

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 12, 2014

2:27 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 173

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

- MOVED CSSB 173(JUD) OUT OF COMMITTEE

SENATE BILL NO. 187

"An Act relating to the crime of endangering the welfare of a child in the second degree; relating to the crime of misconduct involving confidential information in the first degree; amending Rule 16(d)(3), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

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 SB 186 OUT OF COMMITTEE

SENATE BILL NO. 200

"An Act establishing a right of action for the death of an unborn child in certain circumstances."

- MOVED SB 200 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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)
03/05/14 (S) Heard & Held
03/05/14 (S) MINUTE(JUD)
03/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 187

SHORT TITLE: CHILD WELFARE; CONFIDENTIAL INFORMATION

SPONSOR(s): SENATOR(s) COGHILL

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)

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)

BILL: SB 200

SHORT TITLE: WRONGFUL DEATH OF AN UNBORN CHILD

SPONSOR(s): SENATOR(s) MCGUIRE

02/24/14 (S) READ THE FIRST TIME - REFERRALS
02/24/14 (S) JUD
03/10/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/10/14 (S) Heard & Held
03/10/14 (S) MINUTE(JUD)
03/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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: Discussed the changes found in Version C of SB 173 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided information and the Department of Law perspective on SB 173 and SB 186.

KELLI FARQUER, representing herself
Florida

POSITION STATEMENT: Testified in support of SB 173.

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

POSITION STATEMENT: Introduced the changes found in Version N of SB 187 on behalf of the sponsor.

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

POSITION STATEMENT: Provided supporting information related to SB 186 on behalf of the sponsor.

ACTION NARRATIVE

[2:27:52 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 2:27 p.m. Present at the call to order were Senators McGuire, Wielechowski, Dyson, and Chair Coghill. Senator Olson arrived during the course of the meeting.

SB 173-SYNTHETIC DRUGS

[2:28:41 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 second hearing. He noted the proposed committee substitute (CS).

[2:29:12 PM](#)

SENATOR DYSON moved to adopt committee substitute (CS) for SB 173, labeled 28-LS1242\C, as the working document.

CHAIR COGHILL objected for an explanation.

[2:29:37 PM](#)

EDRA MORLEDGE, Staff, Senator Kevin Meyer, Alaska State Legislature, Juneau, Alaska, introduced the two substantive changes found in Version C of SB 173.

- On page 1, line 1, the word "possession" was added so it's one of the prohibited actions with illicit synthetic drugs. That word was also added on page 1, line 5. This clarifies the sponsor's intent that possession is illegal.
- Paragraph (F) on page 2 of the previous Version N was removed entirely. It spoke to the actions of a person rather than to the characteristics of the synthetic drug.

[2:31:58 PM](#)

CHAIR COGHILL removed his objection and Version C was adopted.

MS. MORLEDGE addressed the concern about making illegal the sale of legitimate substances that are purported to be an illicit synthetic drug. The bill requires a synthetic drug to meet two criteria for it to be deemed an illicit synthetic drug. First, it must meet one of the criteria set forth on page 1 in subsection (b)(1)(A),(B), or (C). Then it must meet one or more of criteria in subsection (b)(2)(A)-(G), found on page 1, line 31, through page 3, line [5].

[2:33:42 PM](#)

SENATOR WIELECHOWSKI stated support for the changes. He directed attention to page 2, line 19 through page 3, line 4, and asked the Department of Law if it's appropriate for a prosecution to be based on a street name.

[2:35:48 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, said it might be a

difficult element to prove, but she would defer to the sponsor in that regard.

MS. MORLEDGE explained that the substances that are listed are known packaging labels and by listing them they're immediately illegal.

MS. CARPENETI suggested the sponsor consider adding that the substance is labeled as or has one of the street names listed in paragraph (G).

[2:37:29 PM](#)

SENATOR OLSON joined the committee.

CHAIR COGHILL agreed with the suggestion.

[2:37:49 PM](#)

KELLI FARQUER, representing herself, Florida, shared the personal tragedy of losing her son when he used a synthetic drug. She said his death could have been avoided if he'd known the substance was dangerous, but kids believe the substances are safe because they're readily available in the retail market for a relatively small amount of money. She urged the committee to pass the legislation and save lives in the future.

SENATOR WIELECHOWSKI asked if this would undermine current law that provides higher penalties for possession.

MS. CARPENETI pointed out that this law and the artificial controlled substances law in AS 11.73 have different elements, but the concern would be to avoid any overlap.

SENATOR WIELECHOWSKI recalled legislation passed last year imposed a harsher penalty for possession.

MS. MORLEDGE said that Sec. 11.73.010, the manufacture or delivery of an imitation controlled substance, speaks to the compounds in the substance and targets trafficking, whereas SB 173 targets labeling.

SENATOR WIELECHOWSKI asked if SB 173 specifies an amount or any possession.

MS. MORLEDGE replied it's any possession.

SENATOR WIELECHOWSKI observed that if somebody possesses, there will be a conflict in law.

[2:44:09 PM](#)

MS. CARPENETI clarified that if somebody possesses with intent to deliver it's a violation of the imitation controlled substance law. If somebody mislabels and possesses, it's a violation of the illicit synthetic drug law in SB 173.

SENATOR WIELECHOWSKI continued to express concern.

MS. CARPENETI said she understood the concern.

CHAIR COGHILL suggested a conceptual amendment.

MS. MORLEDGE agreed to the suggestion.

[2:46:05 PM](#)

CHAIR COGHILL moved to adopt conceptual Amendment 1.

Amendment 1

Page 2, line 19, following "drug":
Insert "is labeled as or"

Finding no objection, conceptual Amendment 1 was adopted.

SENATOR WIELECHOWSKI asked if the amendment satisfied the Department of Law's concern.

MS. CARPENETI replied she would also suggest on page 1, line 7, following "if" adding "it is labeled and the label" because it doesn't otherwise require a label.

SENATOR COGHILL disagreed, pointing out that "the label" is on the following line 8.

[2:47:45 PM](#)

SENATOR WIELECHOWSKI agreed with Ms. Carpeneti's point about labeling. He referenced page 1, lines 7-12, and questioned what could be proved if the substance didn't have a label.

MS. CARPENETI agreed that was her concern.

CHAIR COGHILL opined that there wasn't ambiguity.

SENATOR WIELECHOWSKI predicted that a clarifying bill would be introduced next year.

CHAIR COGHILL found no further questions or comments and solicited a motion.

[2:49:27 PM](#)

SENATOR DYSON moved to report SB 173, as amended, from committee with individual recommendations and attached fiscal note(s).

[2:49:53 PM](#)

CHAIR COGHILL announced that without objection, CSSB 173(JUD) was reported from the Senate Judiciary Standing Committee.

[2:50:08 PM](#)

At ease

SB 187-CHILD WELFARE; CONFIDENTIAL INFORMATION

[2:51:20 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of SB 187. "An Act relating to the crime of endangering the welfare of a child in the second degree; relating to the crime of misconduct involving confidential information in the first degree; amending Rule 16(d)(3), Alaska Rules of Criminal Procedure; and providing for an effective date." This was the first hearing. He noted the proposed committee substitute (CS).

[2:51:55 PM](#)

SENATOR DYSON moved to adopt committee substitute (CS) for SB 187, labeled 28-LS1145\N, as the working document.

CHAIR COGHILL objected for an explanation of the changes found in Version N.

[2:52:17 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, explained that the first four sections of the original bill were removed, because endangering the welfare of a child in the second degree is already in statute as an aggravator. The bill now addresses an incident that occurred last year when an attorney gave a defendant a video of an interview and it ultimately appeared on YouTube. SB 187 provides a class A misdemeanor under misconduct involving confidential information in the first degree for anyone who distributes or publishes audios or videos of interviews of children that are conducted for criminal and child protection investigations. It also includes distribution of photographs from medical examinations.

The rest of the bill addresses three court rules that include that confidentiality language; two are under criminal rules and one is under Child in Need of Aid (CINA). The bill also has an applicability section and effective date. She noted that the bill was brought to Senator Coghill by the Alaska Children's Justice Act Task Force.

SENATOR WIELECHOWSKI reviewed AS 11.41.410-11.41.440 to understand what they address.

MS. MOSS advised that they address sexual assault in the first, second third, and fourth, degree; and sexual abuse of a minor in the first, second, third, and fourth degree.

SENATOR COGHILL added that these are about interviews in child advocacy centers and are videoed so the court has a record.

MS. MOSS said the evidence that is in the hands of the attorney and the defendant is allowed to see the evidence, but is not allowed to have physical possession of the evidence. Section 2 provides exceptions; with permission from the victim or the minor's parent or guardian, the recorded material may be used for training by law enforcement.

[2:56:35 PM](#)

SENATOR MCGUIRE suggested the exception in Section 2, paragraph (C) should be clear that a minor does not consent.

MS. MOSS replied it's a policy call, but the current language does say the material may be released with consent of the parent or guardian unless he/she is the perpetrator.

SENATOR MCGUIRE asked the members to make sure the permission on page 2, line 19, sub (ii), doesn't default to the victim in sub (i), if the minor's parent or guardian is the perpetrator.

MS. MOSS suggested inserting "adult" on page 2, line 18, sub (i), to ensure that only an adult victim could consent.

SENATOR MCGUIRE expressed support for the suggestion.

CHAIR COGHILL agreed it would clarify than only an adult victim could consent.

[2:58:32 PM](#)

SENATOR WIELECHOWSKI directed attention to the court rule in Section 3 and expressed concern that by criminalizing distribution an attorney who circulates the material within his/her law firm or gives the audio to secretarial staff to transcribe appears to have broken the law. The court rule says that's not the case, but the law in statute reads otherwise.

MS. MOSS said she had the same concern.

CHAIR COGHILL marked that as a point the Department of Law could address in a subsequent hearing.

[2:59:28 PM](#)

SENATOR WIELECHOWSKI requested DOL's interpretation of the applicability section on page 5. It appears to envision prosecuting someone for conduct that occurred before the law goes into effect.

MS. MOSS offered her interpretation is that it would apply upon conviction.

SENATOR WIELECHOWSKI restated his desire to discuss the matter with DOL.

CHAIR COGHILL suggested the committee discuss on Friday this point and Senator McGuire's question about consent.

MS. MOSS noted that the other concern was tightening the language on page 3, line 30 through page 4, line 3.

[3:01:05 PM](#)

CHAIR COGHILL stated he would hold SB 187 in committee for further consideration.

SB 186-CONTROLLED SUBSTANCES ADVISORY COMMITTEE

[3:02:13 PM](#)

CHAIR COGHILL announced the consideration of SB 186. "An Act relating to the Controlled Substances Advisory Committee and providing for mandatory meetings of the committee at least twice a year." This was the first hearing.

[3:02:52 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, Juneau, Alaska, sponsor, introduced SB 186 speaking to the following sponsor statement: [Original punctuation provided.]

SB 186 seeks to bring the State into compliance with current drug statutes established by the Alaska Legislature in 1982. Specifically, for the past 32 years the State has violated the law requiring a Controlled Substances Advisory Committee to be established within the Department of Law. This committee has never been formed, and has never met, even once, to carry out its statutory duties under AS 11.71.110, or exercised its authority to schedule controlled substances under AS 11.71.120.

AS 11.71.100 established the Controlled Substances Advisory Committee (CSAC) within the Department of Law, and designated the Attorney General or his/her designee as the chairman of the committee. This nine-member commission is to be comprised of persons that combined have a significant breadth of experience to carry out its duties which include advising the Governor on the appropriateness of classification of controlled substances; recommending regulations for adoption by the Board of Pharmacy to prevent excessive prescription of controlled substances; evaluate effectiveness of controlled substance treatment programs; recommend to Alaska Court System alternatives to prosecution or imprisonment of offenders who have no prior criminal record involving controlled substance offenses; and review and evaluate enforcement policies and practices of the Departments of Law and Public Safety with regard to crimes involving controlled substances. The CSAC includes the attorney general or his designee, the commissioner of health and social services and of public safety, a pharmacist, a peace officer, a physician, a psychiatrist and two more public members. The committee is required by law to meet twice a year.

Despite a clear legislative mandate for the CSAC to provide meaningful oversight of our controlled substance laws, and our treatment and enforcement policies, this has never happened. Today, the state of Alaska is reeling under an increasingly complex patchwork of controlled substance laws and regulations, high rates of incarceration and overcrowded prisons, and enforcement policies that have produced severe over criminalization and high recidivism of controlled substance offenders.

The Department of Law recently argued in *State of Alaska vs Patillo* that the legislative language is "directory" as opposed to "mandatory", therefore, they do not have to comply with forming the committee as directed by the Legislature. SB 186 makes it mandatory the CSAC carry out the duties our state desperately needs it to.

He asked Ms. Carpeneti if there was a record over the past 32 years of a systematic effort to accomplish the mission of the CSAC.

[3:10:24 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, Juneau, Alaska, clarified that the litigation that Senator Dyson referenced was a motion on behalf of a defendant charged with a drug offense to declare all the drug statutes unconstitutional because CSAC was never formed. The Department of Law's position was that all the statutes couldn't be declared unconstitutional just because the advisory committee wasn't formed. She added that the Department of Law had no objection to the stronger language put forth in SB 186.

SENATOR DYSON restated the question.

MS. CARPENETI advised that DOL has trainings and district attorney meetings every month that include discussions about how the laws are working and whether they make sense under the circumstances. If a statute appears to be inadequate DOL is able change it by introducing a bill through the governor. That has been done over the years, but she couldn't attest that there had been a top to bottom review of all the drug laws.

SENATOR DYSON stated that in his 18-year tenure in the legislation he had not seen a single governor's bill restructuring or rescheduling drugs.

[3:13:40 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, Juneau, Alaska, sponsor of SB 186, advised that it would be incongruous for the prosecution to carry out the duties of CSAC. Sec. 11.71.100 provides CSAC with a breadth of professional experience and the duties outlined in Sec. 11.71.110 are specific to those professionals. The legislative intent was clearly to provide meaningful oversight of the controlled

substance laws and that hasn't happened. The result is severe over-criminalization in many areas of the law. Under current law it is a class C felony to possess any amount of cocaine that is detectable in a narcotics test, even if it's 1/1000th of a grain. By comparison, it is also a class C felony to put a person in serious fear of their life being imminently taken by pointing a handgun at their head and discharging it into the wall.

MR. KOPP noted that the packets contain 20 examples of class C felonies that are equivalent to simple possession of Schedule IA or IIA substances. The sponsor's point is that if CSAC had been formed, Alaska's drug laws wouldn't be in the state they're in. This commission is an ideal tool to address the schizophrenia in the system, he said.

[3:18:02 PM](#)

SENATOR DYSON added that the debate in 1982 was about the tension between good treatment and incarceration. A fiscal note was passed with the bill but subsequent attorney general and governor budgets didn't include funding. He expressed disappointment at the resistance he'd received from some people in the Criminal Division of the Department of Law and clarified that this did not include Ms. Carpeneti.

[3:21:41 PM](#)

SENATOR WIELECHOWSKI commended the sponsor for the find and highlighted that more than 90 percent of the crimes that are committed in the state are substance-abuse related. He posited that having CSAS in place would have made a huge difference. He asked Ms. Carpeneti how to move forward because the committee is needed today.

[3:22:49 PM](#)

MS. CARPENETI agreed it would be a valuable tool and admitted to surprise when the lawsuit was filed and she looked at the statutes.

SENATOR WIELECHOWSKI asked if the legislature could expect appointments to this commission this session.

MS. CARPENETI said she'd take this back to her superiors.

MR. KOPP said the testimony in House Finance in 1982 was that 1 in 90 Alaskans were under supervision of the Department of Correction. The statistics today show it's 1 in 36 Alaskans. The sponsor's data shows that the primary incarceration drivers are

misconduct involving controlled substance offenses, theft second offenses, and petition to revoke probation filings on felons on parole.

CHAIR COGHILL noted the zero fiscal note from DOL.

SENATOR DYSON asked the committee not to add a fiscal note at this point and suggested that DOL could get started with the compounded amount that was put in the budget in 1983.

[3:27:51 PM](#)

MS. CARPENETI said she believes that the funds would have been returned to the general fund, but she'd check again.

CHAIR COGHILL solicited a motion.

[3:28:25 PM](#)

SENATOR MCGUIRE moved to report SB 186, Version A, from committee with individual recommendations and attached fiscal note(s).

[3:28:41 PM](#)

CHAIR COGHILL announced that without objection, SB 186 will pass from the Senate Judiciary Standing Committee.

[3:28:45 PM](#)

At ease

SB 200-WRONGFUL DEATH OF AN UNBORN CHILD

[3:29:27 PM](#)

CHAIR COGHILL reconvened the meeting and announced the consideration of SB 200. "An Act establishing a right of action for the death of an unborn child in certain circumstances." This was the second hearing.

SENATOR MCGUIRE, responding to an earlier question from Senator Wielechowski, said legislative legal opined that the language in paragraph (2) on page 2, lines 2-4, should be considered in the same terms as Sec. 09.55.549, which defines limitations from healthcare provider services for medical malpractice.

[3:30:43 PM](#)

SENATOR WIELECHOWSKI asked if losses are capped at \$400,000 for medical malpractice or in all cases.

SENATOR MCGUIRE advised that Sec 09.17.010 defines noneconomic damages that can be sought for personal injury and wrongful death. Subsection (b) says that all claims may not exceed \$400,000. Sec. 09.55.549 would apply to damages and limitations if it were in the course and scope of medical malpractice. Sec. 09.55.580 explains damages for wrongful death and she believes some of that will apply. Damages will ultimately be determined based on a preponderance of evidence and by a determination of a jury of their peers

[3:31:57 PM](#)

SENATOR WIELECHOWSKI advocated the committee remove any artificial cap and let a jury decide on an appropriate number.

SENATOR MCGUIRE said she didn't know how to incorporate it and was unwilling to undo what was already there. She agreed to provide a copy of the questions that Senator Wielechowski asked and she answered. She noted that Senator Wielechowski also requested a list of all the charges that had been brought based on the 2006 law; thus far, five individuals were involved in a total of eight charges.

CHAIR COGHILL found no further questions or debate and solicited a motion.

[3:34:06 PM](#)

SENATOR DYSON moved to report SB 200, Version A, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, SB 200 will pass from the Senate Judiciary Standing Committee.

[3:35:06 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:35 p.m.