

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 16, 2016

9:21 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Peter Micciche

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 147(JUD)

"An Act relating to cruelty to animals; relating to the seizure of animals; relating to the destruction of animals; relating to the costs of care of animals that have been seized; relating to the inclusion of animals in protective orders and crimes and arrests for violating those protective orders; and relating to the ownership of animals upon divorce or dissolution of marriage."

- MOVED CSHB 147(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 308 AM

"An Act relating to the limitation of liability for the inspection, installation, or adjustment of a child safety seat or in providing education regarding the installation or adjustment of a child safety seat; and relating to child safety devices in motor vehicles.

- HEARD AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 317(FIN)

"An Act relating to civil in rem forfeiture actions; and providing for an effective date."

- MOVED SCS CSHB 317(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126(JUD) AM

"An Act relating to the administration of military justice; relating to the adoption of regulations by the adjutant general; relating to the authority of the adjutant general; relating to appeals of convictions and sentences of courts-martial; establishing the Military Appeals Commission; relating to the detention and incarceration of members of the militia; relating to the jurisdiction of the supreme court over petitions from the Military Appeals Commission; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; relating to offenses subject to court-martial proceedings; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED SCS CSHB 126(JUD) OUT OF COMMITTEE

SENATE BILL NO. 182

"An Act relating to genetic genealogy, DNA testing, DNA analysis, DNA privacy, and DNA property rights."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 147

SHORT TITLE: ANIMALS: PROTECTION/RELEASE/CUSTODY

SPONSOR(S): REPRESENTATIVE(S) VAZQUEZ

03/16/15	(H)	READ THE FIRST TIME - REFERRALS
03/16/15	(H)	JUD
03/20/15	(H)	BILL REPRINTED (CORRECTED) 3/20/15
03/25/15	(H)	JUD AT 1:00 PM CAPITOL 120
03/25/15	(H)	<Bill Hearing Canceled>
04/01/15	(H)	JUD AT 1:00 PM CAPITOL 120
04/01/15	(H)	Heard & Held
04/01/15	(H)	MINUTE (JUD)
04/06/15	(H)	JUD AT 1:00 PM CAPITOL 120
04/06/15	(H)	<Bill Hearing Canceled>
04/07/15	(H)	JUD AT 1:30 PM CAPITOL 120
04/07/15	(H)	<Bill Hearing Canceled>
04/13/15	(H)	JUD AT 1:00 PM CAPITOL 120
04/13/15	(H)	<Bill Hearing Canceled>
02/01/16	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/16	(H)	Heard & Held
02/01/16	(H)	MINUTE (JUD)
02/10/16	(H)	JUD AT 1:00 PM CAPITOL 120
02/10/16	(H)	-- MEETING CANCELED --
04/06/16	(H)	JUD AT 1:00 PM GRUENBERG 120

04/06/16 (H) Moved CSHB 147(JUD) Out of Committee
 04/06/16 (H) MINUTE (JUD)
 04/07/16 (H) JUD RPT CS (JUD) NT 6DP
 04/07/16 (H) DP: MILLETT, KREISS-TOMKINS, LYNN,
 CLAMAN, KELLER, LEDOUX
 04/14/16 (H) TRANSMITTED TO (S)
 04/14/16 (H) VERSION: CSHB 147(JUD)
 04/15/16 (S) READ THE FIRST TIME - REFERRALS
 04/15/16 (S) JUD
 04/15/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/15/16 (S) -- Postponed to 4/16/2016 at 9:00 a.m.
 04/16/16 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 308

SHORT TITLE: CHILD SAFETY SEAT INSTALLATION LIABILITY

SPONSOR(s): REPRESENTATIVE(s) MILLETT

02/12/16 (H) READ THE FIRST TIME - REFERRALS
 02/12/16 (H) L&C, JUD
 03/28/16 (H) L&C AT 3:15 PM BARNES 124
 03/28/16 (H) Moved HB 308 Out of Committee
 03/28/16 (H) MINUTE (L&C)
 03/29/16 (H) L&C RPT 3DP 2NR
 03/29/16 (H) DP: HUGHES, TILTON, OLSON
 03/29/16 (H) NR: JOSEPHSON, KITO
 04/06/16 (H) JUD AT 1:00 PM GRUENBERG 120
 04/06/16 (H) Moved HB 308 Out of Committee
 04/06/16 (H) MINUTE (JUD)
 04/07/16 (H) JUD RPT 6DP
 04/07/16 (H) DP: MILLETT, KREISS-TOMKINS, LYNN,
 KELLER, CLAMAN, LEDOUX
 04/10/16 (H) TRANSMITTED TO (S)
 04/10/16 (H) VERSION: HB 308 AM
 04/11/16 (S) READ THE FIRST TIME - REFERRALS
 04/11/16 (S) JUD
 04/13/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/13/16 (S) Heard & Held
 04/13/16 (S) MINUTE (JUD)
 04/16/16 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 317

SHORT TITLE: NO COMMON LAW CIVIL IN REM FORFEITURE

SPONSOR(s): REPRESENTATIVE(s) WILSON

02/17/16 (H) READ THE FIRST TIME - REFERRALS
 02/17/16 (H) JUD, FIN

03/30/16 (H) JUD AT 1:00 PM GRUENBERG 120
 03/30/16 (H) Heard & Held
 03/30/16 (H) MINUTE (JUD)
 03/31/16 (H) JUD AT 1:00 PM GRUENBERG 120
 03/31/16 (H) -- Will be Continued from 3/30/16 --
 04/04/16 (H) JUD AT 1:00 PM GRUENBERG 120
 04/04/16 (H) Moved CSHB 317(JUD) Out of Committee
 04/04/16 (H) MINUTE (JUD)
 04/05/16 (H) JUD RPT CS (JUD) NT 4DP
 04/05/16 (H) DP: KREISS-TOMKINS, LYNN, CLAMAN,
 LEDOUX
 04/11/16 (H) FIN AT 5:00 PM HOUSE FINANCE 519
 04/11/16 (H) -- MEETING CANCELED --
 04/12/16 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/12/16 (H) Moved CSHB 317(FIN) Out of Committee
 04/12/16 (H) MINUTE (FIN)
 04/13/16 (H) FIN RPT CS (FIN) NT 8DP 1AM
 04/13/16 (H) DP: MUNOZ, PRUITT, GATTIS, GARA,
 WILSON, GUTTENBERG, EDGMON, THOMPSON
 04/13/16 (H) AM: KAWASAKI
 04/14/16 (H) TRANSMITTED TO (S)
 04/14/16 (H) VERSION: CSHB 317(FIN)
 04/15/16 (S) READ THE FIRST TIME - REFERRALS
 04/15/16 (S) JUD, FIN
 04/16/16 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

BILL: HB 126

SHORT TITLE: CODE OF MILITARY JUSTICE; APPEALS

SPONSOR(S): JUDICIARY

02/25/15 (H) READ THE FIRST TIME - REFERRALS
 02/25/15 (H) MLV, JUD
 03/24/15 (H) MLV AT 1:00 PM CAPITOL 120
 03/24/15 (H) -- MEETING CANCELED --
 03/26/15 (H) MLV AT 1:00 PM CAPITOL 120
 03/26/15 (H) Heard & Held
 03/26/15 (H) MINUTE (MLV)
 03/31/15 (H) MLV AT 1:00 PM CAPITOL 120
 03/31/15 (H) Moved CSHB 126(MLV) Out of Committee
 03/31/15 (H) MINUTE (MLV)
 04/01/15 (H) MLV RPT CS(MLV) NT 3DP 4AM
 04/01/15 (H) DP: LYNN, LEDOUX, HERRON
 04/01/15 (H) AM: TUCK, GRUENBERG, COLVER, HUGHES
 04/14/15 (H) JUD AT 1:00 PM CAPITOL 120
 04/14/15 (H) Heard & Held
 04/14/15 (H) MINUTE (JUD)
 09/22/15 (H) JUD AT 1:30 PM Anch LIO AUDITORIUM

09/22/15 (H) Heard & Held
 09/22/15 (H) MINUTE (JUD)
 11/17/15 (H) JUD AT 1:30 PM ANCH LIO AUDITORIUM
 11/17/15 (H) Heard & Held - Assigned to Subcommittee
 11/17/15 (H) MINUTE (JUD)
 01/22/16 (H) JUD AT 1:00 PM CAPITOL 120
 01/22/16 (H) Moved CSHB 126(JUD) Out of Committee
 01/22/16 (H) MINUTE (JUD)
 01/25/16 (H) JUD RPT CS(JUD) NT 7DP
 01/25/16 (H) DP: CLAMAN, KELLER, MILLETT, FOSTER,
 GRUENBERG, LYNN, LEDOUX
 02/03/16 (H) TRANSMITTED TO (S)
 02/03/16 (H) VERSION: CSHB 126(JUD) AM
 02/05/16 (S) READ THE FIRST TIME - REFERRALS
 02/05/16 (S) STA, JUD
 04/12/16 (S) STA AT 8:00 AM BUTROVICH 205
 04/12/16 (S) Heard & Held
 04/12/16 (S) MINUTE (STA)
 04/13/16 (S) STA AT 8:00 AM BUTROVICH 205
 04/13/16 (S) -- Public Testimony --
 04/13/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/13/16 (S) <Pending Referral>
 04/14/16 (S) STA RPT SCS 4NR 1AM SAME TITLE
 04/14/16 (S) NR: STOLTZE, COGHILL, HUGGINS, MCGUIRE
 04/14/16 (S) AM: WIELECHOWSKI
 04/14/16 (S) STA AT 8:30 AM BUTROVICH 205
 04/14/16 (S) Moved SCS CSHB 126(STA) Out of
 Committee
 04/14/16 (S) MINUTE (STA)
 04/15/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/15/16 (S) -- Postponed to 4/16/2016 at 9:00 a.m.
 04/16/16 (S) JUD AT 9:20 AM BELTZ 105 (TSBldg)

BILL: SB 182

SHORT TITLE: DNA TESTING EXEMPTION FOR GENEALOGY

SPONSOR(s): SENATOR(s) MCGUIRE

02/17/16 (S) READ THE FIRST TIME - REFERRALS
 02/17/16 (S) JUD
 03/09/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/09/16 (S) Heard & Held
 03/09/16 (S) MINUTE (JUD)
 04/16/16 (S) JUD AT 9:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

REPRESENTATIVE LIZ VAZQUEZ

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Co-sponsor of HB 147.

NICOLI BAILEY, Staff
Representative Amy Spohnholz and
the late Representative Max Gruenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 147 on behalf of the
sponsors.

LINDSEY WITT, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Summarized the contents of the House
version of HB 308.

JESSEE LOGAN, Staff
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in the Senate CS for
HB 308.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 317.

KENT SULLIVAN, Assistant Attorney General
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions related to HB 317.

CHRISTOPHER WEAVER, Lieutenant Colonel
Alaska National Guard
Staff Judge Advocate for the Adjutant General
Department of Military & Veterans' Affairs (DMVA)
Joint Base Elmendorf-Richardson, Alaska

POSITION STATEMENT: Introduced HB 126.

REPRESENTATIVE GABRIELLE LEDOUX
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 126.

RETIRED COLONEL BOB DOEHL, Deputy Commissioner
Department of Military & Veterans Affairs (DMVA)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 126.

FORREST WOLFE, Staff
Senator McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered a summary of SB 182.

ACTION NARRATIVE

[9:21:06 AM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 9:21 a.m. Present at the call to order were Senators and Coghill, Wielechowski, Costello, and Chair McGuire.

HB 147-ANIMALS: PROTECTION/RELEASE/CUSTODY

[9:21:30 AM](#)

CHAIR MCGUIRE announced the consideration of CSHB 147. She noted that this is the first hearing.

[9:21:50 AM](#)

REPRESENTATIVE LIZ VAZQUEZ, Alaska State Legislature, speaking as co-sponsor of HB 147, said the late Representative Max Gruenberg was passionate about this bill. When he requested help, the topic also became her passion. It has serious provisions that will help victims of domestic violence, local shelters, and individuals going through the divorce and dissolution process. It will also save money. She deferred further introduction to Ms. Bailey.

CHAIR MCGUIRE shared stories about the late Representative Max Gruenberg.

REPRESENTATIVE VAZQUEZ shared remembrances of the late Representative Max Gruenberg.

[9:26:14 AM](#)

NICOLI BAILEY, Staff, Representative Amy Spohnholz and the late Representative Max Gruenberg, stated that HB 147 accomplishes three things: it amends the cost of care statutes for animals to hold an owner responsible for the reasonable third-party costs of caring for animals lawfully seized due to cruelty or neglect; it provides statutory protection for animals in protective orders, permits granting exclusive temporary custody of an animal to the victim; and permits a judge to consider the well-being of animals when deciding ownership in divorce and dissolution proceedings.

MS. BAILEY highlighted that the Municipality of Anchorage reported that from 2009 to 2014 it spent over \$100,000 to house neglected animals. She described it as a win-win if these animals don't need to be in a shelter. She directed attention to an article from the "New York Times" that speaks to the number of domestic violence victims that stay in the situation in order to ensure the safety of their pets. Point two in the bill ensures the victim may take their pets.

CHAIR MCGUIRE asked her to walk through current law and what will happen should the bill pass with regard to seizure of an animal due to cruelty or neglect. She expressed concern that there be an opportunity for the other person with an interest in the animal to have a chance to rectify the problem. She drew a tangential parallel to a recent bill that allows parents that agree to relinquish parental power of attorney to a third party.

MS. BAILEY said the cost of care provision is targeted on individuals who have so many animals under their care that they are neglected and dying. She suggested the domestic violence part of the bill relates to the chair's concern; when someone is trying to leave a domestic violence situation, they want to ensure that all children and pets will be safe.

CHAIR MCGUIRE said she wants to make sure that all the circumstances of animal seizure are considered. She asked if there is an opportunity for the pet owner that hasn't been awarded care rights to make a claim for a pet that is being purposefully neglected by the individual given the responsibility of caring for the pet.

MS. BAILEY said the animal will not be put up for permanent adoption as long as the owner demonstrates they can take care of the animal financially. Turning to the third part of the bill that permits a judge to consider the well-being of animals when deciding ownership in divorce and dissolution proceedings, she

discussed how important this piece was to the late Representative Gruenberg who was a family lawyer.

CO-CHAIR MCGUIRE commented on the correlation between animal cruelty and domestic violence. She expressed appreciation for the bill.

[9:34:57 AM](#)

REPRESENTATIVE VAZQUEZ noted a national survey found that 52 percent of domestic violence victims did not leave a domestic violence situation due to concern about leaving their pets behind.

MS. BAILEY shared that she will put her car on the ferry when she leaves Juneau and fly home with her cats.

CHAIR MCGUIRE shared a story about the late Representative Gruenberg's dismay that someone who stole a car with dogs inside would only be charged with attempted theft of a vehicle.

[9:38:33 AM](#)

SENATOR COGHILL commented that the reading of the language in Section 19, subsection (a) is inarticulate. He asked if there is a reason for the wording.

MS. BAILEY explained that language clarifies it is a custodial issue. The sponsor was ensuring that the property aspect was included.

SENATOR COGHILL indicated he wouldn't offer the amendment.

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

[9:41:14 AM](#)

SENATOR COGHILL moved to report the CS for HB 147(JUD) from committee with individual recommendations and attached fiscal note(s).

CHAIR MCGUIRE announced that without objection, CSHB 147(JUD) is reported from the Senate Judiciary Standing Committee.

[9:41:45 AM](#)

At ease

HB 308-CHILD SAFETY SEAT INSTALLATION LIABILITY

[9:44:35 AM](#)

CHAIR MCGUIRE announced the consideration of HB 308 am. She noted this is the second hearing and there is a proposed Senate committee substitute.

[9:44:49 AM](#)

SENATOR COGHILL moved to adopt the Senate CS for HB 308, labeled 29-LS1323\H, as the working document.

CHAIR MCGUIRE found no objection and stated that version H is before the committee. She stated her intention to move the bill and listed the individuals available to answer questions.

[9:45:33 AM](#)

LINDSEY WITT, Staff, Representative Charisse Millett, Alaska State Legislature, stated that the part of HB 308 she is most familiar with provides civil immunity to volunteers who are trained car seat technicians, instructors, and individuals that arrange child car seat checkup events. She noted the bill was amended in the other body to lower the booster seat age to 4 rather than 5.

[9:47:07 AM](#)

SENATOR WIELECHOWSKI asked if there is opposition to the bill.

MS. WITT answered absolutely none so far.

CHAIR MCGUIRE asked Mr. Logan to explain the amendment from her office.

[9:47:22 AM](#)

JESSEE LOGAN, Staff, Senator Lesil McGuire, Alaska State Legislature, reviewed the changes in the Senate CS for HB 308. He described the changes as fairly simply; a few sections are added, a few sections are renumbered, and there is a title change. He spoke to the following document titled "SCS for HB 308(JUD) Summary of Changes version A.A to version H:"

Title Change

Page 1, Line 1

Following "An Act relating to"

Insert: "to compensation of attorneys in actions against the state;

Page 1, Line 4-5

Following "motor vehicles;"

Insert "and amending Rule 35, Alaska Bar Rules"

Section 1. AS 09.19.300

Page 1, Lines 7-11

New Section

Chapter 19 pertains only to prisoner and correctional facility litigation against the state. This section inserts language regarding compensation of attorneys in actions against the state. Under this new section a plaintiff's attorney may not enter into a contract for payment of fees based on contingency fee in excess of 25% of damages awarded.

Section 2 AS 09.65.094

Page 1, Line 12 thru Page 2, Line 31

Renumbered from Section 1.

Section 3 AS 28.05.095(b)

Page 3, Lines 1-25

Renumbered from Section 2.

Section 4

Page 3, Lines 26-31

Indirect Court Rule Amendment

Section 1, regarding attorney contingency fees has the effect of changing Rule 35, Alaska Bar Rules by established a rule governing the amount of fees that an attorney may receive in an action against the state under AS 09.19

Section 5

Page 4, Lines 1-8

Applicability

- (a) Provisions in Section 1 of this act apply to contracts for legal services entered into on or after the effective date of this Act.

Section 6

Page 4, Lines 11-13

Conditional Effect

Section 1 of this act only takes effect if Section 4 of this Act receives a two-thirds majority vote in each house as required by art IV, sec 15, of the Alaska State Constitution.

MR. LOGAN explained that the Department of Corrections (DOC) report of December 2015 was condemning of some practices in some facilities and the worry was that predatory attorneys would paint a target on the state. Moreover, it is a victim's rights motion. It ensures that an incarcerated person who is injured by the state can be made whole through a lawsuit, and the lawyer representing the individual cannot take 50 percent to 60 percent of the award. The remainder of the technical changes appear in Sections 5 and 6; changing an Alaska Bar Rule requires a two-thirds majority vote.

CHAIR MCGUIRE added that the amendment embodied in the Senate committee substitute is to the specific area of statute that governs lawsuits against corrections. It adds to the existing section that places caps on damages. The caps were put in place initially in recognition that there would be a lot of litigation in this area and that the state shouldn't be overly exposed to liability.

Specifically, version H caps attorney's fees at 25 percent. She noted that attorneys practicing in this area currently are taking 50 percent to 60 percent of an award. She clarified that this is a very narrow part of the statute that already was an area deemed to be a state interest. She opined that this doesn't materially change the original bill. She asked Ms. Witt if she would like to hear from any of the four people online and members if they were comfortable with the changes.

[9:52:14 AM](#)

SENATOR WIELECHOWSKI objected. He stated that HB 308 is a child car seat bill and the amendment adds a significant change relating to attorney's fees. He said the measure doesn't belong in the bill, there's been no testimony on it, and it's not germane. Respectfully, it's inappropriate and doesn't belong in the bill, he said. He restated his objection.

[9:52:40 AM](#)

SENATOR COGHILL asked if 25 percent is a standard cap.

CHAIR MCGUIRE replied most states do regulate in the area of contingency fees and Alaska said it has a compelling interest in limiting liability in this area. Therefore, a person is entitled to less money in a wrongful death in a DOC facility.

SENATOR COGHILL said he would support the change.

CHAIR MCGUIRE shared that she participated in "a march toward uncovering the wrongs in corrections" and Senator Coghill warned about exposing the state to millions of dollars of liability in lawsuits. Her choice was to believe that wouldn't be the case, but it turns out that attorneys are filing in every case and it's plaguing DOC. There is already a limit on the cap and the intent of the amendment is to make it clear that attorneys that take these cases will only receive 25 percent of the award.

[9:56:52 AM](#)

SENATOR WIELECHOWSKI said this major policy change added to a car seat bill makes the entire bill very controversial. He pointed out that there would have been a lot of interest if the bill had been noticed and people were aware that this is being added. At the very least, the bill ought to be held open for public testimony, but the better option is to debate the issue in a separate bill.

[9:58:42 AM](#)

CHAIR MCGUIRE said she would set HB 308 aside, recess to a call of chair, and bring it up again when there is time to satisfy Senator Wielechowski's concerns.

HB 317-NO COMMON LAW CIVIL IN REM FORFEITURE

[9:59:43 AM](#)

CHAIR MCGUIRE announced the consideration of HB 317. She noted this is the first hearing, CSHB 317(FIN) is before the committee, and there is a proposed Senate committee substitute.

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, Juneau, Alaska, sponsor of HB 317, explained that version P amends Alaska's civil asset forfeiture laws clarifying that private property may not be permanently taken from individuals suspected, but not charged or found guilty, of committing crimes.

[10:00:23 AM](#)

SENATOR COGHILL moved to adopt the Senate CS for CS for HB 317, labeled 29-LS1380\P, as the working document.

SENATOR COSTELLO objected to hear changes.

[10:00:56 AM](#)

REPRESENTATIVE WILSON explained that Section 1 of version P deletes the language in Sec. 09.55.700 relating to prohibiting common law civil in rem forfeiture except by court order. It

inserts, "Common law civil in rem forfeiture actions are abolished if used instead of a criminal proceeding."

She related that the Department of Law agreed to this portion of the original bill. The intent is to close the statutory loophole where law enforcement can seize private property before charging an individual with a crime. She said DOL agrees this is the right language.

SENATOR COSTELLO removed her objection.

CHAIR MCGUIRE said this bill addresses a concern about the small erosion of the Fourth Amendment right against unreasonable seizure. She asked Senator Wielechowski if he had any concerns with the bill.

[10:02:45 AM](#)

SENATOR WIELECHOWSKI asked if the court has a position, and noted the representative in the audience shook her head in the negative. He asked if there was any opposition to the bill.

REPRESENTATIVE WILSON said not now that it's a civil matter.

SENATOR WIELECHOWSKI asked the the Department of Law's (DOL) position on the bill.

[10:03:56 AM](#)

KENT SULLIVAN, Assistant Attorney General, Civil Division, Department of Law, said neither the Civil Division nor the Criminal Division have concerns with HB 317 as currently drafted. Originally the bill seemed to focus on forfeitures used in conjunction with criminal proceedings and the concern was about unintended consequences because civil forfeitures also occur pursuant to the common law that uses in rem jurisdiction against property. His understanding is that the current language satisfies those concerns.

SENATOR WIELECHOWSKI asked when in rem forfeitures are used.

MR. SULLIVAN replied in rem actions are relatively rare outside of criminal proceedings but they do happen both within DOL and the private sector. A partition action and a float house located on state land are good examples. DOL wanted to make sure, if the owner couldn't be located, that it could seize the float house to do something with it and not be affected by this change in statute. The Senate CS satisfies the concern.

SENATOR WIELECHOWSKI asked if there is a way the state could take action against a derelict float house on state property if the bill is enacted.

MR. SULLIVAN said it doesn't affect the state's ability if the bill is enacted as currently drafted.

SENATOR WIELECHOWSKI asked if this will make it more difficult for the state to take action in certain cases.

MR. SULLIVAN answered no.

SENATOR WIELECHOWSKI asked for an example of how this would apply in a quiet title action.

MR. SULLIVAN explained that the property itself can be sued in quiet title actions to affect the property boundaries. For example, two neighbors can sue over the strip of land separating the two driveways, arguing how the strip should be configured and who ought to be the owner. It's a civil in rem action. Initially the concern was that while quiet title actions are statutory, not all the law that addresses how that law proceeds is statutory. Common law is relied upon for a large part of how those actions occur so DOL wanted to make sure that common law as to those civil in rem proceedings is not done away with. As currently drafted, HB 317 does away with that concern.

SENATOR WIELECHOWSKI asked how it avoids the problem.

MR. SULLIVAN said it's because it's a civil proceeding. The bill seeks to abolish going after property in criminal instances instead of going after the person.

[10:10:53 AM](#)

REPRESENTATIVE WILSON agreed with the explanation and expressed appreciation for the work that takes care of the intent without having unintended consequences.

SENATOR COGHILL summarized his understanding of the bill.

MR. SULLIVAN confirmed that civil in rem forfeiture associated with criminal activity will have to happen either with a court order or through statute alone.

SENATOR COGHILL stated agreement with the bill and sponsor.

CHAIR MCGUIRE found no further questions and solicited a motion.

[10:12:52 AM](#)

SENATOR COGHILL moved to report the Senate CS for CS for HB 317, labeled 29-LS1380\P, from committee with individual recommendations and attached zero fiscal note(s).

CHAIR MCGUIRE announced that without objection, SCS CSHB 317(JUD) is reported from the Senate Judiciary Standing Committee.

[10:13:32 AM](#)

At ease

HB 126-CODE OF MILITARY JUSTICE; APPEALS

[10:26:47 AM](#)

CHAIR MCGUIRE reconvened the meeting and announced the consideration of HB 126. She noted this is the first hearing, SCS CSHB 126(STA) is before the committee, and the intention is to move the bill today. She deferred to Senator Costello to say how much of an overview she would like because the other members already heard the bill.

SENATOR COSTELLO requested an adequate overview.

[10:27:44 AM](#)

CHRISTOPHER WEAVER, Lieutenant Colonel, Alaska National Guard, Staff Judge Advocate for the Adjutant General, Department of Military & Veterans' Affairs (DMVA), Joint Base Elmendorf-Richardson, Alaska, explained that HB 126 was introduced after the Office of Complex Investigations with the National Guard Bureau issued a report stating that the Alaska National Guard did not have a functioning military justice program.

He related that the Alaska National Guard does not have a codified punishment system and the other tools it attempts to use are inadequate, resource intensive, and generally do not fit the punishment scheme. For this reason a Uniform Code of Military Justice (UCMJ) and Alaska Code of Military Justice (ACMJ) are needed. The idea is that civilians will prosecute civilian crimes and the military will prosecute military crimes or the crimes that affect the unit. If there's a light crime like sexual assault, the military would look at it to see if it meets military elements. He noted that this would affect nonjudicial punishment for minor offenses and courts-martials for more serious offenses. He directed attention to a document

in the packets that enumerates various offenses and the maximum punishment as it relates to confinement.

SENATOR COSTELLO asked him to talk about the process; how the legislation was drafted, who was involved, the response, and the significance of the bill.

COLONEL WEAVER spoke to the Guard's input in the bill. They tried to keep the process open and brought in people of various ranks to run through scenarios and trainings. They talked to different commanders to learn what they needed to ensure good order and discipline. They looked at what other states have done recently to implement a state military code.

CHAIR MCGUIRE recalled that two years ago the Senate Judiciary Committee brought in corrections officers to talk about corrections issues. Thereafter the committee returned to the issue of the military and the National Guard. She didn't recall if there was a full hearing or just discussion about the sexual harassment claims in the Alaska National Guard. She asked Senator Coghill to talk about the report she advocated.

[10:34:36 AM](#)

SENATOR COGHILL said the committee was looking for information about the same issue that the National Guard was dealing with.

CHAIR MCGUIRE said some members were vocal about the culture within the Alaska National Guard under former Adjutant General Katkus and former Deputy Commissioner McHugh Pierre. She recalled three areas of concerns: a culture of sexual harassment with no opportunity to make a claim; misuse of government property; and drug misuse. This played out in the last governor campaign and election. Commissioner and Adjutant General Laurie Hummel came in with the mission to address those concerns through the update of the Alaska Code of Military Justice that was last updated in 1955. The idea is that updating the code and the process by which individuals are disciplined will inspire more confidence in the system and raise morale. The intention is to correct the action and get the individual back on the right course.

COLONEL WEAVER agreed that is the goal.

[10:37:56 AM](#)

CHAIR MCGUIRE said the remaining controversy with the bill is the amendment to reinsert the no turndown clause. In a previous committee Senator Huggins expressed concern with the provision

and offered an amendment to remove it. The remainder of the bill is relatively uncontroversial.

[10:38:31 AM](#)

SENATOR COGHILL said he suspects there will be a cost associated with the bill despite the fiscal notes that were zeroed. He is satisfied at this point that the federal government will pick up much of the adjudication costs.

CHAIR MCGUIRE thanked Colonel Weaver for his service to the country and state. She asked him to synthesize why he wants the no turn back clause in the bill, how National Guard personnel are disciplined, and what a courts-martial means.

COLONEL WEAVER said a no turn down provision for nonjudicial punishment means a soldier facing a minor offense charge may not decline the imposition of nonjudicial punishment in favor of a courts-martial. In the Senate State Affairs Committee, Senator Huggins argued against having a no turn down provision in the nonjudicial punishment regulations. The Alaska National Guard would prefer that provision be adopted in regulation, but not without having a conversation with Senator Huggins first.

[10:42:29 AM](#)

CHAIR MCGUIRE indicated she would take an at-ease waiting for Senator Wielechowski to return with an amendment.

SENATOR COGHILL asked if this code will make it more difficult for the Alaska National Guard to be flexible and help in a community.

COLONEL WEAVER replied it will have no effect whatsoever in that area.

CHAIR MCGUIRE reviewed the recent discussion and asked Senator Wielechowski to offer his amendment.

[10:44:14 AM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 1, labeled 29-LS0473\L.1.

AMENDMENT 1

OFFERED IN THE SENATE
TO: SCS CSHB 126(STA)

Page 9, line 8:

Delete "confinement of more than one year is sought"
Insert "the member of the militia is accused of committing an offense that is punishable by confinement of more than one year"

Page 27, line 1:
Delete "authorized"
Insert "imposed"

Page 27, line 5:
Delete "authorized"
Insert "imposed"

SENATOR COGHILL objected.

SENATOR WIELECHOWSKI explained that both Amendment 1 and Amendment 2 reverse changes made in the Senate State Affairs Committee and restore the legislation to the language that passed the House. He deferred to the sponsor to provide her view of why this is important.

[10:45:16 AM](#)

REPRESENTATIVE GABRIELLE LEDOUX, Alaska State Legislature, sponsor of HB 126, described Amendment 1 as an antidote to the poison pill amendment adopted in Senate State Affairs. It reverses making a felon of a National Guard member who didn't show up for work for a couple of days. The State Affairs version of the bill goes against what the legislature is trying to do this session to keep nonviolent offenders out of jail, and it goes against what is intended in HB 126.

[10:48:17 AM](#)

CHAIR MCGUIRE said she understands that point of view but Senator Huggin's point is that a person serving in the military would want an opportunity to clear their name.

SENATOR WIELECHOWSKI clarified that she was speaking to proposed Amendment 2; Senator Stoltze offered the amendment that Amendment 1 reverses.

CHAIR MCGUIRE restated Senator Huggins' concern with proposed, yet to be offered, Amendment 2.

REPRESENTATIVE LEDOUX said she is prepared to defer to the Guard on upcoming Amendment 2.

CHAIR MCGUIRE said she has no concern with Amendment 1.

SENATOR COGHILL said the period of confinement is a policy call and then removed his objection to Amendment 1.

[10:50:59 AM](#)

CHAIR MCGUIRE found no further objection, and Amendment 1 was adopted.

[10:51:11 AM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 2, labeled 29-LS0473\L.

AMENDMENT 2

OFFERED IN THE SENATE

TO: SCS CSHB 126(STA)

Page 3, lines 8-10:

Delete "or prohibit a member of the militia from declining the imposition of nonjudicial punishment in favor of a courts-martial"

SENATOR COGHILL objected.

[10:51:30 AM](#)

SENATOR WIELECHOWSKI explained that Amendment 2 essentially is the no turn down provision. He deferred to the National Guard to speak to the provision. He said he respects their opinion and they have experience with the provision in other states.

COLONEL WEAVER deferred to Colonel Hummel or Deputy Commissioner Doehl.

CHAIR MCGUIRE asked Colonel Hummel to explain why the no turn down provision is important.

[10:52:29 AM](#)

COLONEL LAURIE HUMMEL, Commissioner/Adjutant General, Department of Military & Veterans Affairs (DMVA), deferred to Deputy Commissioner Doehl to talk about the Guard's opinions on the no turn down provision.

[10:53:15 AM](#)

RETIRED COLONEL BOB DOEHL, Deputy Commissioner, Department of Military & Veterans Affairs (DMVA), Anchorage, Alaska, suggested looking at this from the perspective that all ranks looked at the issue from a military context going forward with the no turn

down provision. He pointed out that the military has numerous programs with far more severe consequences that have no turn down provisions and they have been repeatedly upheld in the judicial process as meeting appropriate due process to the accused. Therefore, it has been demonstrated in the military context that we can effectively be just to the individuals facing these programs, he said.

He said that if the legislature decides to implement a no turn down provision, the Guard will execute it but it will result in increased risk to the force, because the Alaska National Guard receives no additional funding from the National Guard Bureau for implementing the provision. It will be costly to comply.

10:55:25 AM

SENATOR COSTELLO asked if there is data showing, if the no turn down provision was offered, the percentage of time someone would prefer a courts-marital.

COLONEL DOEHL said it would be speculative to offer a percentage at this point, but it's likely there would be far more challenges in the first year to test the system.

SENATOR COSTELLO asked for an estimate of what one case might cost.

COLONEL DOEHL said it depends on the nature of the matter but more than the dollar cost it's the number of days the people spend in the process. One or two people handling a simple matter something like dereliction of duty could result in the loss of 20 or 30 additional training days. That means they wouldn't be as prepared when they are deployed or to serve the state in an emergency.

SENATOR WIELECHOWSKI asked Colonel Weaver to discuss the experience in other states and questioned whether the no turn down is a federal provision.

COLONEL WEAVER said the trend is moving toward no turn down, as recommended in the model code by the National Guard Bureau. He noted that Kansas felt hamstrung and recently changed their statutes to put in a no turn down provision. He related his experience that good soldiers that make a mistake will accept this whereas the bad soldier will ask for the courts-martial. He estimated a special courts-martial costs from \$3,000 to \$7,000.

10:59:00 AM

CHAIR MCGUIRE recommended moving the bill along "as is." She said there is no reason you can't come back later on with more discrete evidence and focus to get the no turn down provision restored. She further suggested asking the federal government for more grant money to address the long-standing problem in Alaska that yielded a change in leadership; Alaska's code of military justice has just been updated for the first time since 1955 and resources are needed to continue to move forward.

She deferred to Senator Wielechowski as to whether he wanted to move forward with Amendment 2.

[11:01:26 AM](#)

SENATOR WIELECHOWSKI said he respects her opinion, but he can't in good conscience remove the amendment. Without it, combat readiness will be diminished and the process of justice will be slowed. He indicated he will offer the amendment on the floor if it fails in committee.

SENATOR COGHILL said it's appropriate that individuals whose career is on the line are able to defend themselves.

CHAIR MCGUIRE requested a roll call.

A roll call vote was taken. Senator Wielechowski voted in favor of Amendment 2 and Senators Costello, Coghill, and McGuire voted against it. Therefore, Amendment 2 failed by a 1:3 vote.

[11:03:21 AM](#)

CHAIR MCGUIRE found no further amendments, questions, discussion, or public testimony. She closed public testimony and solicited a motion.

[11:03:26 AM](#)

SENATOR COGHILL moved to report the amended Senate CS for CS for House Bill 126, from committee with individual recommendations and attached fiscal note(s).

CHAIR MCGUIRE announced that without objection, SCS CSHB 126(JUD) is reported from the Senate Judiciary Standing Committee.

SB 182-DNA TESTING EXEMPTION FOR GENEALOGY

[11:05:12 AM](#)

CHAIR MCGUIRE announced the consideration of SB 182. She noted that this is the second hearing.

[11:05:24 AM](#)

FORREST WOLFE, Staff, Senator McGuire, summarized that SB 182 exempts the field of genetic genealogy from the Alaska Genetic Privacy Act. In this field an individual voluntarily submits a sample of their DNA to a large pool for the purpose of comparing lineage and ancestry to gain information about family history.

[11:06:08 AM](#)

CHAIR MCGUIRE, speaking as sponsor, said she is unaware of any controversy. She found no public comment and closed public testimony on SB 182.

[11:06:29 AM](#)

SENATOR WIELECHOWSKI highlighted that SB 182 wasn't specifically listed as a bill that might be taken up today, and there is significant opposition to the bill.

CHAIR MCGUIRE offered her understanding that the only opposition that came forward was to a notion that was discussed in the other body about inserting a retroactivity clause.

SENATOR WIELECHOWSKI expressed dismay that there is an active lawsuit about which the committee was never informed.

CHAIR MCGUIRE related that the discussion in the other body was about an amendment that would have made this bill retroactive. That would have intersected the active lawsuit Senator Wielechowski referenced. She explained that SB 182 is an attempt to clarify prospectively an area of law related to voluntary buccal swab offerings of DNA. It has nothing to do with the law relating to the use of DNA in criminal cases.

CHAIR MCGUIRE set SB 182 aside to allow people who have concerns to express them on the record when the committee reconvenes.

[11:10:47 AM](#)

CHAIR MCGUIRE recessed the Senate Judiciary Standing Committee meeting to a call of the chair at 11:10 a.m. [The committee reconvened on 4/17/16, but SB 182 was not taken up.]