

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 16, 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

CONFIRMATION HEARING(S)

Alaska State Commission for Human Rights

Cynthia Marlene Erickson - Tanana
Alice (Debbie) Fullenwider - Anchorage

- CONFIRMATIONS ADVANCED

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 32

SHORT TITLE: CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

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
 04/11/19 (S) Heard & Held
 04/11/19 (S) MINUTE(STA)
 04/15/19 (S) STA AT 6:00 PM BUTROVICH 205
 04/15/19 (S) Heard & Held
 04/15/19 (S) MINUTE(STA)
 04/16/19 (S) STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

CYNTHIA MARLENE ERICKSON, Appointee
 Alaska State Commission for Human Rights
 Tanana, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Commission for Human Rights.

ALICE (DEBBIE) FULLENWIDER, Appointee
 Alaska State Commission for Human Rights
 Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska State Commission for Human Rights.

SCOTT OGAN, Staff
 Senator Mike Shower

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the differences between version A and version U of SB 32.

ROBERT HENDERSON, Deputy Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions and provided information related to SB 32.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information related to SB 32.

ACTION NARRATIVE

[3:35:06 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 Kawasaki, Coghill, Micciche, Reinbold, and Chair Shower.

CONFIRMATION HEARING(S)

Alaska State Commission for Human Rights

[3:35:41 PM](#)

CHAIR SHOWER announced that the first order of business would be consideration of governor appointees to the Alaska State Commission for Human Rights.

He asked Ms. Erickson to tell the committee about her interest in serving on the Alaska State Commission for Human Rights and why she is a good fit.

[3:35:50 PM](#)

CYNTHIA MARLENE ERICKSON, Appointee, Alaska State Commission for Human Rights, Tanana, stated that she would be a good fit on this commission because she was raised in a good home with good moral values and ethics. She related that she has been confronted by controversial issues related to elders, youths,

tribal, and Native corporations in her small community. "I'm not afraid of what to do and stand up and speak," she said.

CHAIR SHOWER asked if she has any problem with the required financial disclosure.

MS. ERICKSON answered that she had no problem with that.

CHAIR SHOWER asked if she or any family member may benefit financially from any decisions the commission may make.

MS. ERICKSON answered no.

[3:37:52 PM](#)

SENATOR KAWASAKI thanked her for wanting to serve. He asked how it happened that she wasn't selected for a seat on any of the boards and commissions she indicated a preference for in her resume.

MS. ERICKSON clarified that this was her first choice; she made a mistake when she cut and pasted text from an old application.

SENATOR KAWASAKI asked who asked her to apply.

MS. ERICKSON replied a woman from Boards and Commissions called to ask if she was interested because her name "had been put in the hat."

[3:39:30 PM](#)

SENATOR COGHILL thanked her for her work in the communities and her service to Alaska.

CHAIR SHOWER asked her perspective of joining a commission that has experienced some controversy and resignations and how she'll help get it back on track.

MS. ERICKSON said she doesn't have a problem with this because of her experience living in a small community and addressing issues that are uncomfortable. She was raised to make good decisions and she has always worked well with others. She foresees no problem in maintaining neutrality and following the law.

CHAIR SHOWER asked what she sees as the core mission of the commission.

MS. ERICKSON replied, "just to follow the law and to read and understand and educate ourselves on what to do."

CHAIR SHOWER commented that part of the controversy was members staying within the bounds of the mission of the commission. He asked what two issues she's identified that the commission needs solve.

MS. ERICKSON talked about the importance of communication and finding a new director. She said the fact that the meetings are all online may be part of the problem. She supports an initial face-to-face meeting to select the director and talk about issues.

CHAIR SHOWER said her help keeping the commission on target with its mission would be welcome.

[3:46:09 PM](#)

CHAIR SHOWER opened and closed public testimony on the appointment of Ms. Erickson to the Alaska State Commission for Human Rights. He noted that written testimony could be submitted to senate.state.affairs@akleg.gov.

MS. ERICKSON said she looks forward to serving.

CHAIR SHOWER asked Ms. Fullenwider to tell the committee about her interest in serving on the Alaska State Commission for Human Rights and why she is a good fit.

[3:47:22 PM](#)

ALICE (DEBBIE) FULLENWIDER, Appointee, Alaska State Commission for Human Rights, Anchorage, reported that she was born and raised in Alaska. In her youth she spent her summers set-net fishing in Eklutna. She and her husband raised three children all of whom live in Anchorage. Her schooling started at the Seventh Day Adventist School in Anchorage and she has attended Anchorage Community College and numerous workshops and seminars. Her life experience has taught her to deal with people, to value customer service, to compromise, and to trust but verify. She has served on committees, boards, and commissions throughout the years and she believes that her experience speaks to her qualification for this position.

[3:51:07 PM](#)

SENATOR KAWASAKI thanked her for being willing to serve. He asked if she was asked to serve on the commission or if she applied.

MS. FULLENWIDER answered she was asked to apply.

SENATOR KAWASAKI asked if she would be willing to provide disclosure information if this commission requires that.

MS. FULLENWIDER answered yes.

CHAIR SHOWER asked her perspective of joining a commission that has experienced some controversy and resignations and how she'll be able to help get it back on track.

MS. FULLENWIDER said when she was asked to apply, she looked into the commission and immediately realized the problem. She believes open communication, clear lines of authority, and knowledge of the mission are key. She said she's new and willing to learn.

CHAIR SHOWER said some of the turmoil was created by members who might have stepped outside the bounds of the commission. He asked what she believes is the mission of the Commission on Human Rights.

MS. FULLENWIDER said the mission is to serve the people of Alaska and regain their confidence after this recent controversy.

CHAIR SHOWER asked what top issues she might look at and how would you solve them.

MS. FULLENWIDER answered that she will look at the statutes for guidance.

CHAIR SHOWER wished her luck in accomplishing the mission of protecting human rights.

3:57:19 PM

CHAIR SHOWER opened and closed public testimony on the appointment of Debbie Fullenwider to the Alaska State Commission for Human Rights. He noted that written testimony could be submitted to senate.state.affairs@akleg.gov.

3:57:40 PM

CHAIR SHOWER stated that in accordance with AS 39.05.080, the Senate State Affairs Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Alaska State Commission for Human Rights

Cynthia Marlene Erickson - Tanana

Alice (Debbie) Fullenwider - Anchorage

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

[3:58:15 PM](#)

At ease

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

[4:00:22 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."

He recapped that the bill was last heard 4/15/19 and public testimony was heard and closed. He noted the proposed committee substitute (CS) that makes technical and conforming changes.

[4:00:54 PM](#)

SENATOR COGHILL moved to adopt the CS for SB 32, work order 31-GS1029\U, as the working document.

SENATOR REINBOLD objected for discussion purposes.

CHAIR SHOWER asked Mr. Ogan to review the Legislative Legal Services memo that highlights the changes from version A to version U of SB 32.

[4:01:58 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, explained that the memo first talks about a drafting error [in AS 12.55.125(d)]. Second, [AS 11.56.760(c)] was added to the applicability section. The memo also discusses a number of drafting considerations the first of which relates to electronic monitoring. If a prisoner tampers with an electronic monitoring device, the punishment is a class C felony. If the same prisoner charged with a misdemeanor escapes from official detention other than a correctional facility, the

penalty is a class A misdemeanor. He deferred further explanation to Mr. Henderson.

[4:03:28 PM](#)

ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Department of Law, Juneau, said the CS steps up the penalty for escaping from official detention on a class A misdemeanor charge to a class C felony if an electronic monitoring device is either disabled or tampered with or if the person removes him/herself from custody during lawful movement or activity. He also pointed out that escape in the second degree, which is the class B felony, is removing oneself from official detention from a secure detention facility.

SENATOR MICCICHE commented that the memorandum is a confusing way to explain the CS because it doesn't refer to the bill sections. He asked if this was the only document available.

MR. OGAN answered yes.

[4:05:14 PM](#)

At ease

[4:12:20 PM](#)

CHAIR SHOWER reconvened the meeting and asked Mr. Ogan to address the question raised during the at ease about the deleted section.

MR. OGAN explained that it was a technical change. The original version unnecessarily included a lot of criminal rule 6(r) regarding admissibility of evidence to the grand jury when just the amendment in paragraph 6(r)(6) was needed.

CHAIR SHOWER asked Senator Reinbold if anything else was covered during the at ease.

SENATOR REINBOLD said she wanted to make sure that the Department of Law agreed that the changes in the CS are technical and conforming.

CHAIR SHOWER stated for the record that the Department of Law agreed that the CS makes technical and conforming changes.

MR. OGAN added that the Department of Law agreed to provide a more detailed analysis by the next hearing.

CHAIR SHOWER asked him to continue to review the memo.

[4:14:31 PM](#)

MR. OGAN directed attention Section 26 of the CS that amends AS 11.56.810(a) regarding terroristic threatening by removing the phrase, "dangerous to human life exists or is about to exist,". He said the issue is that if person A says they are going to blow up a building and person B hears and reports the threat person B could be charged with the offense of communicating a threat.

MR. OGAN said Legislative Legal Services has agreed that joining subparagraph (A) with (B) on page 14, line 1 with "and" is a possible solution. He deferred further explanation to the Department of Law.

[4:16:59 PM](#)

MR. HENDERSON expressed concern with the proposal to tie the phrases with an "and" at the end of subparagraph (A) because that would require the state to prove (A), through (D) for the crime of terroristic threatening as opposed to the current drafting that has an "or." He said he'd be happy to discuss another solution to change from the passive to active voice in subsection (a) on page 13, line 25.

CHAIR SHOWER asked him to provide additional explanation because one of the concerns is that this might be interpreted too broadly. He used the example of young men in a bar getting into a disagreement and one threatening to kill the other when it was a heat of the moment statement and not the real intent.

MR. HENDERSON said there are two issues. The point in the legislative legal memo is what happens if person A makes a threat and person B reports it to law enforcement. He described that as an extraordinary stretch of the law that would not occur for three reasons. First, "communicates a threat" must be read together with "to commit a crime against a person." You commit a crime when you tie that to the communication which is what prevents person B from being held criminally liable for reporting that offense. Second, a person has to act with reckless disregard, which means they have to consciously disregard a substantial and unjustifiable risk that they are causing that fear. The person who reports that threat is not acting recklessly under the law. Third, if the appellate court were faced with that factual scenario, it would recognize the absurdness of that result and revert to the legislative intent, which is capturing the threat surrounding school shootings, bomb threats, or shooting at a public facility. Under the rules of

statutory construction, it is unlikely that a court of appeals would hold somebody criminally liable for reporting that threat because it would go against the legislative intent of the statute.

MR. HENDERSON said the factual scenario where somebody makes a threat to kill when they're in a bar is more realistic and the question is how to put bumpers on that scenario. He said this section needs to be clear as to what the legislature intends to protect against and making sure that law enforcement has the ability to intervene in scenarios like school shootings. The person also has to recklessly disregard that they are placing a person in reasonable fear. The threat must be more realistic than hubristic talk.

[4:22:01 PM](#)

SENATOR REINBOLD asked Mr. Ogan where he suggested placing the "and."

MR. OGAN replied it would be after "serious physical injury to a person;" on page 14, line 1.

CHAIR SHOWER warned that he was considering Mr. Henderson's concern about joining the phrases with "and" and he may decide against it.

[4:22:59 PM](#)

MR. OGAN continued to discuss the memo. He said the change in Section 31 [sec. 11.71.040] talks about marijuana but it does not envision industrial hemp or licensed establishments. Amendments to address this oversight are forthcoming, he said.

Section 41, [sec. 12.55.135(q)] is a new subsection that talks about personal use marijuana. It clarifies that the definition of "permanent and temporary residence" does not include a vehicle or tent which may have an unintended effect of indigent people being charged more frequently than other demographics. He suggested the committee look at that issue.

Section 45 amends AS 28.35.032(o) by repealing language about a 24-hour community service requirement. The memo asks if that provision should be added to SB 32.

[4:26:16 PM](#)

SENATOR MICCICHE reiterated that it is cumbersome to move back and forth between the memo and the bill. He suggested limiting the discussion to the memo itself.

[4:26:51 PM](#)

At ease

[4:30:02 PM](#)

CHAIR SHOWER reconvened the meeting and asked Mr. Ogan to continue.

[4:30:10 PM](#)

MR. OGAN said Section 50 talks about the court's 38-year lookback for a person who has been involuntarily committed. He noted an amendment on this section is forthcoming.

Section 51 addresses whether or not the legislature needs a two-thirds vote to pass a court rule change.

SENATOR MICCICHE asked if there is any way to avoid the court rule change and the associated two-thirds vote requirement.

MR. OGAN deferred the question.

[4:31:47 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, said she believes this type of court rule change would require a two-thirds vote. The prior draft had that vote in it and she didn't believe it was as big an issue as legislative legal indicated.

SENATOR REINBOLD asked if that section could be removed.

MS. MEADE said the court rule change is the only part of a bill that needs a two-thirds vote. If a bill passes with that level of support, a motion on the floor is to accept the vote on the bill as the vote on the court rule change. If the bill passes with less than two-thirds support, a separate vote is needed for the court rule change.

SENATOR REINBOLD commented that she was saying the same thing in a different way.

CHAIR SHOWER asked Senator Reinbold if she maintained her objection.

[4:34:14 PM](#)

SENATOR REINBOLD removed her objection.

CHAIR SHOWER found no further objection and version U was adopted. He asked if there were questions.

4:35:01 PM

SENATOR KAWASAKI asked Mr. Henderson if there was a way, other than administratively, to compel someone to submit their DNA at the time of arrest.

MR. HENDERSON answered yes; if officers have probable cause that somebody's DNA would be evidence of a crime, they can seize that person's DNA through a buccal swab once they have obtained a warrant from the court.

4:36:09 PM

SENATOR KAWASAKI asked how long it takes to get a warrant in that circumstance and if the person usually stays in jail until it's issued.

MR. HENDERSON replied it depends on the availability of a magistrate or judge, but his experience is that each of the two ways to obtain a warrant can take several hours. One way is to draft an affidavit for the court to sign that establishes probable cause for needing the evidence. The other way is to obtain a warrant through oral testimony. Whether or not the person remains in custody is a factual determination that depends on the charge.

SENATOR REINBOLD asked if it would be more efficient to obtain the evidence on the spot instead of going to court to get a warrant.

MR. HENDERSON answered yes. He added that since the DNA arrest provisions for specific types of crimes went into effect in December 2008, there have been 357 arrestee hits under CODIS. He said this speaks to its power as a law enforcement tool.

SENATOR REINBOLD asked if he agrees that this could be a powerful tool to prevent wrongful convictions and ensure that the right person is convicted.

MR. HENDERSON said yes. He noted that DOL is preparing a memo to explain the DNA process. It cites two examples where the DNA seized after arrest exonerated two individuals.

SENATOR REINBOLD voiced full support for this important tool and thanked the administration for putting it in the bill.

[4:41:18 PM](#)

CHAIR SHOWER said his concerns about the use of DNA are about protecting people's rights. Thus he is very interested in safeguards to ensure this isn't abused or raises constitutional challenges. Another concern is that someone who hasn't done anything wrong but refuses to submit their DNA when they're pulled over could potentially be charged for not complying. He noted that his staff is a former trooper and he, too, has some concerns.

SENATOR REINBOLD asked if DNA is collected in rape kits.

MR. HENDERSON confirmed that sexual assault kits collect DNA. He added that under AS 11.56.762 it is a class C felony to unlawfully collect or use DNA samples and it's also a crime to misuse information in CODIS.

SENATOR REINBOLD asked if there is also a \$250,000 fine for the misuse of this data.

MR. HENDERSON said yes, and both state and federal law criminalize the unauthorized disclosure of DNA evidence.

[4:45:22 PM](#)

SENATOR MICCICHE asked if it is common for somebody to refuse to submit to a buccal swab upon arrest. He noted there is no sanction for refusing.

MR. HENDERSON replied it's not frequent... [communication lost].

[4:46:31 PM](#)

At ease

[4:49:16 PM](#)

CHAIR SHOWER reconvened the meeting and asked Senator Micciche to restate the question.

[4:49:21 PM](#)

SENATOR MICCICHE noted there is no sanction for refusing to submit to a buccal swab upon arrest and asked how this next step would benefit law enforcement.

MR. HENDERSON replied the benefit to law enforcement is that the enforcement mechanism will incentivize people to follow the law. He acknowledged that the majority of individuals comply with the law.

SENATOR MICCICHE asked what percentage do not comply.

MR. HENDERSON said he would try to get the information from the Department of Public Safety (DPS) but he wasn't sure if it could be quantified.

CHAIR SHOWER asked him to also provide a list of the crimes that that are subject to a buccal swab upon arrest.

MR. HENDERSON agreed to try to provide that information.

SENATOR MICCICHE commented that it looks like all arrestees are subject to the collection of DNA. He said he'd like that on the record, now if possible.

[4:52:19 PM](#)

MR. HENDERSON clarified that DNA is only required from those individuals arrested for qualifying offenses. That is all crimes against a person under Title 11, which includes violent misdemeanors and violent felonies; felony arrests under Title 11; and arrest for a felony DUI. Somebody who is arrested for such things as disorderly conduct, shoplifting, or reckless driving is not required to submit their DNA upon arrest.

CHAIR SHOWER asked him to describe felony DUI.

MR. HENDERSON explained that felony DUI applies to somebody who has been convicted of DUI twice before within the last 10 years.

CHAIR SHOWER asked if that information is immediately available to the arresting officer.

MR. HENDERSON replied if the prior convictions were in Alaska that information is part of APSIN (Alaska Public Safety Information Network) and is available on the spot. If the prior convictions are out of state, the officer may have immediate access to that information under the national database on criminal history, NCIC. But if the information is not in NCIC the prosecutor's office would file the felony DUI charges later.

SENATOR MICCICHE said he struggles with the idea that this creates a crime for a person who may not be a criminal. He asked what he thinks about an amendment that says a person who is found not guilty of the original qualifying crime is also not guilty of refusing to submit to the buccal swab.

MR. HENDERSON said he'd like to give it some thought because gives law enforcement an enforcement mechanism to encourage people who are arrested for a qualifying offense to submit their DNA without a more involved process. An existing safeguard is that the DNA can be expunged from the system if the person who is ultimately acquitted of the underlying charge or the prosecution decides, for whatever reason, not to file criminal charges.

CHAIR SHOWER asked if he would consider an amendment that drops the secondary charge if the person is not guilty of the initial crime.

MR. HENDERSON said at first blush it makes sense, but he wants time to consider unintended collateral consequences.

CHAIR SHOWER asked him to get back to his office once he's had time to give it consideration.

[4:57:11 PM](#)

SENATOR REINBOLD questioned the provision in Section 12 on page 7, line 29 that says it's vehicle theft in the first degree if the owner does not have their vehicle for seven days or more. She stressed that it's theft if the vehicle is gone for just an hour.

MR. HENDERSON said he'd look at it more closely but the intention is to ensure that somebody who is joyriding is not charged with vehicle theft.

SENATOR REINBOLD stated her intention to have a follow-up, off-line discussion with him or Ms. Schroeder before she asked Legislative Legal Services to prepare an amendment. She also asked why the term "propelled vehicle" is used in Section 15 on page 9, line 26. She said she is focusing on vehicle theft because it is such a problem and she's trying to identify all loopholes.

MR. HENDERSON read the definition for "propelled vehicle," which includes automobiles, vessels, airplanes, motorcycles, snow machines, and all-terrain vehicles. He explained that other than cars, trucks, and motorcycles, the most typical vehicles are ATVs and snow machines.

SENATOR REINBOLD restated her intention to close all loopholes and get to the bottom of vehicle theft.

5:00:33 PM

SENATOR KAWASAKI referenced the direct court rule change dealing with a prior conviction as an element of an offense and asked if information about somebody's Title 11 crime against a person conviction would be admissible to a grand jury.

MR. HENDERSON said the change to Rule 6(r), Alaska Rules of Criminal Procedure, is to expand an existing rule such that anytime somebody is accused of a felony and a predicate offense exists, the state would be entitled to use the person's electronic rap sheet to prove that predicate offense at grand jury. Those crimes include felon in possession, recidivist felony theft, and recidivist felony assault.

CHAIR SHOWER stated he would hold SB 32 in committee.

5:04:19 PM

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:04 p.m.