**ALASKA STATE LEGISLATURE**
**SENATE STATE AFFAIRS STANDING COMMITTEE**
April 11, 2019
3:35 p.m.

**MEMBERS PRESENT**

Senator Mike Shower, Chair
Senator John Coghill, Vice Chair
Senator Lora Reinbold
Senator Peter Micciche
Senator Scott Kawasaki

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 100
"An Act naming the Willard E. Dunham Residence Hall."

- MOVED SB 100 OUT OF COMMITTEE

SENATE BILL NO. 80
"An Act relating to proposing and enacting laws by initiative."

- MOVED SB 80 OUT OF COMMITTEE

SENATE BILL NO. 32
"An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 100
SHORT TITLE: NAMING WILLARD E. DUNHAM RESIDENCE HALL
SPONSOR(s): SENATOR(s) MICCICHE

| | | |
|---|---|---|
| 03/27/19 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/27/19 | (S) | STA |
| 04/10/19 | (S) | STA WAIVED PUBLIC HEARING NOTICE,RULE 23 |
| 04/11/19 | (S) | STA AT 3:30 PM BUTROVICH 205 |

BILL: SB 80
SHORT TITLE: INITIATIVE SEVERABILITY
SPONSOR(s): SENATOR(s) BIRCH

| | | |
|---|---|---|
| 03/06/19 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/06/19 | (S) | STA, JUD |
| 04/11/19 | (S) | STA AT 3:30 PM BUTROVICH 205 |

BILL: SB 32
SHORT TITLE: CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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|---|---|---|
| 01/23/19 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/23/19 | (S) | JUD, FIN |
| 02/06/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/06/19 | (S) | Heard & Held |
| 02/06/19 | (S) | MINUTE(JUD) |
| 02/08/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/08/19 | (S) | Heard & Held |
| 02/08/19 | (S) | MINUTE(JUD) |
| 02/09/19 | (S) | JUD AT 1:00 PM BELTZ 105 (TSBldg) |
| 02/09/19 | (S) | Heard & Held |
| 02/09/19 | (S) | MINUTE(JUD) |
| 02/11/19 | (S) | MOTION TO DISCHARGE FROM JUD COMMITTEE |
| 02/11/19 | (S) | DISCHARGED FROM JUD COMMITTEE U/C |
| 02/11/19 | (S) | STA REFERRAL ADDED |
| 02/11/19 | (S) | STA REPLACES JUD REFERRAL |
| 02/11/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/11/19 | (S) | <Bill Hearing Canceled> |
| 03/05/19 | (S) | STA AT 3:30 PM BUTROVICH 205 |
| 03/05/19 | (S) | Heard & Held |
| 03/05/19 | (S) | MINUTE(STA) |
| 04/04/19 | (S) | STA AT 1:30 PM BUTROVICH 205 |
| 04/04/19 | (S) | Heard & Held |
| 04/04/19 | (S) | MINUTE(STA) |
| 04/09/19 | (S) | STA AT 3:30 PM BUTROVICH 205 |
| 04/09/19 | (S) | Heard & Held |
| 04/09/19 | (S) | MINUTE(STA) |
| 04/11/19 | (S) | STA AT 3:30 PM BUTROVICH 205 |

**WITNESS REGISTER**

CHEYENNE GIRMSCHEID, Intern
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Introduced SB 100 on behalf of the sponsor.

CATHY LECOMPTE, Director
AVTEC
Seward, Alaska
**POSITION STATEMENT:** Testified in support of SB 100.

SENATOR CHRIS BIRCH, Bill Sponsor
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Introduced SB 80

KIM SKIPPER, Staff
Senator Chris Birch
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Reviewed SB 80 on behalf of the sponsor.

LARRY BARSUKOFF, Director of Operations
Alaska Policy Forum
Anchorage, Alaska
**POSITION STATEMENT:** Testified in support of SB 80.

BETHANY MARCUM, Executive Director
Alaska Policy Forum
Anchorage, Alaska
**POSITION STATEMENT:** Testified in support of SB 80.

MARLEANNA HALL, Executive Director
Resource Development Council for Alaska
Anchorage, Alaska
**POSITION STATEMENT:** Testified in support of SB 80.

ALBERT FOGLE, Vice President
Alaska State Chamber
Anchorage, Alaska
**POSITION STATEMENT:** Testified in support of SB 80.

ERIC FJELSTAD, representing self
Anchorage, Alaska
**POSITION STATEMENT:** Testified in support of SB 80.

KATHY MONFREDA, Director
Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska
**POSITION STATEMENT:** Answered questions related to SB 32.

MICHAEL DUXBURY, Deputy Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska
**POSITION STATEMENT:** Answered questions and provided information related to SB 32.

ROBERT HENDERSON, Deputy Attorney General
Criminal Division
Department of Law
Anchorage, Alaska
**POSITION STATEMENT:** Answered questions and provided information related to SB 32.

QUINLAN STEINER, Public Defender
Public Defender Agency
Alaska Department of Administration
Anchorage, Alaska
**POSITION STATEMENT:** Answered questions and provided information related to SB 32.

**ACTION NARRATIVE**

3:35:29 PM
**CHAIR MIKE SHOWER** called the Senate State Affairs Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Coghill, Micciche, Reinbold, Kawasaki, and Chair Shower.

## SB 100-NAMING WILLARD E. DUNHAM RESIDENCE HALL

3:36:20 PM
CHAIR SHOWER announced the consideration of SENATE BILL NO. 100, "An Act naming the Willard E. Dunham Residence Hall."

3:36:33 PM
SENATOR MICCICHE, bill sponsor, said the bill was introduced at the request of the people of Seward. Mr. Willard Dunham was a great man who passed away March 1. After the earthquake in 1964, he worked to rebuild Seward. He was the founding director of AVTEC [Alaska's Institute of Technology] and served from 1969 to

2019. He worked to bring the Alaska Sea Life Center to Seward. He always put his community and Alaska first. He was an amazing man.

SENATOR MICCICHE said the bill renames AVTEC dormitory as the Willard E. Dunham Residence Hall.

3:38:19 PM
CHEYENNE GIRMSCHEID, Intern, Senator Peter Micciche, Alaska State Legislature, Juneau, Alaska, said Mr. Dunham spent his life working toward and advocating for a better quality of life in his community. He worked for the Alaska railroad before being drafted into the Army and was stationed in Fairbanks in the early 50s. After his Army service, he worked on the docks in Seward until the 1964 earthquake wiped out the docks, along with most of the town.

MS. GIRMSCHEID said this led him to work full time with the Department of Labor and the City of Seward. He had an impressive record of community service and employment projects. Some of these projects included the Spring Creek Correctional Center and the Seward Library and Museum. He was mayor of Seward for two years and sat on nearly every city task force, commission, and committee over a 60-year period. One thing that came up repeatedly in her discussions with AVTEC staff was his passion for Alaska and his dedication to Seward. As director of AVTEC, he reminded his students and staff of the goals of the school and Seward itself. These are the values that Willard Dunham left impressed on those around him and the values that AVTEC wishes to honor and remember.

CHAIR SHOWER noted the letters of support from the community and asked if they had reached out to the family. He asked, out of concern for due diligence, if there was any opposition to renaming the hall.

MS. GIRMSCHEID said the person she spoke to with AVTEC had been in contact with family, friends, and coworkers.

3:41:36 PM
SENATOR MICCICHE said the community is excited about the bill. Mr. Dunham was beloved by his community. They have lots of support.

SENATOR KAWASAKI asked if the building already had a name.

MS. GIRMSCHEID answered that it was just the Third Avenue AVTEC facility.

SENATOR REINBOLD said Mr. Dunham sounds impressive. She generally has a challenge with naming things after persons because people have no idea why that person was chosen over others. She asked if a there can be a plaque on the building that states why the dormitory is named after Mr. Dunham. She thinks informative plaques are critical for people in the future.

MS. GIRMSCHEID said the city is collecting funds to buy a plaque that will do that.

3:43:48 PM
CHAIR SHOWER opened public testimony.

3:43:59 PM
CATHY LECOMPTE, Director, AVTEC, Seward, Alaska, testified in support of SB 100. She said the ribbon cutting will be September 27. The plaque is being purchased by the city of Seward and it will explain who Mr. Dunham was and remind students to live a life of public service in honor of Mr. Dunham. He was an amazing man. Because of his efforts at AVTEC, thousands of Alaskans have gone through AVTEC and been trained for work and have had good careers. They continue to do that to this day, 50 years later.

3:44:55 PM
CHAIR SHOWER closed public testimony.

3:45:13 PM
At ease.

3:45:44 PM
CHAIR SHOWER reconvened the meeting.

SENATOR MICCICHE said that because it is a state building, a name change requires a bill. Mr. Dunham was a friend of his and a mentor. He provided the ultimate example of public service in the state of Alaska.

CHAIR SHOWER asked the will of the committee.

3:46:25 PM
SENATOR COGHILL moved to report SB 100 from committee with individual recommendations and attached fiscal note(s).

CHAIR SHOWER found no objection and SB 100 passed from the Senate State Affairs Standing Committee.

3:46:43 PM
At ease

## SB 80-INITIATIVE SEVERABILITY

3:48:39 PM
CHAIR SHOWER reconvened the meeting and announced the consideration of SENATE BILL NO. 80, "An Act relating to proposing and enacting laws by initiative."

3:48:50 PM
SENATOR CHRIS BIRCH, Bill Sponsor, Alaska State Legislature, Juneau, Alaska, read the following sponsor statement:

> SB 80 seeks to ensure ballot initiative language that appears before voters at the ballot box is the same as the language circulated during the signature-gathering phase and to restore the legislature's important role in the initiative process.
>
> Alaska's constitution details a very important right of our residents - the right to enact legislation through the voter initiative process. The legislature also has the right to enact legislation substantially the same as the proposed initiative thus removing it from the ballot.
>
> Per our constitution, some issues are off-limits for ballot initiatives and initiatives can only cover one subject. But while a cursory legal review of language occurs before the Lieutenant Governor's certification, it has sometimes been the case that further review finds constitutional concerns with proposed language. In those cases, a party can file a lawsuit to force the issue through the court system. This can happen simultaneous to the circulation of signature booklets.
>
> Under current law, if a court determines that language in a proposed initiative is unconstitutional and/or severed, an amended version of the language can appear before voters. This results in voters seeing a different initiative than the one they supported with their signatures. Furthermore, if the courts revise/sever the language after the legislative review

process, they deny the legislature its right to review the initiative as revised. The net effect of a court's severance is that an initiative can move forward to the voters that is substantially different than the initial version reviewed by the legislature.

SB 80 would rectify this situation. Under this bill, if a court determines that language in a proposed initiative is unconstitutional or severed, the Lieutenant Governor must reject the entire initiative petition and prohibit it from appearing on the ballot. Voters should be assured that language on the ballot has not changed from the language in the petition booklets supported with voter signatures and further, restores the legislature's right to review and enact substantially similar legislation to stop an initiative from moving forward.

SENATOR BIRCH noted that Eric Fjelstad, who assisted with the bill, was online.

3:51:57 PM
KIM SKIPPER, Staff, Senator Chris Birch, Alaska State Legislature, Juneau, Alaska, said the bill is a single section. Section 1 amends AS 15.45.240 by adding the following subsection:

(b) The provisions of an initiative are not severable after being circulated under AS 15.45.110. An initiative petition may not contain a severability clause. If a court finds a provision of an initiative petition unconstitutional during a review under (a) of this section, the court shall order the lieutenant governor to reject the entire initiative petition and prohibit the placement of the initiative on the ballot.

CHAIR SHOWER advised that the committee is discussing the possibility of changes and those are forthcoming. After public testimony, he will see if those changes are available.

3:53:20 PM
At ease

3:54:14 PM
CHAIR SHOWER reconvened the meeting and opened public testimony on SB 80.

3:54:36 PM
LARRY BARSUKOFF, Director of Operations, Alaska Policy Forum, Anchorage, Alaska, testified in support of SB 80. He said the right of Alaska voters to directly participate in the legislative process is to be cherished and protected. Voters must have an absolute guarantee of the integrity of the ballot initiative process. Since 1988, a loophole has expanded and is now used when ballot initiative groups rely on the Alaska Supreme Court to act as a legal editor of ballot initiatives. Language that may not pass constitutional muster is included in petition booklets. These groups know that the Supreme Court will remove the offending language later. This violates the integrity of the ballot initiative process. Voters casting their ballots for or against an initiative should know absolutely that the ballot language was exactly the same as what was presented for signatures.

MR. BARSUKOFF said that a further effect of the loophole is the legislature can be stripped of its role to counterbalance the system. The legislature has the right to enact legislation substantially the same as proposed in initiatives, thus removing those initiatives from the ballot. When initiative language is stricken or changed by the court, the legislature can lose its ability to provide oversight of the process. To prohibit the ability of a court and unelected judges to pick, choose, and delete language in a ballot initiative would require authors of an initiative to more carefully vet their language and would keep judges out of the business of crafting legislation. Not imposing a prohibition of severability robs the legislature of its right and mandate to act as a check on the initiative process by enacting legislation similar to a ballot initiative. Not imposing a prohibition of severability robs Alaska's voters of the assurance that the language on the ballot when they vote is the same as the language they supported during the signature gathering. It would be a good policy for this technicality to be addressed.

3:57:26 PM
BETHANY MARCUM, Executive Director, Alaska Policy Forum, Anchorage, Alaska, testified in support of SB 80. She said the state is fortunate to have a constitutionally-enshrined ballot initiative process. Not all states trust their citizens to participate directly in the legislative process. In order for the ballot initiative process to continue to have value for future generations of Alaskans, it is imperative to ensure the integrity of the process is ensured. A loophole was created by past Supreme Court decision that allows the court to tamper with

initiative language. While the intention may be good, the result can be that the words which voters see on their ballots may be different than the language that was displayed to them and other voters who earlier signed the petition booklets. Alaska experienced this in 2018 with Ballot Measure 1. It is an injustice to Alaskan voters when the words they approve for a ballot are changed by unelected judges. Another effect of the loophole is that the legislature can be stripped of its role to act as a counterbalance in the ballot initiative process. The legislature has the right to enact legislation substantially the same as proposed in an initiative, thus removing the initiative from the ballot. When the court changes or strikes initiative language, the legislature effectively loses it ability to provide oversight over this process.

SENATOR REINBOLD said she understands the concept of the bill, which is that judges should not be able to amend initiatives, but the problem she has is that she hasn't liked numerous court decisions. The court has struck down numerous laws that legislators have worked on diligently. She understands that the bill would not allow the court to amend, but it seems to increase their power to kill initiatives. She has seen the courts often use one little phrase in the constitution without looking at the constitution globally. For example, the constitution says people can enjoy their rewards of their industry, but it also allows the government to tax, so it can be in conflict. She said she doesn't want the court to do what it did with the marriage law when it was as clear as day that marriage was between one man and one woman. She asked if this increases the power of the courts.

MS. MARCUM said she didn't believe so because so many ballot initiatives already involve a lawsuit and the courts must rule on them. The solution to what she is discussing is SJR 3 that Senator Shower has introduced and some sort of judicial reform.

4:01:49 PM

MARLEANNA HALL, Executive Director, Resource Development Council for Alaska, Anchorage, Alaska, testified in support of SB 80. She said she had submitted a letter of support for SB 80 and wanted to share additional points about why SB 80 is needed. The voters have the ability to participate in the legislative process by passing law or overturning law through the ballot measure process. Voters can support initiatives by writing them, signing onto them, and voting for them. Throughout these actions the language should remain unchanged once a voter signs in support. SB 80 would remove the court's ability to sever the

language, thereby leaving that language intact. As the law is currently written, rather than ensuring that the ballot initiative language passes legal and constitutional muster before being presented to voters, they are concerned that groups will rely on Alaska's courts for legal editing services. SB 80 will send a message to proponents that the language of the initiative must be carefully drafted to ensure it is constitutional.

4:03:46 PM
ALBERT FOGLE, Vice President, Alaska State Chamber, Anchorage, Alaska, testified in support of SB 80. He said SB 80 is needed to retain the integrity of the signature-gathering process for a ballot measure. Once the voters sign their names to specific ballot measure language, their support should be applied only to the exact language to which they lent their names. If any court decides to alter or remove language from the initiative, it cannot be assumed that voter support remains. If a court severs language from a proposed ballot measure, it should be mandatory that initiative proponents go back and ask voters to support the revised language that will actually appear on the ballot. They applaud their effort to correct a deficiency that has been overlooked with the ballot initiative process. SB 80 will result in fewer protracted legal battles once ballot measure proponents understand that should any section of their initiative not pass constitutional muster, they would be required to revert to the signature-gathering stage of the process. This should result in more carefully crafted ballot measures being proposed at the outset, which means a smoother, more predictable process for all parties.

4:05:57 PM
ERIC FJELSTAD, representing self, Anchorage, Alaska, testified in support of SB 80. He said he is an attorney who has worked with ballot measure initiatives for the past ten years. Testimony has focused on three things. First is truth in advertising. When voters sign a pamphlet, that language should not change. Second is the constitutional issue. The constitution puts power with the legislature as the last stop on initiatives. There is the ability to cut off an initiative by enacting something substantially similar. That is an important safeguard. Last fall with the salmon initiative, the court struck major provisions of the initiative and then sent that on to voters. The key takeaway is that the modified version was different than what the legislature looked at initially. He would argue that the dynamics are entirely different after something has been modified by the court. If the bad portions of an initiative are

removed, the odds go up that the legislature would take action, so this matters. This is a balance of power issue between the legislature and the courts. It is the rightful place of the legislature to make it clear that this is their prerogative and not the courts. He sees this as an apolitical issue that would apply equally to any ballot measure. The last point is that the court's last ruling will encourage all sorts of bad behavior with initiative proponents. There is no reason to worry about overreach or the constitutionality of the draft because the courts will step in at the end. SB 80 restores the balance of powers as the architects of the constitution intended.

4:08:50 PM
CHAIR SHOWER closed public testimony on SB 80.

4:08:58 PM
At ease

4:10:52 PM
CHAIR SHOWER reconvened the meeting. He asked if the committee members had any questions.

4:11:23 PM
SENATOR KAWASAKI asked if the purpose is to restrict the total numbers of ballot measures that go before the voters because the legislators can do it. He asked how many ballot measures in the last ten years have gone before the voters.

SENATOR BIRCH clarified that the intent is not to restrict the number of ballot measures. The intent is that if the courts rewrite a ballot measure that signatures had been gathered for, if the language is substantially changed and severed by the courts, the process should start over. The language should be constitutional from the get-go.

SENATOR KAWASAKI asked how many ballot measures had gone before voters in the last ten years.

SENATOR BIRCH said his office would get the answer.

SENATOR KAWASAKI asked Senator Birch what the term "substantially" means to him in the context of changing or severing language in a ballot initiative.

SENATOR BIRCH replied that the severability would relate to the constitutional aspects. If the language is revised to make the

ballot question constitutional, then the ballot measure changes substantially from what people signed.

SENATOR KAWASAKI said the use of severability clauses are common. They are in almost every bill. He asked why is it necessary to remove severability clauses from laws that would appear before the people vs. laws that would appear before the legislature.

SENATOR BIRCH said the issue is the effort, energy, and initiative it takes to prepare a properly constructed ballot measure and gather those signatures. It needs to be done right the first time.

SENATOR KAWASAKI asked how often an initiative is later challenged.

SENATOR BIRCH said he would follow up with the answers.

SENATOR KAWASAKI said he wonders about the generation of the bill and what effect this will have on a fundamental constitutional right of initiative and referendum. He has questions around those. On the timeline, he asked if they looked at changing the timeline to address the problem, for example, the total numbers of days for the lieutenant governor to certify and the number of days the petitioners have after. He asked if they looked at a way that would be more amenable to the petitioners.

SENATOR BIRCH said that once the signature gathering begins, the expectation would be that the document has been constitutionally vetted. The content should not change substantially between the signature-gathering phase and what is on the ballot.

4:15:37 PM
SENATOR COGHILL asked how many initiatives have been changed after the vetting process and before the voting process.

SENATOR BIRCH said he would follow up with the information.

SENATOR COGHILL said the concept is right, but these are questions that need to be addressed to get to the finish line. One of the most recent initiatives had a change with a constitutional tweak so it's easy to demonstrate why this needs to be fixed. The legislature also has the same restrictions. Some of their laws have been slapped down by the courts. They

are still on the books but are invalid. It is a good concept, but it's necessary that background information.

4:17:53 PM
SENATOR REINBOLD asked if the court has to be very specific about why it is striking down an initiative as opposed to making a general reference to the constitution.

SENATOR BIRCH deferred the question to Mr. Fjelstad.

4:18:33 PM
MR. FJELSTAD said the court would identify a specific constitutional provision. Last fall, the court found that multiple provisions of Ballot Measure 1 violated the appropriations clause and those were severed from the initiative. The remainder moved forward. Regarding how many times this has come up, he thought it was just a handful, less than five.

SENATOR REINBOLD said that's helpful, but sometimes the court looks at different clauses in the constitution, like it did with marriage between a man and a woman. She asked him if the court has to look at the constitution globally or if they can strike the measure down based on one clause.

MR. FJELSTAD said the court primarily would focus on the arguments the parties make rather than finding authority on its own. If a clause is struck down, the court would have to identify the specific constitutional provision for doing so.

SENATOR REINBOLD commented that it seems that the court should have to look at the constitution globally rather than just a little provision because almost anything can be argued with each and every clause in the constitution.

MR. FJELSTAD said there is no hard and fast rule but if the parties argue three constitutional provisions, generally the court will look at those three and not everything else.

4:21:25 PM
SENATOR REINBOLD said she absolutely supports the initiative process and thinks it is brilliant in the constitution. She wants to make the courts to look at the constitution globally. So many times, they have struck down some awesome things because of a little clause. "I don't want to increase the power of the courts at all. That is not the intention. I think they are way too powerful as it is right now. The power should really belong

with the people," she said. As long as the courts must specify why they strike things down, the concept is good.

SENATOR MICCICHE clarified that the section of law only deals with initiatives, not referendums.

MR. FJELSTAD agreed.

SENATOR MICCICHE said he supports this and sees it as completely nonpartisan. He related his personal experience gathering signatures on parental consent. He'd rather have known it was unconstitutional in advance instead of wasting time waiting for a ruling. Referencing the fish initiative process, if he were running an initiative today, he would shoot for the moon. He would go for most extreme stance and let the courts fix it for him, which is what occurred. He is a huge supporter of the initiative process. When folks feel the legislature is not doing its job, they have the ability to make law and to repeal laws through the referendum process. This puts more pressure on the courts to determine constitutionality in advance so that perhaps people on either side can come back with something likely constitutional, collect signatures, and put it on the ballot. It is a time saver. It is the right thing to do. It avoids the courts rewriting initiatives differently from what was proposed.

SENATOR REINBOLD said she was out there collecting signatures when it was freezing cold. She was ticked off when it was struck down. She reiterated Senator Micciche's comments.

4:25:21 PM
At ease

4:28:03 PM
CHAIR SHOWER reconvened the meeting.

4:28:55 PM
SENATOR COGHILL moved to report SB 80, Version U, from committee with individual recommendations and attached fiscal note(s).

4:29:14 PM
CHAIR SHOWER found no objection and SB 80 moved from the Senate State Affairs Standing Committee.

4:29:20 PM

## SB 32-CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE

4:32:50 PM
CHAIR SHOWER reconvened the meeting and announced the consideration of SENATE BILL NO. 32 "An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

CHAIR SHOWER noted that the committee last heard the bill April 9 and that James Stinson, Director of Public Advocacy, Robert Henderson from the Department of Law, and several people from the Department of Public Safety were available to answer questions.

4:33:53 PM
SENATOR KAWASAKI said part of the bill deals with DNA swabs at the time of arrest. He asked for the thoughts behind that.

4:34:23 PM
KATHY MONFREDA, Director, Statewide Services, Department of Public Safety (DPS), Anchorage, Alaska, said the law requiring the collection of DNA at the time of arrest was passed in 2007. It was a lobbying effort by Karen Foster, the mother of Bonnie Craig. She was passionate about it. Senator Wielechowski introduced the amendment to a bill. The power behind it was that had the law been in effect the murder could have been solved 12 years earlier.

SENATOR KAWASAKI noted that this is a person's first time to be arrested for any sort of crime. Now the penalty for not providing DNA at the time of arrest will be a class A misdemeanor. He asked if there had been a penalty before.

MS. MONFREDA replied it currently is not a crime to refuse to submit a DNA sample at the time of arrest. It is only a crime for refusal on felony arrests.

SENATOR KAWASAKI asked what happens to the DNA taken at the time of arrest, where it is stored, if it is analyzed at the time of arrest, and what happens to it if the person isn't arraigned.

MS. MONFREDA said current law is that if the person is not found guilty, the person can request a court order to have the sample destroyed. The samples are analyzed and entered into a system called CODIS run by the FBI. It is in an encrypted, private network. Once the person gets a court order, the crime lab gets

a copy and then destroys the sample, documents the destruction, and notifies the court and the defendant's attorney that the sample has been destroyed.

4:38:02 PM
SENATOR KAWASAKI asked if people arrested for disorderly conduct would need to submit to a buccal swab that would be uploaded to CODIS automatically.

MICHAEL DUXBURY, Deputy Commissioner, Department of Public Safety (DPS), Anchorage, Alaska, said no. That would be a misdemeanor which does not require a buccal sample to be taken. The requirement applies to serious felonies.

SENATOR KAWASAKI asked if it had to be a crime against a person.

MR. DUXBURY deferred to the Department of Law.

4:39:16 PM
ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, said disorderly conduct would not be a qualifying offense under AS 44.41.035(b). This is applicable to AS 11.41 crimes against a person offenses, Title 11 felonies, and Title 28 DUI felonies.

CHAIR SHOWER asked what proof there is that the data has been truly destroyed and can never be retrieved or used again.

MS. MONFREDA said her understanding is that the data is destroyed. It is removed from CODIS and is not accessible.

CHAIR SHOWER said that is a good answer for the record. The reality is that it is probably out there somewhere.

4:41:35 PM
SENATOR REINBOLD said she likes that there are bookends regarding collecting the DNA sample. She asked for clarification about the point at which a DNA sample is required.

MR. HENDERSON replied that the types of offenses and circumstances under which a DNA sample is required is spelled out in AS 44.41.035(b). First it is a person convicted of crimes against a person or a felony under AS 11, AS 28.35, or a law with elements similar to crimes against a person or a felony; (2) would be a minor adjudicated of a delinquent if the minor was 16 years of age or older and committed a crime against a person or a felony; (3) is a voluntary donor; (4) is an

anonymous DNA donor used for forensic validation; (5) is a person required to register as a sex offender or child kidnapper; and (6) is what SB 32 talks about - a person arrested for a crime against a person under Title 11.41, a felony under Title 11 or a felony under AS 28.35.

SENATOR REINBOLD asked if someone convicted of vehicle theft, burglary, or purse snatching would have to give a DNA sample under current law.

MR. HENDERSON said it depends on the type of offense. Someone convicted of felony-level theft would be required to give a DNA sample upon conviction whereas a purse snatching depends on the ultimate charge and conviction. A theft against a person under theft in the second degree is a C felony and would be covered.

SENATOR REINBOLD said you keeps saying "at conviction." She generally supports the concept of getting more DNA samples to help reduce wrongful convictions, help get to a verdict more quickly, and help reduce pretrial delays, as long as there are parameters. She asked what the parameters are for SB 32.

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MR. HENDERSON said the three big categories for which DNA will be collected are any felony arrest or crime against a person or felony DUI. It is a powerful and effective law enforcement tool as Ms. Monfreda described in her initial testimony. There are several safeguards or sideboards on the information that is collected. He has talked about a couple of them. Another safeguard is that federal law imposes a $250,000 fine or up to a year in jail for any unauthorized disclosure of information in CODIS.

SENATOR REINBOLD asked if there is any correlation with fingerprints and DNA. She asked if they are allowed to collect fingerprints or would that be part of a warrant. She asked if a swab is taken under SB 32 and someone is not convicted, can a person use the court rule to get the fingerprints and DNA sample destroyed.

MR. HENDERSON answered that if a person is not convicted or charges are not filed, that person can have the DNA destroyed and not put into CODIS. If the person is ultimately acquitted, the same process would apply. He asked her to restate the question about fingerprinting.

SENATOR REINBOLD asked if fingerprints can be taken at arrest and is there is correlation between fingerprints and DNA.

MR. HENDERSON said the constitution allows the police to take certain routine administrative steps during processing or booking. That includes getting biographical information such as name and date of birth, photographing, and fingerprinting and for one of the qualifying offenses, taking the buccal swab.

CHAIR SHOWER said he'd like to hear about the safeguards from the Department of Public Safety in an e-mail that spells them out clearly so that the committee and then Judiciary will know exactly what those bookends are. He also asked if any other states have had this kind of provision and if there have been any constitutional issues or legal challenges. He asked for that information to be provided in written format.

CHAIR SHOWER asked Mr. Steiner to comment from the public defender side about the proposals in SB 32 regarding DNA collection, use, and destruction.

4:50:33 PM
QUINLAN STEINER, Public Defender, Public Defender Agency, Alaska Department of Administration, Anchorage, Alaska, said the issue is that the crime occurs at arrest. The bill could elevate the situation significantly because it covers all 11.41 crimes, which includes misdemeanor assaults in the lowest level of crimes against a person. He did not know how that would relate to the dismissal of charges. Someone could be convicted of a crime of failing to provide. Charges may not even be filed against the original, low-level fear assault that could be stemming from just an argument. A disorderly conduct may not apply, but arguments can develop into fear assaults because of a raised fist in a bar. It often doesn't go anywhere, but that could result in the conviction of somebody for failing to supply the sample. Then that person has to affirmatively seek its destruction. That doesn't happen automatically. It is a whole other process that the person may not be in a position to pursue. This elevates things to a level that the committee may not want.

CHAIR SHOWER asked Mr. Henderson to comment or counter Mr. Steiner's view. He asked if the evidence would be admissible if a sample was taken after arrest and that person was not convicted but the DNA provided a hit on another crime. The committee is concerned about using data appropriately, making

sure it is protected constitutionally, and not violating rights, he said.

MR. HENDERSON said an argument can lead to a misdemeanor assault in the fourth degree, but it has to be more than an argument. It has to have recklessly placed someone in fear of physical injury. There has to be an affirmative step, which is how it is distinguished from disorderly conduct, which is not an 11.40 crime.

MR. HENDERSON said that if DNA is taken in good faith by law enforcement and results in that person becoming a suspect in another crime, the DNA match is unlikely to be suppressed. The statute talks about that scenario.

MR. HENDERSON said the person has to affirmatively refuse to provide, so it does create a new crime, but in his professional judgement, it would encourage people to submit their DNA. The person is required by law to submit their DNA and being reminded of that will encourage the person to comply with the pre-existing state of the law. Right now the incentive is missing.

CHAIR SHOWER expressed concern that it could be part of the lowest level of crime. He wondered how big a hammer they wanted to wield, depending on the level of the crime. He is trying to find a balance. He addressed Ms. Monfreda to make sure that somebody would get back to him with the information he asked for. He said the committee also may not have gotten an answer to Senator Reinbold's question about what happens if someone is arrested versus convicted.

MR. STEINER pointed out that a person is entitled to talk to a lawyer before refusing to submit to a breathalyzer sample for a DUI. If this passes, it would certainly raise that prospect. That can be a substantial time process. Someone has the right to engage a lawyer right there on the spot before refusing. That DUI scenario may extend to this process as well.

CHAIR SHOWER said that is in line with his question about whether other states have enacted something similar and if there have been constitutional or legal challenges.

4:56:57 PM
MR. HENDERSON said that Alaska is not unique. All 50 states use CODIS, the Combined DNA Index System maintained by the FBI. As of 2018, 31 states have DNA collection laws at the time of arrest. Most states define what is a qualifying offense

differently. There have been legal challenges. The ones he read this morning about legal challenges for misdemeanor arrests as a qualifying offense have not been successful. The U.S. Supreme Court has definitively held that it is not a violation of the Fourth Amendment to collect someone's DNA upon arrest if they are charged with a serious offense. The question becomes what is the definition of "serious offense." That is what the lower courts are struggling with now. Other states have upheld misdemeanor violent offenses as qualifying offenses.

CHAIR SHOWER asked Ms. Monfreda if she had gotten his request about providing written information about the bookends or guardrails in SB 32 regarding privacy protections related to providing DNA.

MS. MONFREDA said she would coordinate with the lab DNA experts to provide the safeguard steps in writing.

SENATOR KAWASAKI asked for someone from the Department of Law to contact him to discuss his concerns about the language about terroristic threatening. He had some questions for law enforcement regarding the Title 47 process and the request for the Department of Public Safety to receive all records of a person adjudicated of a mental illness or incompetence issued on or after October 1, 1981. Legislative Legal Services said there might be due process issues for people who committed crimes prior to 2014 under the Brady handgun bill. That says it is illegal to dispose of or sell a firearm or ammunition to any individual adjudicated of a mental defect or who has been committed to a mental institution.

CHAIR SHOWER asked Mr. Henderson if he could provide that information to the committee in writing.

MR. HENDERSON said yes.

CHAIR SHOWER asked Ms. Monfreda to provide the information as well.

MS. MONFREDA agreed.

CHAIR SHOWER asked Mr. Steiner to share anything he needed to with the committee.

MR. STEINER said certainly.

5:01:48 PM

SENATOR REINBOLD said this is a powerful tool and the bookends are really important. There are provisions to have the DNA destroyed for wrongful or non-convictions or dropped cases. There is a $250,000 fine for misuse of the information. She asked Mr. Steiner and Mr. Henderson if this could help ensure that wrongful convictions do not take place. She asked for a yes or no answer.

MR. HENDERSON replied the short answer is yes. There may be an example in another state that he will look for.

MR. STEINER said there may have been instances and it is certainly a theoretical possibility. He doesn't have an answer for a closed case, for example, but it's theoretically possible.

SENATOR REINBOLD clarified that she meant that this could be a powerful tool for the defendant to make sure the wrong people are ending up in jail. To her, this is just as good an amendment for wrongful convictions. It could help either side.

MR. STEINER replied that would depend on whether a new DNA sample could tie in to closed cases. He doesn't know if those cases stay in the system once they have been closed.

SENATOR REINBOLD said she thought he was confusing issues.

MR. STEINER said he was not confused about the issue.

SENATOR REINBOLD said she was not talking about closed cases at all.

MR. STEINER said with a false conviction, the case is closed. The case is closed with conviction.

SENATOR REINBOLD said she is talking about preventing wrongful convictions. She asked Ms. Monfreda for information on the offenses in 2018.

CHAIR SHOWER said powerful tools are important, and they can be used for good and bad. That is the balance the bill needs to strike.

CHAIR SHOWER held SB 32 in committee.

5:07:16 PM

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:07 pm.