

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 8, 2021

1:32 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Mike Shower, Vice Chair
Senator Shelley Hughes

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Alaska Police Standards Council

Ed Mercer - Juneau
Joseph White - Ketchikan
Jennifer Winkelman - Juneau
Justin Doll- Anchorage
Larry Nicholson - Kodiak
Gregory Campbell - Palmer

- CONFIRMATIONS ADVANCED

SENATE BILL NO. 65

"An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, dentists, optometrists, and pharmacists."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: LIABILITY CONSULTING HEALTH CARE PROVIDER

SPONSOR(S): SENATOR(S) KIEHL

02/03/21	(S)	READ THE FIRST TIME - REFERRALS
02/03/21	(S)	HSS, JUD
02/16/21	(S)	HSS AT 1:30 PM BUTROVICH 205

02/16/21 (S) Heard & Held
02/16/21 (S) MINUTE (HSS)
02/18/21 (S) HSS AT 1:30 PM BUTROVICH 205
02/18/21 (S) OPIOID OVERDOSE DRUGS
02/19/21 (S) HSS RPT CS 3DP 1NR NEW TITLE
02/19/21 (S) DP: WILSON, BEGICH, HUGHES
02/19/21 (S) NR: REINBOLD
03/05/21 (S) JUD AT 1:30 PM BUTROVICH 205
03/05/21 (S) -- MEETING CANCELED --
03/08/21 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ED MERCER, Appointee
Alaska Police Standards Council
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

JOSEPH WHITE, Appointee
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

JENNIFER WINKELMAN, Appointee
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

JUSTIN DOLL, Appointee
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

SCOTT CAMPBELL, Appointee
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Palmer, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

LARRY NICHOLSON, Appointee
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Kodiak, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Police Standards Council.

CJ HARRELL, Intern
Senator Jesse Kiehl
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement on behalf of the sponsor of SB 65.

ACTION NARRATIVE

[1:32:56 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Myers, Kiehl, and Chair Reinbold.

CONFIRMATION HEARING(S) **Alaska Police Standards Council**

[1:33:50 PM](#)

CHAIR REINBOLD announced consideration of the Governor's Appointees to Boards and Commissions. She brought up the appointees to the Alaska Police Standards Council.

[1:34:45 PM](#)

ED MERCER, Appointee, Alaska Police Standards Council, Department of Public Safety (DPS), Juneau, Alaska, stated he has served as a law enforcement officer for 28 years. He worked his way through the ranks from officer to his current position as Chief of Police at the Juneau Police Department (JPD). He has attended thousands of hours of police training during his career, including basic police procedure, supervision management, and executive-level command schools. He stated he holds a Bachelor of Science degree (BS) in criminal justice from Herzing University. He also graduated from the FBI National Academy. He said he currently serves on the Alaska Association of Chiefs of Police and has served on several boards, councils, committees and task forces. He would like to serve on APSC because he has a strong desire to serve and has a good understanding of police professionalism and accountability. He

identified his strengths as critical thinking and methodical decision-making. He would like to keep Alaska's law enforcement profession credible by providing uniform standards. He emphasized the need to create accountability by establishing an internal system of checks and balances, which can help ensure that police personnel conduct their duties with integrity and professionalism.

[1:37:02 PM](#)

SENATOR MYERS said some law enforcement officers in his community contacted him about changes made by the APSC. These officers expressed concern that some changes were too restrictive. He asked him to comment.

MR. MERCER acknowledged that some of APSC's proposals reflect the national trends in police reform and will be beneficial. For example, one proposal would increase training requirements for police officers seeking certification in Alaska. Currently, law enforcement officers do not receive additional training after their initial training at Sitka's Public Safety Training Academy. He specifically recalled de-escalation training, which could be beneficial for all law enforcement officers, helping them keep up with current trends in law enforcement.

[1:39:08 PM](#)

SENATOR MYERS appreciated his comments. He said he is still researching these concerns.

[1:39:15 PM](#)

SENATOR KIEHL expressed concern that the proposed regulations may affect training costs for small police departments. He asked if funding would be provided to not adversely impact small police department budgets.

MR. MERCER agreed that training funds were limited and small police departments needed assurance that funding will be provided. He suggested the council needs to think logistically about where to conduct the training. For example, JPD may hold training sessions and invite their law enforcement partners in the region to attend. The APSC intends to provide the required training statewide.

[1:41:27 PM](#)

CHAIR REINBOLD asked if he supported Senate Bill 91 in 2016 and the bill's repeal during the last legislature.

MR. MERCER responded that Senate Bill 91 had some good aspects. He acknowledged he had seen a revolving door with police officers dealing with the same individuals. Some perpetrators suffer from mental illness or addiction, he said. The general concept of Senate Bill 91 was to provide opportunities to help these individuals avoid recurrence of criminal behavior. However, as Senate Bill 91 progressed, he became concerned about the bill because treatment programs, work facilities and diversionary courts were not in place to address those behaviors. Therefore, people were arrested, did not go to jail but were put back in communities where they committed more offenses and victimized people. He recalled testifying to repeal the bill because treatment systems were not in place.

CHAIR REINBOLD maintained her opposition to Senate Bill 91 due to increased crime.

[1:44:09 PM](#)

CHAIR REINBOLD referred to Senator Gray-Jackson's bill on uniform standards. She asked him if he supported those standards.

MR. MERCER answered he was aware of the national move to establish police reform. He said that banning chokeholds, which he believes is in SB 1, absolutely should be enforced. He reported that JPD does not allow chokeholds, but it does allow some types of carotid-type holds when deadly force is justified. However, many provisions for police reform are covered in most police policies and procedures. He suggested that APSC's regulations and police department policies and procedures can manage and regulate issues related to police reform.

[1:46:54 PM](#)

CHAIR REINBOLD asked what JPD needs to reduce crime.

MR. MERCER answered that the state needs capable, trained personnel. The state has moved away from sending municipal police to the Public Safety Training Academy. Instead, municipalities must fund training. The state needs sound united policy for habitual offenders within communities in terms of the criminal justice system. He acknowledged that Juneau had seen a rise in habitual property offenders.

CHAIR REINBOLD said the committee welcomes his feedback.

MR. MERCER related that law enforcement needs adequate training to maintain police certification.

[1:50:57 PM](#)

JOSEPH WHITE, Appointee, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), Ketchikan, Alaska, stated he currently serves as the Chief of Police for the Ketchikan Police Department (KPD). He graduated from the University of Alaska in 1992. He said he has served on APSC since May 2018 and seeks reappointment. He offered that he has developed sound judgment during his 25-year police career at KPD. The APSC's role is to provide high standards for all law enforcement in Alaska. Alaska's communities deserve the best and the state needs to provide the best applicants, employees and services that it can.

[1:52:13 PM](#)

CHAIR REINBOLD asked if he publicly supported Senate Bill 91 and its repeal.

MR. WHITE said he did not publicly support Senate Bill 91. He recalled that he became the police chief when the bill was adopted. Although he did not publicly support the repeal, he was relieved when it was repealed. While Ketchikan did not have the same issues as Anchorage in terms of auto theft, it experienced significant property theft and property damage crimes. He said that citizens had a hard time understanding why the system was ineffective.

[1:53:26 PM](#)

CHAIR REINBOLD asked why he did not support the bill.

MR. WHITE said he was unsure why the administration did not get involved. He recalled that the department worked with the police union. He said he appreciated the work that the legislature put in.

[1:54:17 PM](#)

CHAIR REINBOLD asked what KPD would need to reduce crime.

MR. WHITE responded that the district attorney's office is often overwhelmed. He suggested hiring additional staff could help alleviate staffing needs. He echoed Chief Mercer's statement that it is important to have highly trained, dedicated officers. Currently, he is trying to hire three officers but only received two offers applied for the job. He emphasized the need for officers, but they need to be the right officers and these officers must be properly trained.

[1:57:01 PM](#)

JENNIFER WINKELMAN, Appointee, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), Juneau, Alaska, stated she currently serves as Director of Pretrial, Probation and Parole, Department of Corrections (DOC). She related that she earned a degree in criminal justice from the University of Alaska Fairbanks (UAF). In response to Senator Shower's general question for applicants, she responded that she does not have a criminal record or any surprises that would surface in a background check.

MS. WINKELMAN said she has served in the APSC's correctional administrative officer position for about two years. She would like to continue to serve on the council to maintain professionalism and integrity within the law enforcement community. She offered her belief that her personality and experience will continue to be an asset to the council. She said she has been fair and impartial in her deliberations that impact officers and communities. She explained that she considers the facts and formulates her decisions based on any overarching situations and the safety of Alaska's communities.

MS. WINKELMAN added that because of her experience in management in rural Alaska, she recognizes their challenges, but police agencies must also maintain a level of professionalism throughout Alaska. She emphasized the necessity to ensure that Alaska has the most qualified law enforcement officers serving its communities. She added that she would like to help ensure that Alaska's law enforcement certification process requires best practices and to help restore faith when cases of misconduct come before the council.

[2:00:07 PM](#)

CHAIR REINBOLD asked if she publicly supported Senate Bill 91 and the law's repeal.

MS. WINKELMAN answered that she was not publicly supportive of Senate Bill 91, but she actively worked to repeal the law.

[2:00:40 PM](#)

SENATOR MYERS related his understanding that the Department of Corrections has had issues hiring and retaining correctional officers. He asked what her role was on the council regarding standards that may create barriers to hiring correctional officers. He asked what she could do to make it easier to hire officers.

MS. WINKELMAN answered that she works to ensure she has a voice on the council as a correctional representative. She said recruitment and retention issues for correctional officers is parallel to recruitment and retention for probation and parole officers and law enforcement officers. The council must consider regulations and certification standards for officers that do not impose unnecessary barriers.

[2:02:07 PM](#)

CHAIR REINBOLD related that she has been getting pressure from her communities to help reinstate visitors at the Hiland Mountain Correctional Facility, which was put on hold due to COVID-19.

MS. WINKELMAN said the Department of Corrections has actively worked to reestablish visitors. She acknowledged the importance of family members to have contact with inmates.

[2:04:06 PM](#)

JUSTIN DOLL, Appointee, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), Anchorage, Alaska, stated that he has served as Chief of Police for 4 of the 24 years he has served on the Anchorage Police Department. He said he served on the APSC for two years and sought reappointment to the council. He would like to continue to serve to allow law enforcement leadership to have a voice in upholding the standards for law enforcement officers throughout Alaska. This is especially important as law enforcement agencies across the country face challenges and transformation of the profession, he said.

[2:05:17 PM](#)

SENATOR MYERS asked for his view regarding the new APSC standards issued several weeks ago.

MR. DOLL responded that he was familiar with some of the regulations being proposed. However, the standards related to the conduct and operations of law enforcement officers in the state essentially mirror APD's current practices. He said he does not have any concerns about APD's operations.

MR. DOLL echoed Chief Mercer's concerns about costs to smaller police agencies and offices related to training officers to specific standards, developing policies, tracking and reporting use of force data. He said he was not aware of any philosophical objections, but agencies were more concerned about keeping up with the requirements. The council is always worried about

adequate officer training. However, the financial allocation to the council has been declining in recent years which makes funding training more challenging. He related that the council previously provided funding to send officers to Sitka's Public Safety Training Academy. The APSC stopped offering this training because it lacked sufficient funding. He encouraged the legislature to consider the cost to agencies subject to the regulations. The APSC is very conscious of burdening small police departments, he said. During his service on the council, he has been interested in learning about the challenges in rural Alaska, including how their police departments' function, their challenges to recruit and hire police officers and how to provide officer training. For example, if APD sends one of its 450 officers for training, it has little impact on the agency, but small agencies sending one of its three officers for training means it loses 33 percent of its workforce. He related that small police agencies face different challenges.

[2:08:25 PM](#)

SENATOR KIEHL asked whether he was familiar with all of the regulations the APSC put out for public comment.

MR. DOLL replied that what he meant to say was he is not familiar with all bills before the legislature related to law enforcement. However, he is familiar with the APSC's regulations, he said.

SENATOR KIEHL asked if he was looking for employment outside of Alaska.

MR. DOLL answered that he plans on retiring from APD in June. He acknowledged that he would not likely serve his full term. He said he has made that clear to the governor's office. However, the governor's office has asked him to continue with the reappointment.

[2:09:34 PM](#)

CHAIR REINBOLD asked if he supported Senate Bill 91 or the bill to repeal it.

MR. DOLL answered that he was not involved with either bill. He explained that he was not the police chief at the time, but he did provide information to the legislature on the types of criminal activity in Anchorage. He said he generally tries to remain apolitical.

[2:10:46 PM](#)

CHAIR REINBOLD said she was very disappointed to hear this. She offered her belief that it is his duty and responsibility as police chief to weigh in. She reported that her number one goal as a senator was to repeal Senate Bill 91. She asked what can be done to drive down criminal activity in Anchorage.

MR. DOLL responded that he was encouraged at some recent successes. He reported that in 2020, homicides were down 50 percent and property crimes were down 40 percent compared to 2017. He said that Anchorage wants to stay on track. He offered his appreciation for the funding for APD to add officers and programs. He said he hoped for parallel support for partner agencies, including the Department of Corrections, Department of Law, district attorneys and prosecutors. He related that the police department is often the first point of contact for those with behavioral issues. However, there are lots of people downstream that interact with that person. He emphasized the need for behavioral health programs, including support for substance abuse to minimize the impact that those with behavioral health issues have on communities.

[2:13:26 PM](#)

CHAIR REINBOLD encouraged him to make an exit report to inform local legislators what the legislature can do to drive down crime. She remarked that she was pleased overall with the APD.

[2:14:43 PM](#)

SCOTT CAMPBELL, Appointee, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), Palmer, Alaska, stated that he just recovered from COVID-19. He related that he has been an Alaska resident since 1969. He served as an Alaska State Trooper for about 12 years, then worked for the North Slope Borough, retiring as Chief of Police. He stated that he previously served on the council. He expressed his strong interest in improving rural law enforcement's integrity, standards, and responsibilities.

[2:16:02 PM](#)

CHAIR REINBOLD asked if he publicly supported Senate Bill 91 and the repeal of the law.

MR. CAMPBELL responded that he was not in an official law enforcement capacity when the bill passed. He said he did speak to some assistant attorneys general and prosecutors. He offered his belief that Senate Bill 91 was established as a cost savings measure, which was an important goal, but it turned out to be a disaster. He said he strongly supported the repeal.

CHAIR REINBOLD asked what could be done to reduce crime.

MR. CAMPBELL responded that training law enforcement and providing ongoing training would help maintain professionalism. He offered his belief that, as a whole, law enforcement agencies in Alaska have an excellent reputation in the Lower 48. He emphasized that he would like to maintain it.

CHAIR REINBOLD said she welcomed comments on improving the criminal justice system in Alaska. She thanked him for his interest in serving.

[2:19:42 PM](#)

LARRY NICHOLSON, Appointee, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), Kodiak, Alaska, stated he has worked for the Alaska State Troopers since 1994, starting as a technician with the Alaska Department of Fish and Game (ADF&G). In 2014, he took a position with the Alaska Wildlife Troopers in Kodiak, he said. He stated that he has lived in various communities throughout the state.

[2:21:01 PM](#)

CHAIR REINBOLD asked him why he would like to serve on the board. She further asked if he publicly supported Senate Bill 91 and the bill to repeal it.

[2:21:13 PM](#)

MR. NICHOLSON expressed his interest in serving because he would like to uphold law enforcement standards in Alaska. He stated he has served as an instructor at the Public Safety Training Academy in Sitka. He emphasized his support for the level of training for law enforcement at the academy. As an instructor and a member of APSC, he would like to ensure that law enforcement standards are upheld.

[2:22:15 PM](#)

MR. NICHOLSON related that as a sergeant, he was neutral on Senate Bill 91. He acknowledged that the bill made law enforcement's job more difficult at times. Troopers had repeat offenders. He admitted that he was not vocal about the repeal. However, he has been pleased with its repeal, he said.

CHAIR REINBOLD asked what he recommends the state should do to reduce crime.

MR. NICHOLSON responded that AST are fewer in number. The lack of law enforcement officers in small communities means that troopers are placed in a more reactive role. One trooper may be in charge of four or five villages. He expressed his gratitude for the Village Police Officers (VPOs) and Village Police Safety Officers (VPSOs).

[2:25:32 PM](#)

CHAIR REINBOLD said she hoped that some of the legislature's investment for VPOs and VPSOs would help improve the situation.

[2:26:39 PM](#)

At ease

[2:26:50 PM](#)

CHAIR REINBOLD reconvened the meeting. She opened public testimony and after first determining no one wished to testify, closed public testimony on the confirmation hearing for Ed Mercer, Joseph White, Jennifer Winkelman, Justin Doll, Daniel Weatherly, Larry Nicholson, and Gregory Campbell.

[2:27:10 PM](#)

SENATOR KIEHL stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Alaska Police Standards Council

Ed Mercer - Juneau

Joseph White - Ketchikan

Jennifer Winkelman - Juneau

Justin Doll- Anchorage

Daniel Weatherly - Anchor Point (appointee did not testify so his name was not forwarded)

Larry Nicholson - Kodiak

Gregory Campbell - Palmer

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.

[2:27:52 PM](#)

CHAIR REINBOLD said that appointee Daniel Weatherby, Anchor Point, was not able to testify today so his name was not forwarded today. She said she hoped to hold his confirmation hearing soon.

[2:27:49 PM](#)

At ease

SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER

[2:29:35 PM](#)

CHAIR REINBOLD reconvened the meeting and announced that the business before the committee would be SENATE BILL NO. 65, "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, dentists, optometrists, and pharmacists." [Before the committee was CSSB 65(HSS)].

[2:29:52 PM](#)

SENATOR KIEHL, speaking as sponsor, introduced his staff, CJ Harrell, as an intern through the University of Alaska Southeast and Ted Stevens Institute.

[2:30:18 PM](#)

CJ HARRELL, Intern, Senator Jesse Kiehl, Alaska State Legislature, Juneau, Alaska, stated that she works as an intern for Senator Kiehl, sponsor of SB 65. She read the sponsor statement on behalf of Senator Kiehl:

Within Alaska and other states, health care providers will seek the knowledge and expertise of fellow medical professionals to help them understand how to help their patient in an effective and timely matter. These conversations may be an official consultation, but often medical professionals have what are called "curbside consultations".

This is when a patient's health care provider has an uncompensated informal consultation with another medical professional. These consulting medical professionals are often specialists, and do not have any relationship with the patient being discussed. It is a fast and effective way of sharing knowledge and expertise and in many ways is the backbone of medical care.

It was not until 2 years ago in Minnesota that a health care provider who had no relationship to a patient was forced to defend themselves against a civil liability case. We fear that by not protecting those who have no relationship to a patient and are

sharing their expertise through a curbside consultation, they will no longer feel comfortable aiding fellow health care providers in this way.

This bill will allow curbside consultations to continue, but now without the fear of becoming subject to civil liability for a patient who they have no relationship to.

[2:31:44 PM](#)

SENATOR KIEHL explained that the Senate Health and Education Committee made two changes to the bill. One change clarified a vague statement about preparing a report. The other change added chiropractors to the list of professionals who may give and receive curbside consultations without the risk of liability under the bill.

SENATOR KIEHL reviewed the legal principles. He said the Minnesota Supreme Court case set out a new standard for medical liability. It did not require a doctor/and patient relationship. Therefore, it did not require the duty of care, one of the keystones of liability and torts. The goal of SB 65 is to preserve how medical malpractice liability has worked in Alaska, which is not to hold liable health care professionals who have never given care to patients. He offered his willingness to discuss the details. He emphasized that is the key to the legal issues in SB 65

CHAIR REINBOLD related her understanding that care includes vaccinations.

SENATOR KIEHL answered that any health care professional who has given shots has a duty of care but would not be covered under the bill.

[2:34:02 PM](#)

the patient is not a current or former patient of the consulting health care provider or of the consulting health care provider's practice." He asked why the sponsor did not allow liability to be removed from a former patient.

SENATOR KIEHL answered that if a doctor treated a patient last week, they have established a doctor/patient relationship.

SENATOR MYERS said that the timeliness of the visit seemed relevant. For example, if a doctor has not seen a patient and

three years, he asked if a doctor/patient relationship would still exist.

[2:35:17 PM](#)

SENATOR MYERS referred to page 2, line 23 of SB 65 to the definition of a health care facility. He said it does not mention federal hospitals. He noted that hospitals for veterans in Alaska would not be covered.

SENATOR KIEHL answered that it was not the intent to exclude federal hospitals. He offered to research it and report back to the committee.

[2:36:08 PM](#)

SENATOR MYERS referred to page 3, line 3 of SB 65. He said was surprised to see pharmacists listed. He related his understanding that pharmacists do not enter into the same relationship as other health care professionals such as doctors and nurses. He asked for clarification.

SENATOR KIEHL agreed that the relationship is different. Pharmacists were added to the bill because of the frequency in which other medical providers consult pharmacists on the best medication to prescribe for their patients that a practice within their scope of practice. He pointed out that SB 65 is written such that the treating physician must treatment within their scope of practice. While a pharmacist can only work within their scope of practice, when a pharmacist provides advice to a doctor, the doctor is the treating physician who maintains the liability if something goes wrong. Last year, the legislature added pharmacists to the bill. He emphasized the importance of health care professionals obtaining expertise from pharmacists is valuable, such as when a drug is contraindicated.

[2:38:52 PM](#)

SENATOR MYERS referred to the fiscal note analysis. He pointed out that the analysis states that immunity "may" apply instead of requiring that immunity "shall" apply. He was unsure if the Department of Law made an error or if it reflects the immunity in the bill.

[2:39:41 PM](#)

SENATOR KIEHL responded that the fiscal note analysis clarifies the instances in which immunity applies. He agreed that the bill is not designed to "possibly" set out civil immunity but to create civil immunity.

[SB 65 was held in committee].

2:41:34 PM

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 2:41 p.m.