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COMMITTEE REPORT

SENATE

1/28/82

FURTHER: None

Date: MARCH 17, 1982

Mr. President:

The Committee on JUDICIARY has had HR 573

relating to the crime of tampering with a witness

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 573 same title
- new title
- and recommends THE INDIVIDUAL RECOMMENDATIONS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Delbert Anderson, J. McKe...
Thomas P. ...

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 17, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 573 - "An Act relating to the crime of tampering with a witness."
- SB 741 - "An Act relating to child support enforcement."
- SB 633 - "An Act relating to work programs for prisoners in state institutions."
- SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Ray, and Anderson. Senator Bennett was absent.

010 - Call to order by Chairman Rodey.

012 - Chairman Rodey brings SB 741 before the committee.

014 - Mr. Bruce gave explanation of the committee substitute.

037 - Senator Ray moves to adopt the committee substitute and pass the bill with individual recommendations. There was no objection.

085 - Next Chairman Rodey brought HB 573 before the committee.

100 - Mr. Bruce explains the changes that the committee substitute would make.

126 - Senator Ray moves to adopt the committee substitute and move the bill from committee with individual recommendations. There was no objection.

144 - SB 473 was the next item on the agenda.

152 - Mr. Lee Shark, City Attorney for Juneau, testified in favor of SB 473, stating it would clear up some confusion that exists in present law.

367 - Palmer McCarter, representing the Department of Community and Regional Affairs, testified in favor of the bill.

401 - Pat Anderson, representing the Municipality of Anchorage, testified in favor of SB 473.

526 - After brief discussion, Senator Parr asked that the bill be held in committee until Monday's meeting to enable time to review the bill further. There was no objection.

534 - Chairman Rodey next brought SB 633 before the committee.

540 - Senator Parr gave an overview of the bill.

581 - Mr. Walt Jones, Division of Corrections, testified in favor of SB 633.

The Committee spent considerable time discussing the merits of work programs and gratuity payments.

SIDE TWO

177 - Chairman Rodey suggests adopting amendments to SB 633 made by the Department of Health, Education, and Social Services. See attached amendments.

185 - Senator Ray objects to amendment on Page 1, Line 17. Chairman Rodey requested the Division of Corrections to review its fiscal note to insure that no fiscal impact is possible.

287 - SB 633 is laid on the table.

293 - Chairman Rodey adjourned at 2:35 P.M.

1. Page 1, line 17. Delete the last line in this paragraph and replace with:
The amount of the gratuity payment may not exceed \$3.00 a day except
in institutions where the work programs require prisoners to pay
their daily expenses.

2. Page 2 Insert after line 22:

AS 33.30.250(c) is amended to read:

(c) Whenever the prisoner is not employed and between the hours of
periods of employment, he shall be confined in jail or furlough facility
as directed by the commissioner. ((UNLESS THE COURT DIRECTS OTHERWISE))

3. Page 1 After line 27. Insert:

AS 33.30.250 is amended by adding a new sub section (d)

(d) Notwithstanding provisions of this section,, prisoners may not be
required to participate in Correctional Industries Programs except on a
voluntary basis.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE
OF
March 15, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 535 - "An Act relating to the criminal laws of the state."

HB 573 - "An Act relating to the crime of tampering with a witness."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Anderson, and Parr. Senator Bennett and Ray were absent.

004 - Chairman Rodey called the meeting to order.

007 - Chairman Rodey brought HB 573 before the committee.

012 - Barry Stern, Assistant Attorney General, testified in favor of HB 573.

084 - Senator Ray entered the room for the record.

157 - Mr. Stern expressed that if the committee were to simply eliminate the words "testify falsely" in paragraph 1 and didn't make any other changes to the statute that would address the Department's main concern because then they could prosecute people who induce someone to lie; commit perjury in a criminal trial under the general solicitation of perjury statute and they wouldn't have a conflicting provision.

240 - Senator Parr asked if the following would be covered in the bill. If a committee wants to talk to someone from the Department of Education and the Commissioner said that he did not want that person to go to the hearing.

243 - Chairman Rodey stated that to be certain you wanted to use your subpoena powers at that point it would be clear that anyone who interfered with the appearance of that person before your committee would be guilty.

247 - Senator Parr asked if this applied only if the person were subpoenaed.

248 - Chairman Rodey said that it is not clear because even without the subpoena provision, which of course your committee has at its discretion, a person may be guilty of tampering with a witness under the existing criminal code. If you request their appearance, it is an official standing committee of the legislature, and we would want that covered.

254 - Senator Ray suggested that the committee eliminate the word summoned and put subpoenaed.

256 - Chairman Rodey expressed that there are several points of the statute we will want to deal with separately. Mr. Stern's first concern, on behalf of the Attorney General, is "tampering" with portion 1 of the statute be a class "C" felony. Chairman Rodey expressed his agreement with this and also stated that the ascending provision which is Sec. 2 appears to be not warranting a class "C" felony.

280 - Senator Anderson stated that in order to clarify the intent, Sec. 11.56.540, additional language should be added to subsection A to prevent future misinterpretation of what is intended.

298 - Senator Ray agreed with Senator Anderson's recommendation and asked when the fine line was when you became a witness.

301 - Mr. Stern said that this had been addressed. The idea of summoning the person is intended to only apply to paragraph 2. He also defined witness as being a person summoned or appearing in an official proceeding, or a person who the defendant believes may be called as a witness in an official proceeding.

331 - Mr. Stern also said that the committee could take out just the acts of testifying falsely and unlawfully withhold testimony and make that a separate crime, and leave everything else a misdemeanor.

339 - Senator Parr stated that maybe the committee should change the definition of witness also.

358 - Chairman Rodey asked Mr. Stern if he meant to delete offering misleading testimony?

362 - Senator Ray had objected.

451 - Chairman Rodey directed staff to work with Mr. Stern and draft a committee substitute to set forth distinctions addressed by members of the committee.

460 - Chairman Rodey laid HB 573 on the table.

479 - The next item on the agenda was SB 535.

487 - Mr. Bruce gives explanation to the committee substitute.

547 - Gordon Evans, representing Multivisions, testified in favor of the committee substitute, but stated that he would like to see Sec. 5 and 7 deleted.

582 - Senator Ray makes the following language change: on Page 2, Line 3, delete [private financial gain] and insert with the intent to defraud a person providing commercial service under Sec. 10. AS 11.81.900(b)(50) and on Page 2, Line 13 delete [private financial gain] and insert with the intent to defraud a person providing commercial service under Sec. 10. AS 11.81.900(b)(50). There was no objection to this change and it was adopted.

628 - Senator Ray moves to pass Sb 535 from committee with individual recommendations. There was no objection. SB 535 was passed from committee with Senator Rodey signed do pass, Senators Ray, Parr, and Anderson signed no recommendation.

636 - Chairman Rodey adjourned at 2:45 P.M.

TAMPERING WITH A WITNESS

NEW CRIMINAL CODE

Sec. 11.56.540. TAMPERING WITH A WITNESS. (a) A person commits the crime of tampering with a witness if he knowingly induces or attempts to induce a witness to

(1) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding; or

(2) absent himself from an official proceeding to which he has been summoned.

(b) Tampering with a witness is a class A misdemeanor.

PRIOR CRIMINAL CODE

See former AS 11.30.320, Influencing witnesses, judges or jurors or obstructing administration of justice (reprinted under this heading in section on AS 11.56.510).

COMMENTARY

From Senate Journal, 81-82:

The crime of tampering with a witness differs in three primary respects from the crime of interference with official proceedings. First, the means by which tampering with a witness is committed (inducing or attempting to induce) are not as culpable or as overt as the means specified in the crime of interference with official proceedings (force, threat or bribery). Tampering with a witness is consequently graded as a class A misdemeanor.

Second, unlike the interference statute, an attempt to induce a prospective witness to avoid process is not made an offense. This distinction is discussed in the Commentary to the Proposed Michigan Revised Criminal Code § 5020 at 414.

[W]hile [§ 11.56.510] make[s] it unlawful to use a bribe or threat to induce a witness

to avoid legal process, [§ 11.56.540] does not bar an attempt to achieve that objective by persuasion or argument. A defense attorney, for example, would not be prohibited from attempting by persuasion or pleading to induce a witness to avoid process by leaving the state. Although the attorney's activity might raise certain ethical issues, it should not give rise to criminal liability, since neither the means used nor the objective sought is unlawful in itself.

Finally, while interference with official proceedings includes acts done with intent to induce a witness to "withhold testimony", tampering with a witness requires an intent to induce a witness to "unlawfully withhold testimony." While it would not be tampering with a witness to persuade a witness to lawfully refuse to testify on grounds of personal privilege, i.e., privilege against self-incrimination, it would be interference with official proceedings to attempt to do so by force, threat or bribe.

See also TD IV, 59-60.

CROSS REFERENCES

Definition of "official proceeding" - AS 11.81.900(b)
Definition of "knowingly" - AS 11.81.900(a)
Definition of "witness" - AS 11.56.900
Interference with official proceedings - AS 11.56.510
Receiving a bribe by a witness or juror - AS 11.56.520

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill No. 573
 Title "An Act relating to the crime of tampering with a witness."
 Requested by Representative Barnes Date January 8, 1982

II. FISCAL DETAIL
 Agency Affected Health and Social Services
 Program Category Affected Offender Confinement Reformation & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The Division of Adult Corrections anticipates no fiscal impact if H.B. 573 were to be enacted.

IV. DATE January 11, 1982 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections, H&SS
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

Roger C. Lange
Jeanne C. Clark, Acting Director
Division of Management & Budget