging of the product, and is aimed not at what the illicit drug is, but what it *isn't*. According to the National Institute on Drug Abuse, labels on these products often claim that they contain "natural" psycho-active material taken from a variety of plants. Sold at smoke shops, and gas stations as "incense" or "potpourri," easy access and the misperception that these products are "natural" and therefore harmless, have likely contributed to their popularity. SB 173 will make it illegal to sell these

designer drugs that are packaged as "spice," "potpourri," or a variety of other misleading labels. Senate Bill 173 would prohibit the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs. The Legislature has made several attempts to prohibit the use of synthetic illicit drugs by classifying certain known chemical compounds as controlled substances. Unfortunately, what we're seeing as a result of this and similar efforts by the federal government, is that manufacturers simply change the chemical compound slightly, thus evading law enforcement efforts.

With the passage of SB 173, it will be considerably more difficult, if not impossible, for the sale or distribution of these synthetic illicit drugs state-wide.

He pointed out that this is a civil rather than criminal penalty, so it doesn't overload the courts. In the short time the ordinance has been in effect in Anchorage, the results have been very positive, he said.

[2:08:13 PM](#)

CHAIR COGHILL asked what duties the Department of Public Safety and the Department of Health and Social Services (DHSS) each would carry out.

SENATOR MEYER said originally DHSS was asked to do enforcement because they are statutorily involved with labeling, but he determined that (DPS) was more appropriate to do enforcement.

[2:09:13 PM](#)

SENATOR WIELECHOWSKI asked if there was a conscience effort not to include possession or manufacture.

MS. MORLEDGE explained that criminal statute AS 11.73 already imposes a class C felony penalty for the manufacture, delivery, possession, or possession with the intent to deliver an imitation controlled substance.

SENATOR WIELECHOWSKI observed that possession or manufacture is a felony but selling the same imitation controlled substance is a \$500 fine.

MS. MORLEDGE agreed that is how the existing statute and the proposed legislation are crafted.

SENATOR WIELECHOWSKI said the Department of Law would probably have something to say because they're always concerned about lesser included offenses. Having possession of an imitation controlled substance in a store seems to imply ownership and this legislation essentially reduces the penalty to \$500, which may or may not be something the legislature wants to do.

SENATOR MEYER said he chose this route to provide flexibility.

CHAIR COGHILL expressed interest in hearing from the Department of Law at the next hearing.

[2:11:55 PM](#)

SENATOR OLSON asked how the bill affects the situation in his district where residents order these products over the Internet.

SENATOR MEYER said Internet purchases are federal jurisdiction, but VPSOs have the same authority as police officers and could issue the \$500 citation per package.

[2:13:17 PM](#)

SENATOR WIELECHOWSKI pointed out inconsistencies with the definition of synthetic drug in Section 1, paragraph (2). He also expressed concern that the more general definition criminalizes things like synthetic caffeine.

SENATOR MEYER said he thought about that and there is some concern, but the reality is that the police won't cite somebody for possessing or using synthetic caffeine. He opined that they'll instead go after items that are harmful to society and cause a public nuisance.

SENATOR WIELECHOWSKI responded that he's always cautious about giving police discretion to arrest someone when lawmakers have an opportunity to provide clarity.

CHAIR COGHILL commented that the flexibility in this law could result in a claim of harassment, but the opposing view is that this could be a worthwhile tool.

SENATOR MEYER agreed it is a delicate balance.

CHAIR COGHILL commented on the cultural discussion associated with the marijuana initiative.

SENATOR DYSON maintained that a lot of due process is available to anyone who is charged under this legislation.

[2:18:46 PM](#)

CHAIR COGHILL announced he would hold SB 173 in committee for further consideration.

SB 176-REG. OF FIREARMS/KNIVES BY UNIVERSITY

[2:19:09 PM](#)

CHAIR COGHILL announced the consideration of SB 176. "An Act relating to the regulation of firearms and knives by the University of Alaska." This was the second hearing.

HANS RODVIK, Intern, Senator John Coghill, sponsor of SB 176, informed the committee that Brian Judy was available to testify.

[2:20:35 PM](#)

BRIAN JUDY, Alaska State Liaison, National Rifle Association (NRA), Sacramento, California, testified in support of SB 176. He opened his testimony with several questions and stated that SB 176 simply erases arbitrary lines that require different standards. He said the Alaska Constitution recognizes that self-defense is a fundamental preexisting right and SB 176 is about law abiding citizens being able to provide self-protection on both sides of that arbitrary line. He pointed out the problems with the idea that defense ought to be left up to the professionals: 1) it can take law enforcement too long to respond; and 2) the courts have ruled that police are responsible for protecting society at large, not individuals. He cited mass killings in recent years perpetrated in gun-free zones as evidence that gun-free school zones are a public policy failure. He said this comes as no surprise to those who support the individual right to keep and bear arms and the right to provide a means of personal defense. He said it's astounding that many people don't grasp the simple truth that criminals don't obey gun laws or designated gun-free zones, because the reality is that only potential victims are gun free in gun-free zones.

[2:23:49 PM](#)

He described the arguments that were made during a previous committee hearing as predictable scare tactics designed to derail the bill. He said the hypotheticals that were posed are similar to hypotheticals of horror that the legislature has heard every time firearm legislation has been introduced in the past 20 years, but they've never materialized.

MR. JUDY stressed that the majority of people on campuses are law abiding and they currently don't have an opportunity to protect themselves, just as the victims at Virginia Tech didn't have an opportunity. The Virginia Legislature considered, but didn't pass, similar legislation just before the attack. That lack of action ensured those individuals were sitting ducks, he said. The bottom line is that SB 176 is intended to erase the arbitrary lines and make the laws uniform both off and on campus. It's a matter of common sense, he said.

[2:29:36 PM](#)

SENATOR DYSON asked if he had statistics to show that more children have died from accidents like drowning than from firearms.

MR. JUDY replied he didn't have the statistics in hand, but that is generally true.

CHAIR COGHILL asked Mr. Rodvik if he had compiled that information.

MR. RODVIK replied he posted to BASIS some statistics provided by the Gun Owners Association including that, in a four-year period, twice as many children are killed playing football in school compared to the number of students who were murdered by firearms during that same period.

[2:31:58 PM](#)

SENATOR WIELECHOWSKI asked Mr. Judy to talk about the experiences in states like Utah that have similar laws.

MR. JUDY said Utah has allowed the possession of firearms on campuses for about ten years and there has never been a gun violence incident. He offered to provide a copy of the letter that the Utah attorney general wrote when Nevada was considering similar legislation.

SENATOR WIELECHOWSKI indicated interest in receiving a copy.

CHAIR COGHILL said he would distribute copies of the letter.

[2:34:04 PM](#)

SENATOR OLSON asked his experience with guns that accidentally go off in public forums.

MR. JUDY said the fact is that firearms accidents are relatively rare compared to other types of accidental harm. The empirical evidence across the states is the same; there are virtually no accidents associated with law-abiding citizens carrying firearms. He cited military recruiting on campus and stressed that people who can be trusted to carry firearms in defense of the country should be trusted to carry a firearm in their own defense.

SENATOR OLSON commented that his experience in school was that many students shouldn't be trusted with a firearm. He added that he didn't believe that the bill with the concealed provision was relevant to the Virginia Tech example.

MR. JUDY agreed that the responsible way to carry a firearm for self-protection is in a holster and concealed. Perhaps the legislature will want to tighten this law at some point to ensure certain, more responsible ways to carry, he said.

[2:40:32 PM](#)

SENATOR WIELECHOWSKI asked if there have been challenges under the Alaska Constitution to the individual right to carry anywhere including a university campus.

MR. JUDY said not to his knowledge.

[2:42:44 PM](#)

CEEZAR MARTINSON, Vice President, UAA Political Science Association, University of Alaska-Anchorage, Anchorage, Alaska, testified in support of SB 176. He said Article 1, Section 19 of the Alaska Constitution is very clear that neither the state nor any political subdivision can violate the individual right to keep and bear arms, and the university policy regarding concealed carry on campus is in direct contradiction. He stressed that it is time for the legislature to correct the inequity that the university policy creates.

MIKE COONS, representing himself, Palmer, Alaska, testified in support of SB 176. He disagreed with the points that President Gamble made when he testified in a previous hearing. He maintained that the testimony was designed to create emotion and hide facts.

[2:47:24 PM](#)

MONTANA WARE, President, Young Americans for Liberty (YAL), Anchorage, Alaska, testified in support of SB 176. He questioned the logic of the signs that prohibit guns on campus and pointed

out that this policy violates Article 1, Section 9 of the Alaska Constitution. He said he considers it his right to have the means to protect himself under any threatening circumstances, and believes that the UAA policy potentially puts lawful students in an unnecessarily unfavorable position. It is pertinent to the incident at Virginia Tech; with a bill like SB 176, any victims or potential victim would have had an opportunity to stop the gunman before he hurt many other students. He thanked Senator Coghill and his staff for taking steps to make Alaskans feel secure and protecting the right to self-defense.

SENATOR DYSON voiced exception to Mr. Coons' remarks about President Gamble and encouraged everyone to be respectful.

CHAIR COGHILL echoed the comment, with the caveat that it should not dampen passion.

[2:51:07 PM](#)

MATTHEW CARBERRY, representing himself, Anchorage, Alaska, testified in support of SB 176. He referenced the question about whether the university policy had been challenged and offered his opinion that there is a strong case that the university policy violates both the state and federal constitutions. He cited recent Ninth Circuit Court opinions that say government agencies can't utterly abrogate the right to carry and noted that the same right exists under the state constitution. By comparison, the Board of Regents' grant of authority is limited to adopting reasonable rules, orders and plans for good governance of the university and regulation of the Board of Regents. Clearly, the university doesn't have a legal leg to stand on; their position is weak and has been dependent on no one challenging it, he said.

MR. CARBERRY indicated he would submit written testimony.

[2:56:41 PM](#)

MICHAEL BUCKLAND, representing himself, Anchorage, Alaska, said he's a lifelong Alaskan, decorated Vietnam veteran, and tenured professor at UAA who strongly supports SB 176. He has taught for 25 years and doesn't feel threatened by the idea that his students and other law-abiding Alaskans will have weapons. The fact is that horrible shootings happen in zones that are effectively gun-free, he said.

He concluded that public safety will be enhanced with this legislation, because a good guy with a gun will be able to stop the bad guy with a gun.

CHAIR COGHILL said public testimony would be taken again on Monday.

He held SB 176 in committee.

[3:00:31 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.