

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 2, 2018

1:33 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Pete Kelly
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Click Bishop

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics
Dennis E. "Skip" Cook

- CONFIRMATION ADVANCED

SENATE JOINT RESOLUTION NO. 14

Proposing an amendment to the Constitution of the State of Alaska relating to notice and consent before termination of a minor's pregnancy.

- HEARD & HELD

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."

- HEARD & HELD

SENATE BILL NO. 148

"An Act relating to powers of the Alaska Police Standards Council; and relating to background checks for admission to police training programs and certification as a police officer."

- MOVED SB 148 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SJR 14

SHORT TITLE: CONST. AM: PARENTAL CONSENT TO ABORTION

SPONSOR(S): SENATOR(S) OLSON

02/19/18 (S) READ THE FIRST TIME - REFERRALS
02/19/18 (S) JUD, FIN
03/02/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

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
02/07/18 (H) Moved HB 312 Out of Committee
02/07/18 (H) MINUTE(JUD)
02/09/18 (H) JUD RPT 4DP 3AM
02/09/18 (H) DP: KOPP, KREISS-TOMKINS, STUTES,
CLAMAN
02/09/18 (H) AM: EASTMAN, LEDOUX, REINBOLD
02/16/18 (H) TRANSMITTED TO (S)
02/16/18 (H) VERSION: HB 312
02/19/18 (S) READ THE FIRST TIME - REFERRALS
02/19/18 (S) JUD
03/02/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 148

SHORT TITLE: BACKGROUND CHECKS FOR POLICE & TRAINING

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/18 (S) READ THE FIRST TIME - REFERRALS
01/18/18 (S) STA, JUD
02/08/18 (S) STA AT 3:30 PM BUTROVICH 205
02/08/18 (S) Moved SB 148 Out of Committee
02/08/18 (S) MINUTE(STA)
02/09/18 (S) STA RPT 3DP 2NR
02/09/18 (S) DP: MEYER, GIESSEL, EGAN
02/09/18 (S) NR: WILSON, COGHILL
02/26/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

02/26/18 (S) Heard & Held
02/26/18 (S) MINUTE (JUD)
02/26/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/02/18 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR DONNY OLSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SJR 14.

JIM PUCKETT, Staff
Senator Donny Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided details related to SJR 14 on behalf of the sponsor.

DENNIS E. "Skip" Cook, Appointee
Select Committee on Legislative Ethics
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Select Committee on Legislative Ethics.

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 312.

REPRESENTATIVE MATT CLAMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 312.

LIZZY KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis for HB 312.

BECKY HULTBERG, President/CEO
Alaska State Hospital and Nursing Home Association
Anchorage, Alaska

POSITION STATEMENT: Testified in strong support of HB 312.

ACTION NARRATIVE

[1:33:09 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Costello, Wielechowski, Kelly, and Chair Coghill.

SJR 14-CONST. AM: PARENTAL CONSENT TO ABORTION

[1:35:34 PM](#)

CHAIR COGHILL announced the consideration of SJR 14.

[1:36:07 PM](#)

SENATOR DONNY OLSON, Alaska State Legislature, Juneau, Alaska, sponsor of SJR 14, provided a summary of the legislation speaking to the following sponsor statement:

Parents alone have the sole duty and responsibility of raising their children, providing for their education, sustenance, and spiritual wellbeing. Any legal provision, guideline, statute, or ordinance infringing upon that fundamental principle and right of parents should be changed.

Senate Joint Resolution 14 proposes an amendment to the Alaska Constitution creating a new section allowing the legislature OR the people through the initiative process to have the option to require notice to and the consent of the parent or the legal guardian of a minor before the minor's pregnancy is terminated.

It is a well-established principle that before treating a patient, a physician or other healthcare provider must obtain the consent of that patient. This proposition becomes less clear when treating minors and physicians are often faced with the question of just who may consent to treatment and under what circumstances? This resolution is a first step to clarify this vital issue.

SENATOR OLSON advised that the resolution is the first step toward putting the question of amending the Alaska Constitution for this specific purpose before the voters. He cited Article I, Section 2 as the authorizing authority. He noted that the resolution is a response to the 2010 [Alaska Parental

Notification Initiative] that the Alaska Supreme Court struck down. He emphasized that political power is inherent in the people, not the five judges that everyone looks up to and greatly respects.

[1:43:37 PM](#)

JIM PUCKETT, Staff, Senator Donny Olson, Alaska State Legislature, Juneau, Alaska, stated that SJR 14 provides that Article I, Constitution of the State of Alaska, would be amended by adding a new Section 26 titled "Notice and Consent before Termination of Minor's Pregnancy." This section could be implemented by the legislature or by initiative. The amendment proposed by the resolution would be placed before the voters at the next general election.

[1:44:53 PM](#)

SENATOR WIELECHOWSKI asked what happens in the circumstance of a child who is a ward of the state.

MR. PUCKETT replied it could be handled the same way that the state currently handles the situation of a pregnant foster child, although he did not know what that was.

CHAIR COGHILL pointed out that the resolution provides that the section would be implemented by law.

SENATOR WIELECHOWSKI asked how the resolution defines a minor.

MR. PUCKETT said the state defines a minor as a person age 18 or younger.

SENATOR WIELECHOWSKI asked if a married 17-year-old would need parental consent to obtain an abortion.

MR. PUCKETT replied that will be addressed should the amendment be put in place.

SENATOR OLSON offered his understanding that a minor who is married would be emancipated.

CHAIR COGHILL added that a 16-year-old can be emancipated.

SENATOR WIELECHOWSKI said he was trying to frame the extent that a parent has rights over their minor child's body. He asked if a parent could force their 15-year-old child to have an abortion.

MR. PUCKETT replied, "We're dealing with the consent, not the parents forcing them to do something." He added that in school a parent must consent to their child seeing the school nurse or going on a field trip.

SENATOR COSTELLO recalled a proposition that said a child who was pregnant and could not go to their parents could appear before a judge. She asked if the legislature would need to work out the details, should this pass.

[1:49:09 PM](#)

MR. PUCKETT said Ballot Measure 2 allowed the minor to go to court to authorize an abortion without giving notice to the parent or guardian. It also made it a felony for a doctor to notify the parents of the minor's intent to have an abortion.

CHAIR COGHILL added that the issue of judicial bypass could again be up for debate should this question get to the people of Alaska.

SENATOR COSTELLO asked if the legislature would handle the regulatory details if the constitution is changed.

SENATOR OLSON replied that is his understanding, but he would prefer to delay any discussion of the details until after the people have spoken about what they want in the constitution.

SENATOR WIELECHOWSKI asked the intent regarding the type of notice and consent. Is the notice verbal or written and is the consent from the parent to the child and the doctor?

MR. PUCKETT said those details would be worked out later, but it seems reasonable that the consent would be written.

[1:52:10 PM](#)

SENATOR WIELECHOWSKI asked if a doctor would be subject to criminal penalties if he/she performed an abortion without parental consent.

MR. PUCKETT replied that detail would be worked out in the future.

[1:52:35 PM](#)

SENATOR KELLY pointed out that the resolution says the legislature shall implement the section by law in a manner consistent with the requirements of the U.S. Constitution. The details are left to the legislature to work out.

MR. PUCKETT agreed and read the legislative oath of office. He said legislators will take care of the details that arise as a result in the change to the constitution.

SENATOR KELLY it's also important for the legislature to realize that the constitutional amendment regarding privacy also says that the legislature shall implement this by law and that has mostly been ignored by the courts.

MR. PUCKETT said the sponsor's intent is for the people to have an opportunity to make their will very clear.

[1:54:59 PM](#)

SENATOR WIELECHOWSKI disagreed that all the details would be decided by the legislature in the future. He said he interprets the entire first sentence as a fundamental change in the state constitution. Thus, the legislative history on what is notice, what is consent, who is a legal guardian, and what is a minor is very relevant and will override the second sentence. He said things that are defined in this room are critical because that legislative history will inform the court when these issues come up in court cases, which they undoubtedly will.

He asked if a minor has constitutional rights to decide when and if they want to start a family.

MR. PUCKETT replied, "I believe, in Alaska there is an age where they can legally go get married on their own."

SENATOR WIELECHOWSKI asked if a 15-year-old has parenting rights over her child or if that minor's parents have parenting rights over their grandchild.

CHAIR COGHILL suggested the sponsor respond.

[1:57:44 PM](#)

SENATOR OLSON said he didn't have answers to all the details. He wants the people of Alaska to decide if they want parents to consent to this surgical procedure.

CHAIR COGHILL said he wanted the sponsor to hear the first line of questions so he could begin to think about the language and how it might be challenged. The questions are appropriate because the definitions are something that will need to be fleshed out. He said he generally agrees that the people should reinforce what the legislature is trying to define.

He asked Senator Wielechowski if he had anything more for the committee and sponsor to consider.

[1:59:39 PM](#)

SENATOR WIELECHOWSKI questioned whether this should just be limited to the termination of pregnancy. If not, he asked if Section I should say that notice and consent is required before any medical procedure is done.

MR. PUCKETT replied, "It's already a reality that just about any other type of medical procedure that needs to be done on a minor needs consent from a parent."

SENATOR WIELECHOWSKI replied that is false and directed attention to AS 25.20.025.

MR. PUCKETT named abortion, treatment of sexually transmitted disease and noted there is a third item.

SENATOR WIELECHOWSKI read paragraph (1) and part of paragraph (2) of Sec. 25.20.025(a). He questioned saying a minor must get consent to terminate a pregnancy, but not for anything else, including major surgery.

MR. PUCKETT said he stands corrected; he didn't think about the exceptions in current law. He asked Senator Wielechowski to restate the original question.

SENATOR WIELECHOWSKI asked the reasoning for singling out this one medical situation.

[2:01:45 PM](#)

SENATOR KELLY said the answer is that the courts have singled out abortion as having special rights to the point that parents do not have rights. In other situations, the courts have been fairly reasonable about requiring the consent of the parent. The resolution seeks to put abortion on that reasonable list of things to which parents should give consent.

CHAIR COGHILL asked the sponsor to do a little research on the areas where there is an exception to the parental consent rule and the litigation that followed Roe v. Wade. The idea is to understand the line of thinking that makes this resolution necessary.

SENATOR OLSON said he understands that *Roe v. Wade* is the law of the land and SJR 14 is not an attack on that. He continued to say:

This is the idea that I as a parent who has children that are younger girls - but more importantly that I as an Alaskan, whether I'm in the legislature or not in the legislature, have got the ability to make sure that if a majority of us have an idea and we want something done, that there is a constitutional protection that if we vote a certain way, we want this done this way that the courts don't have the ability to overturn it.

We've got a five-judge panel out there, many of whom aren't even from the state of Alaska that are overturning what people from the state of Alaska voted on. And that's what I'm trying to do. That's the bottom line of what I want to say. Is if we've got an initiative that passes, I want that listened to and if that's being overturned then a constitutional amendment needs to be drawn up and that's why I've drawn it.

SENATOR KELLY said most of the things like what is a parent, what is a minor, and what are the circumstances under which a parent has control are defined in statute and work quite well until it comes to abortion. The courts treat that differently.

CHAIR COGHILL said he asked the sponsor for the information so there would be a good record. Because "termination of pregnancy" has been highly litigated through the years, it is important that each word and the intent is clear going forward. He said that's what Senator Wielechowski is getting to and he agrees with that point.

CHAIR COGHILL thanked the sponsor and held SJR 14 in committee for future consideration.

CONFIRMATION HEARING(S)
Select Committee on Legislative Ethics

[2:06:59 PM](#)

CHAIR COGHILL announced the confirmation hearing for Skip Cook for reappointment to the Select Committee on Legislative Ethics. He asked Mr. Cook to tell the committee about his interest in being reappointed to the ethics committee.

[2:07:47 PM](#)

DENNIS E. "SKIP" COOK, Appointee, Select Committee on Legislative Ethics, Fairbanks, Alaska, advised that he's served on the ethics committee since 1997 and has found this important work to be both challenging and interesting. He opined that it's helpful to have some continuity. If confirmed he would like to serve another term and provide that experience.

CHAIR COGHILL said he's enjoyed working with Mr. Cook on the ethics committee. He brings a solid and reasonable voice as well as an historical perspective. He found no questions or comments.

[2:10:36 PM](#)

CHAIR COGHILL stated that the Judiciary Committee reviewed the following and recommends the following name be forwarded to the Senate floor for ratification: Select Committee on Legislative Ethics - Dennis E. "Skip" Cook. He reminded members that for this committee the vote is on the individual.

HB 312-CRIMES AGAINST MEDICAL PROFESSIONALS

[2:11:36 PM](#)

CHAIR COGHILL announced the consideration of HB 312.

[2:12:01 PM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, Juneau, Alaska, sponsor of HB 312, explained that he and Representative Claman were each contacted by the Alaska Nurses Association, the Alaska Hospital Nurses Association, and emergency room physicians with requests for help with the rising tide of violence in health care facilities. He and Representative Claman each had legislation drafted and subsequently decided to work together.

[2:13:27 PM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 312, said he was in the Anchorage LIO and would let Representative Kopp take the lead introducing HB 312.

REPRESENTATIVE KOPP said things have changed dramatically in emergency rooms and health care facilities generally since the opioid crisis hit. They have become trauma zones for staff. It's not just from people presenting for treatment, but also visitors and family accompanying them. Some of the violence is opioid driven and some is behavioral health issues. Regardless of the reason, health care staff are not combat medics trained to

survive in high-threat environments. They are health care professionals who traditionally treat people in very safe and secure environments. It's come to the point where the law needs to address the situation.

House Bill 312 addresses the issue by allowing a warrantless arrest for a fourth-degree misdemeanor assault in a health care facility. The perpetrator can be removed from the facility if they are stable for discharge. If probable cause is established after interviewing witnesses, the responding officer can make a misdemeanor arrest. The bill also adds an aggravator to the felony assault statute when the assault is knowingly perpetrated against a medical professional who is working. He noted that the packets contain letters of endorsement from nearly every hospital in the state.

[2:21:01 PM](#)

CHAIR COGHILL asked for confirmation that a health care worker who witnesses an assault could be a party to a lawsuit that may arise.

REPRESENTATIVE KOPP said that's correct; the probable cause would be based on their witness statement so they would be a party to any civil or criminal action.

CHAIR COGHILL said he brought it up because the assault occurs within a health care facility and that becomes an issue.

REPRESENTATIVE KOPP said the health care facility is an important issue because it is a sacred space for every worker and patient.

[2:23:33 PM](#)

LIZZY KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature Juneau, Alaska, paraphrased the following sectional analysis for HB 312:

Section 1

[Amends] AS 12.25.030(b) - Grounds for arrest by private person or peace officer without a warrant.

Establishes that a peace officer may arrest a person without a warrant when the peace officer has probable cause for believing that the person has committed an assault in the fourth degree at a health care facility and the person was not seeking medical treatment at the facility or was stable for discharge.

The term "stable for discharge" comes from the federal Emergency Medical Treatment and Labor Act, also known as EMTALA. EMTALA requires anyone coming to an emergency department be stabilized and treated, regardless of their insurance status or ability to pay. The federal government has published guidelines that describes the responsibilities of hospitals in emergency cases.

The guidelines provide: "a patient is considered stable for discharge...when, within reasonable clinical confidence, it is determined that the patient has reached the point where his/her continued care, including diagnostic work-up and/or treatment, could be reasonably performed as an outpatient or later as an inpatient, provided the patient is given a plan for appropriate follow-up care with the discharge instructions." In addition, "... 'Stable for discharge' does not require the final resolution of the emergency medical condition."

Section 2

[Amends] AS 12.25.030 - Grounds for arrest by private person or peace officer without a warrant.

Establishes that the definition for "health care facility" has the meaning given in AS 18.07.111.

Section 3

[Amends] AS 12.55.155(c) - Factors in aggravation and mitigation.

Adds an aggravator to Alaska's felony assault statute when a defendant committed the offense at a health care facility and knowingly directed the conduct constituting the offense at a medical professional during or because of the medical professional's exercise of professional duties.

Section 4

Uncodified law

This section contains applicability provisions.

CHAIR COGHILL asked for the definition of health care facility.

REPRESENTATIVE KOPP read the definition in AS 18.07.111(8)(A) and (B).

CHAIR COGHILL said he wanted that exact definition brought into the open.

SENATOR COSTELLO asked if a warrantless arrest is constitutional.

REPRESENTATIVE KOPP said the legislature has the authority to place exceptions in the law. The arrest warrant requirement in the Fourth Amendment is the law of the land but the courts have given state legislatures the authority to implement that in a reasonable manner. The current exceptions are crimes relating to domestic violence.

CHAIR COGHILL advised that Title 47 holds are allowed in circumstances of life and safety.

REPRESENTATIVE CLAMAN added that both the Alaska Supreme Court and the U.S. Supreme Court have addressed the topic of exceptions to the warrant requirement in the context of misdemeanors. The courts have typically found that the legislature has the authority to craft narrow exceptions when there are good legislative findings. HB 312 was crafted with that case law in mind; the exception is narrow.

[2:31:34 PM](#)

BECKY HULTBERG, President/CEO, Alaska State Hospital and Nursing Home Association, Anchorage, Alaska, said she was testifying on behalf of Alaska's hospitals and skilled nursing facilities to express strong support for HB 312. It gives police and the judicial system new tools to address violence in health care facilities. She said hospitals are sacred places and they should also be safe places. Unfortunately, as violence has increased in some communities, it has spilled over into hospitals. In the last year hospitals have reported an increase in workplace violence and staff report feeling unsafe in the workplace. Violence should not be an acceptable workplace hazard but for many health care workers it has become normal. There are many contributing factors to the increase in violence, including the opioid crisis and a shortage of psychiatric and detox beds. As employers, hospitals have an obligation to address workplace violence and they are working to ensure that plans are in place to prevent, identify, and de-escalate violence before the police need to be involved. Because workplace violence is a complex

problem with many causes, it will require multiple solutions to address. HB 312 is one of those tools.

MS. HULTBERG said hospitals clearly understand the need to differentiate between an intentional and unintentional assault. Reporting an assault by a patient is not something caregivers do lightly. But hospitals do report that when health care workers call the police to report an assault, the police sometimes leave the individual at the hospital rather than arresting them. HB 312 gives police new tools to arrest for fourth degree assault without a warrant. Hospitals address violence daily and understand the needs of vulnerable populations. The intent of HB 312 is not to penalize those who need behavioral health or substance abuse treatment. In fact, it is carefully designed not to do that. It is intended to give police and the judicial system additional tools in dealing with serious physical violence when it is creating an unsafe environment for caregivers and patients. The legislation is also clear that patients that need medical treatment belong in the hospital. Hospitals understand that obligation.

MS. HULTBERG stressed that hospitals cannot bear the burden of community violence much longer. Caregivers need help and passing HB 312 tells everyone that violence in health care facilities is not acceptable. She encouraged the committee to act favorably on the legislation.

CHAIR COGHILL asked which hospital departments are primarily affected by workplace violence.

MS. HULTBERG said a significant amount of the violence takes place in the emergency room, but labor and delivery and the general medical floors can also be very volatile.

[2:38:47 PM](#)

CHAIR COGHILL found no questions. He asked if Pioneer and Veteran Homes have been part of the discussion.

REPRESENTATIVE KOPP said those are primarily residential, not health care facilities. They weren't intentionally excluded but staff haven't reported problems in those facilities. Similarly, private physician offices didn't seem to have the same level of problem as in hospitals, but there wasn't an overt attempt to exclude them.

SENATOR WIELECHOWSKI directed attention to the new language on page 2, lines 16-17, regarding violating AS 11.41.230. He asked

if this includes the sidewalk and parking lot outside the facility.

REPRESENTATIVE KOPP said he would defer to the definition, but his guess is it may apply to the campus, not just within any four walls on the campus.

REPRESENTATIVE CLAMAN said he agrees with everything Representative Kopp said.

SENATOR WIELECHOWSKI stated that he would interpret this to mean within the four walls the health care facility plus the sidewalk and the parking lot. "That's my intent in passing this legislation."

CHAIR COGHILL said he didn't know that anyone on the committee would disagree.

REPRESENTATIVE KOPP thanked the committee for hearing the bill.

[2:43:10 PM](#)

CHAIR COGHILL held HB 312 in committee for future consideration.

SB 148-BACKGROUND CHECKS FOR POLICE & TRAINING

[2:43:28 PM](#)

CHAIR COGHILL announced the consideration of SB 148. He summarized the intent of the bill for Senator Wielechowski and asked if he had any questions.

SENATOR WIELECHOWSKI said he didn't have any questions and wouldn't object to moving the bill.

[2:44:22 PM](#)

SENATOR COSTELLO moved to report SB 148, version A, from committee with individual recommendations and attached fiscal note(s).

[2:44:36 PM](#)

CHAIR COGHILL announced that without objection, SB 148 moved from the Senate Judiciary Standing Committee.

[2:45:04 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:45 p.m.