

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 7, 2018

1:53 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins, Vice Chair
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Charisse Millett (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 312

"An Act relating to arrest without a warrant for assault in the fourth degree at a health care facility; and relating to an aggravating factor at sentencing for a felony offense against a medical professional at a health care facility."

- MOVED HB 312 OUT OF COMMITTEE

HOUSE BILL NO. 129

"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 312

SHORT TITLE: CRIMES AGAINST MEDICAL PROFESSIONALS

SPONSOR(s): REPRESENTATIVE(s) CLAMAN

01/26/18 (H) READ THE FIRST TIME - REFERRALS
01/26/18 (H) JUD
02/05/18 (H) JUD AT 1:30 PM GRUENBERG 120
02/05/18 (H) Heard & Held
02/05/18 (H) MINUTE(JUD)
02/07/18 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 129

SHORT TITLE: FISH & GAME: OFFENSES;LICENSES;PENALTIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/15/17 (H) READ THE FIRST TIME - REFERRALS
02/15/17 (H) RES, JUD
03/29/17 (H) RES AT 1:00 PM BARNES 124
03/29/17 (H) Heard & Held
03/29/17 (H) MINUTE(RES)
03/31/17 (H) RES AT 1:00 PM CAPITOL 106
03/31/17 (H) Scheduled but Not Heard
04/03/17 (H) RES AT 1:00 PM BARNES 124
04/03/17 (H) Heard & Held
04/03/17 (H) MINUTE(RES)
04/05/17 (H) RES AT 1:00 PM BARNES 124
04/05/17 (H) Moved CSHB 129(RES) Out of Committee
04/05/17 (H) MINUTE(RES)
04/07/17 (H) RES RPT CS(RES) 6DP 3NR
04/07/17 (H) DP: BIRCH, PARISH, WESTLAKE, DRUMMOND,
TARR, JOSEPHSON
04/07/17 (H) NR: TALERICO, JOHNSON, RAUSCHER
01/29/18 (H) JUD AT 1:30 PM GRUENBERG 120
01/29/18 (H) Heard & Held
01/29/18 (H) MINUTE(JUD)
01/31/18 (H) JUD AT 1:30 PM GRUENBERG 120
01/31/18 (H) -- MEETING CANCELED --
02/05/18 (H) JUD AT 1:30 PM GRUENBERG 120
02/05/18 (H) Heard & Held
02/05/18 (H) MINUTE(JUD)
02/07/18 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SYLVAN ROBB, Deputy Commissioner

Department of Administration
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 129, answered questions.

KELLY HOWELL, Director
Administrative Services
Department of Public Safety
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 129, answered questions.

MAJOR BERNARD CHASTAIN, Deputy Director
Division of Wildlife Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 129, answered questions.

ACTION NARRATIVE

[1:53:22 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:53 p.m. Representatives Claman, Kreiss-Tomkins, LeDoux, Eastman, Reinbold, and Kopp were present at the call to order. Representatives Stutes (alternate for Representative Fansler) arrived as the meeting was in progress.

HB 312-CRIMES AGAINST MEDICAL PROFESSIONALS

[1:54:00 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 312, "An Act relating to arrest without a warrant for assault in the fourth degree at a health care facility; and relating to an aggravating factor at sentencing for a felony offense against a medical professional at a health care facility."

CHAIR CLAMAN recapped that during the 2/5/18 meeting, as members reviewed the bill and heard public testimony. Since that time, he advised that the Department of Health and Social Services (DHSS) submitted an amended Alaska Psychiatric Institute (API) zero fiscal note.

CHAIR CLAMAN, in response to the questions as to why the Pioneer Homes and the Alaska Veterans Home was excluded from the health care facility definition, he explained that there are many different statutes defining health care facility. (Audio difficulties) past the deadline, "I've ruled and we won't be taking it up in the committee," he said.

[1:57:37 PM](#)

REPRESENTATIVE LEDOUX asked Chair Claman to re-state his answer as to the Pioneer Homes and the Alaska Veterans Home.

CHAIR CLAMAN explained that in reviewing the statutes, there are many different definitions as to health care facility. The sponsors did not include the Pioneer Homes and the Alaska Veterans Home because those entities are primarily assisted living homes and senior living facilities. While, he acknowledged, these entities provide medical care services, it is not their primary duty to provide medical care for those people coming in and seeking medical care.

CHAIR CLAMAN further explained that within the reports heard by this committee as to where these abuses are issues, those reports did not come from these two entities. The sponsors tried to narrowly tailor the legislation to the concerns the community brought to the sponsors, he said.

REPRESENTATIVE LEDOUX surmised that the legislature would wait until the Pioneer Homes or the Alaska Veterans Home communities comes in with a problem, and the legislature will just add that to one more of the exceptions.

CHAIR CLAMAN opined that that would be one approach, and the committee can certainly continue discussions after finishing with the bill. In the event there was a sense the body was interested in that type of change, it could be amended on the floor of the House of Representatives, he offered.

[1:58:14 PM](#)

REPRESENTATIVE LEDOUX pointed out that there are so many exceptions, perhaps it is time to actually revisit the whole issue.

CHAIR CLAMAN said that Representative LeDoux's concerns were well noted.

[1:58:30 PM](#)

[CHAIR CLAMAN and Representative Reinbold discussed the amendment process.]

[1:59:27 PM](#)

REPRESENTATIVE KREISS-TOMKINS related that after public testimony, discovery, and the committee's questions, this legislation appears to be on point and that he now has greater awareness of some of the negative externalities of the drug and alcohol problems ravaging many of Alaska's communities. He said that he has enhanced curiosity about the relationship between law enforcement and the response to these social economic problems in the health care system and the role the health care system is being drafted into, to some extent. He said he is excited to support HB 312.

[2:00:58 PM](#)

REPRESENTATIVE REINBOLD related that this bill is important and that it is sad post-Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] that there has been a dramatic increase in assaults to health care workers. She noted that "many other states" have felony fourth-degree assault against health care workers in a health care facility. It is critical to address the issues in the bill, which is a good first step, but something is missing, she said.

[2:01:54 PM](#)

REPRESENTATIVE EASTMAN commented on the discussion procedure. He then noted that the committee heard from law enforcement regarding a desire for the ability to arrest someone engaging in abusive behavior at the hospital, a soup kitchen, or wherever that assault might take place. In his opinion, he said, assault is assault no matter where it takes place because the victim is just as injured, and the public is just as violated by the crime. He offered an interest in an amendment that would deal with the assault itself and give law enforcement the ability to arrest someone, if necessary, without tailoring it to specific exceptions such as health care facilities.

[2:04:05 PM](#)

REPRESENTATIVE KOPP addressed the comments of Representative Eastman and advised that "speeding is speeding," it can be 20 miles outside of Cantwell on a 10-mile stretch of road or a person speeding through an elementary zone with 300 students getting onto the bus, yet those circumstances are especially different. This legislation is not an attempt to remove all due processes from the law, it respects a person's constitutional right as a high priority, thereby, going out of its way to not remove due process of arrest warrants in all misdemeanors. He explained that this legislation looks at high risk environments where patients, health care workers, and visitors of patients absolutely need to know they are safe. Health care facilities must be a place where care can be performed safely, and the state must recognize that health care facilities are much more sensitive to assaultive conduct occurring within the facility. This legislation gives law enforcement a tool to "not just cite and release" but to "hook and book," he said.

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REPRESENTATIVE STUTES commented that having been in the health care industry many years ago, she could not be any more supportive than she is of this bill. She stressed that, "This is just a terrific bill, it's really needed" because the state's health care workers are at risk enough in other manners that they do not need to be at risk with assaults and being beat up by the people they are trying to help.

[2:06:23 PM](#)

CHAIR CLAMAN, in response to the issues raised by Representative Eastman, remarked that he takes very seriously the oath legislators take to uphold the constitution. Part of that is due to the Constitution of the United States and constitutional rights, the United States Bill of Rights, and the Constitution of the State of Alaska and not being arrested without probable cause, he explained. When taking a step to loosen that requirement, he said that he believes it must be taken with tremendous caution for the same reasons Representative Kopp expressed, yet he has heard some police officers indicate that they would like to have greater authority to arrest for assault without a warrant under any circumstance. He pointed out that the Department of Law (DOL) is not here because, he opined, if asked, the Department of Law (DOL) would advise to go very cautiously when taking away a person's constitutional rights.

For those reasons, he advised, he will not support an amendment that broadens the authority to arrest other than the narrow step taken in this legislation. This legislation is consistent with the legislature's obligation to protect the important constitutional rights of every single Alaskan, he stated.

[2:07:37 PM](#)

REPRESENTATIVE LEDOUX commented that this is an important bill, except she is concerned that whenever the legislature singles out one group of people, such as medical health care workers or any other group, and decides that if a person assaults those people then there is an exception to the presumptive sentencing and the sentence moves higher. Therefore, if the legislature is willing to go higher for the policeman, fireman, nurse, or doctor, then the legislature needs to revisit the whole concept of the presumptive sentencing, she remarked. In the event anyone on the committee was assaulted or their children were assaulted, she opined that the sentences should conceivably be as high as if a doctor, nurse, or first-responder was assaulted. That is her concern, and she suggested possibly doing away with those presumptive maximums when it comes to everyone.

[2:09:49 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report HB 312, Version 30-LS1225\0 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

[2:10:11 PM](#)

A roll call vote was taken. Representatives Kopp, Kreiss-Tomkins, LeDoux, Stutes, and Claman voted in favor of moving HB 312, Version 30-LS1225\0 out of committee. Representatives Eastman and Reinbold voted against it. Therefore, HB 312 was reported out of the House Judiciary Standing Committee by a vote of 5-2.

[2:10:41 PM](#)

The committee took an at-ease from 1:10 p.m. to 2:15 p.m.

HB 129-FISH & GAME: OFFENSES;LICENSES;PENALTIES

2:15:59 PM

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 129, "An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; and providing for an effective date."

CHAIR CLAMAN reminded the committee that this is the third hearing in the House Judiciary Standing Committee on CSHB 129 and there had been questions during the 2/5/18 committee meeting regarding fiscal notes. He advised that Sylvan Robb, Deputy Commissioner, Department of Administration and Kelly Howell, Administrative Services Director, Department of Public Safety are available to testify regarding "your fiscal notes," and explain the process of preparing fiscal notes.

2:16:55 PM

SYLVAN ROBB, Deputy Commissioner, Department of Administration, [Available to testify.]

2:16:59 PM

KELLY HOWELL, Director, Administrative Services, Department of Public Safety, [Available to testify.]

CHAIR CLAMAN asked Ms. Robb to describe the Department of Administration's fiscal note, provide more insight into the preparation of fiscal notes, and when they are prepared.

2:17:20 PM

MS. ROBB responded that the Department of Administration (DOA) is in the process of preparing an indeterminate fiscal note on CSHB 129, and that Shared Services of Alaska (SSOA) deals with collections for the Alaska Court System. Once the court has transferred those fines and fees, those collections are sent to

the DOA in an aggregate format and it has no way to parse out what percentage or amount from past fines are related to fish and game offenses versus other types of offenses. At this point, until there is more data in the future, the department could not determine the impact of this bill, she pointed out. She said that she could only speak in general terms about preparing a fiscal note because she is not an attorney. In the terms of the way fiscal notes have been handled in the past, she offered that a fiscal note was required when there would be a positive or negative impact on a department's budget. In the absence of an impact taking place on a department, generally, there would be a zero-fiscal note in the event a committee was likely to wonder why there was not be a fiscal note, thereby, giving the department a chance to explain the reason, she explained.

[2:18:49 PM](#)

REPRESENTATIVE LEDOUX surmised that when something merely affects the general fund for the entire state and not one particular department, no fiscal note is prepared.

MS. ROBB reminded Representative LeDoux that when revenue bills have come up over the past couple of years and were definitely intended to impact the general fund, those have shown the change in revenue. She differed to the Legislative Finance Division.

[2:19:36 PM](#)

CHAIR CLAMAN commented that Ms. Robb understood, at least as the Deputy Commissioner of the Department of Administration (DOA), that if a fiscal note would raise revenue and those funds would go directly to the DOA, that there would be a fiscal note showing the positive effect of the legislation. In the event the funds were going to the general fund and not specifically to the DOA, that would not cause the department to have a fiscal note representing the revenue, he questioned.

MS. ROBB responded that that has been the convention in the past.

CHAIR CLAMAN related that, in contrast, if it would cost the DOA more money to do whatever is in the bill causing a negative fiscal note, then it would be looking solely at the DOA and not beyond the department.

MS. ROBB answered that Chair Claman was correct in that if the funds to be raised were to be retained by the Department of Administration, the change in revenue would be reflected.

2:20:29 PM

CHAIR CLAMAN acknowledged that the indeterminate fiscal note has not been completed and asked whether it reflected that there might be revenue going directly to the Department of Administration (DOA), or rather, if that revenue comes in, that it is going to the general fund. In the event it is going to the general fund, he asked why an indeterminate fiscal note would be prepared if Ms. Robb did not believe there was any reason this would bring revenue to the Department of Administration separately.

MS. ROBB explained that the way the collections process works for the Alaska Court System (ACS) is that once funds had been transferred to collections, if it had been successfully collected by a vendor, that the department employed to try to increase collections for the state, SSOA receives a percentage. In the event fines were increased, the amount of money the department had the percentage to collect on, would increase.

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REPRESENTATIVE LEDOUX noted that she unsure what Ms. Robb meant by "shared services" and asked whether the fiscal note is being prepared by SSOA or by the Department of Fish and Game.

MS. ROBB clarified that she was speaking to the fiscal note for the DOA and its division of Shared Services of Alaska (SSOA), as it relates to its collections portion.

CHAIR CLAMAN surmised that the Department of Administration (DOA) has different contractors to try to collect debt, and in that instance if they collect \$100, the DOA may receive 3 or 4 percent of the \$100, and the other \$96 would go to the general fund. Therefore, the indeterminate role is whatever percentage the department may receive from contractors collecting these debts on behalf of SSOA, he offered.

MS. ROBB advised that Chair Claman was mostly correct in that the contractor employed to perform the collections, receives a percentage of the money as incentive to collect for the state. In the event the amount of the fees does not change, the state's ability to receive more or less money is not impacted. For

example, a \$100 fine for a criminal offense that now becomes a \$100 violation that would have no impact for SSOA in the potential collection. The primary reason the DOA's fiscal note will be indeterminate is that the debts that are transferred to collections from the court system arrive in the aggregate and they are inclusive of all types of debts.

[2:23:28 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he was not concerned so much about which agency has the fiscal note. He then offered a scenario wherein on average data showed that 10 black bears had been illegally harvested over the last 10-years, and the legislature doubled restitution to, for example, \$1,000 to \$2,000. Thereby, causing a positive fiscal note associated with that increased restitution of \$10,000, of which happens approximately 10 different times in this bill with restitution, he advised. Representative Kreiss-Tomkins questioned why the number is indeterminate, and why there is not an estimate of the revenue raised from the increased restitution.

MS. ROBB clarified that SSOA does not collect restitution, it collects fines and fees imposed by the court.

[2:24:56 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked which agency handles restitution.

MS. ROBB answered the Alaska Court System.

[2:25:16 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that the testimony of Ms. Meade was that the Alaska Court System (ACS) passes that money onto the general fund. He asked who receives the restitution revenue from the court system.

MS. ROBB responded that the money flows into the general fund and once the money is in the general fund, it is up to the legislature to allocate it as it sees fit. Ms. Robb acknowledged that these questions were moving beyond her scope of expertise.

[2:26:03 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that it is unlikely there is an open pit into which dollars flow and no one keeps track of the money. The court system has to liaison with someone, and he said that he would like to know who that is, whether that person keeps track of the restitution dollars that flow into the general fund, and to offer an estimate of how much increased restitution revenue would likely be forthcoming with the passage of CSHB 129.

CHAIR CLAMAN noted that "that seems like that has a different practice than the legislature's done when there is revenue that's coming through the general fund." He said that his office could look for an answer.

[2:26:59 PM](#)

REPRESENTATIVE EASTMAN commented that it should be doable to attach a fund code to any funds being collected by the court system when transferring the restitution money to DOR, DOA, or whoever, to make sure those funds are identified based on the categories the state wants to keep track of, if nothing else. In the event there are specific crimes of interest to the legislature, that might be something to track and he encouraged finding a way to maintain that information.

MS. ROBB answered that the money does go to the general fund and she would find the answer.

[2:28:09 PM](#)

REPRESENTATIVE EASTMAN explained that he was not looking for a bean counter, he is looking for an economist, someone who can assess there is a supply and demand curve at play. He said that he assumed that by significantly increasing the penalty for a violation, hopefully there would be fewer violations.

[2:29:21 PM](#)

MS. HOWELL advised the committee that the Department of Public Safety (DPS) submitted a zero fiscal note because the department will not receive an increase or decrease in its appropriations as a result of the passage of CSHB 129. Therefore, a zero fiscal note is appropriate for the Department of Public Safety (DPS), she said.

[2:30:26 PM](#)

CHAIR CLAMAN advised Major Bernard Chastain, Department of Public Safety (DPS) that questions were raised regarding the interplay between this bill and AS 12.55, regarding the misdemeanor sentencing provisions. He asked Major Chastain to provide the administration's perspective to the committee.

[2:31:02 PM](#)

MAJOR BERNARD CHASTAIN, Deputy Director, Division of Wildlife Troopers, Department of Public Safety (DPS), noted that the question last week had to do with the increase in potential fines for class A misdemeanors. He advised that this bill was first introduced in 2015, and during that time frame Senate Bill 91 and SB 54 had not yet gone through the process and those amounts have not changed. Under Senate Bill 91, the actual value for a class A misdemeanor moved to a maximum of \$25,000; part of the Senate Bill 91 change aligned penalties under AS 12.55.035 class A misdemeanor and increased that value to \$25,000. As this bill has moved through the process over the last couple of years, there was a change to align Title 16 with a variety of misdemeanor offenses and unclassified misdemeanors with specific penalties for each section, he explained. This bill attempted to go through and align the misdemeanor offenses as all class A misdemeanors within Title 16, and it created a secondary class within each of those sections of a violation offense, he related. Some of the offenses have moved up in the potential maximum fine a court could impose, up to \$25,000. All of the offenses listed in this bill have a secondary possibility of charging with a violation offense, with a maximum of a \$500 fine. He noted that he has it broken out by sections if the committee would like him to go through each section. In general, he offered, the possible fine is a maximum of \$25,000 under a class A misdemeanor, which was changed under Senate Bill 91, as a maximum fine a court could impose. It is rare that a fine would be imposed to the maximum amount because it usually only happens under the worst circumstances, he advised.

[2:33:58 PM](#)

REPRESENTATIVE LEDOUX noted that the "huge difference" in CSHB 129 between a \$1,000 fine and a \$25,000 fine was never pointed out for the committee.

MAJOR CHASTAIN responded that in 2015, when the bill was introduced, the difference in the change had to do with \$1,000, and at the time the maximum fine was \$10,000. The change in the maximum penalty took place during the changes to AS 12.55 and

defining it as a class A misdemeanor automatically changed it under Senate Bill 91, he explained.

[2:35:05 PM](#)

REPRESENTATIVE LEDOUX said she understood what Major Chastain was saying except that someone had testified before this committee and basically explained the bill. At that time, she said that she would have thought the change in fines from \$1,000 to \$25,000 would have been mentioned. She pointed out that that difference is not something a legislator would have realized when reading the bill unless they went back to the statute, and so forth. She commented that that difference does not pop out and asked why this issue was not mentioned.

MAJOR CHASTAIN responded that the initial bill went through the House and Senate Resources Standing Committees and penalties were discussed "pretty robustly" during that timeframe. He related that he had presented the bill to this committee during its first hearing this year, and he went step-by-step through the sectional analysis. He stressed that it certainly was not his intent to skip over any information.

[HB 129 was held over.]

HB 312-CRIMES AGAINST MEDICAL PROFESSIONALS

[2:37:56 PM](#)

CHAIR CLAMAN, in granting Representative Reinbold's request, allowed the committee to return to HB 312.

REPRESENTATIVE REINBOLD noted that she wanted to make it clear to this committee that she absolutely supports the bill and will be a yes-vote. She said that she wanted it on the record that she supports this bill and was a no-vote due to the amendment. Whether the amendment passed or not is irrelevant, she pointed out, but having the minority voice heard is important to her, and that is why she was a no-vote.

[2:39:00 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:39 p.m.