HOUSE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, Kawasaki

Introduced: 2/18/09
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to juries in criminal cases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.45 is amended by adding a new section to read:

Sec. 12.45.017. Role of jury. (a) Except as otherwise provided by law, the jury is the exclusive judge of the facts. The jury is bound to receive the law from the court and be governed thereby, except if a jury determines that a defendant is guilty according to the law and that the law is unjustly applied to the defendant, the jury may determine not to apply the law to the defendant and find the defendant not guilty or guilty of a lesser included offense.

(b) A defendant has the right to inform the jury of the jury's power to judge the just application of the law and to vote on the verdict according to conscience. Failure to allow the defendant to inform the jury of the jury's power is grounds for a mistrial.

(c) Notwithstanding any other law, the court shall allow the defendant to present to the jury, for its consideration, evidence and testimony relevant to the

exercise of the jury's power under this section.

(d) The state may rebut any evidence introduced under this section with evidence of a similar nature.

(e) This section applies only to an action tried to a jury under applicable criminal law. This section does not create a right to a jury.

(f) A potential juror may not be excused or disqualified from serving on a jury because the juror expresses a willingness to exercise a power granted to the jury under this section.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to juries impaneled on or after the effective date of this Act.

*** Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

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REPRESENTATIVE JOHN COGHILL

HB 140
Jury Nullification

House Bill 140 addresses jury nullification. Representative Coghill is asking the legislature to consider this legislation as an acknowledgement that the jury is the exclusive judge of the facts and may decide that the law is unjustly applied to the defendant.

This legislation enacts provisions in law instructing the court to allow a defendant the right to inform the jury of their right to judge the defendant and to judge the law as it applies to the defendant.

Current jury instructions for Alaskan jurors require them to "accept and follow the law as instructed by the judge even though they may have a different idea about what the law is or ought to be".

HB 140 allows a jury to fully understand their role and exercise their responsibility as a jury. A jury is the only thing standing in the way of a government out of check and inherent rights of citizens being judge by the law. Jury nullification allows citizens to have the final say on what is fair in a court of law.

Indiana, Georgia, and Maryland currently have provisions in their state constitutions guaranteeing jurors the right to "judge" or "determine" the law in all criminal cases.

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 140, "An Act relating to juries in criminal cases; and providing for an effective date."

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RYNNIEVA MOSS, Staff, Representative John Coghill, Alaska State Legislature, speaking on behalf of the sponsor, Representative Coghill, began by relating that HB 140 is not new as the sponsor introduced similar legislation in 2002. Ms. Moss then paraphrased from the following sponsor statement [original punctuation provided]:

> House Bill 140 addresses jury nullification. Representative Coghill asks the legislature to consider this legislation as an acknowledgement that the jury is the exclusive judge of the facts and may decide that the law is unjustly applied to the defendant.
>
> This legislation enacts provisions in law instructing the court to allow a defendant the right to inform the jury of their right to judge the defendant and to judge the law as it applies to the defendant.
>
> Current jury instructions for Alaskan jurors require them to "accept and follow the law as instructed by the judge even though they may have a different idea about what the law is or ought to be".
>
> HB 140 allows a jury to fully understand their role and exercise their responsibility as a jury. A jury is the only thing standing in the way of a government out of check and inherent rights of citizens being judge by the law. Jury nullification allows citizens to have the final say on what is fair in a court of law.
>
> Indiana, Georgia, and Maryland currently have provisions in their state constitutions guaranteeing jurors the right to "judge" or "determine" the law in all criminal cases.

MS. MOSS then informed the committee that in 2002, then Senator Donley said, "Today government more often tells American citizens what to do rather than the other way around." She then reminded the committee that the forefathers of this nation

founded it on the basis of "for the people and by the people." However, today there are activist courts, judges, and lawyers. Furthermore, laws are being passed that engender fear of aggressive governments, she opined. The sponsor, she relayed, feels that the jury in a court case should be the last check when there is a government that's diminishing people's rights.

[Chair Ramras passed the gavel to Vice Chair Dahlstrom.]

MS. MOSS said that although cynics will claim that judges and lawyers don't trust individuals and want to hold the power, she didn't believe that to be the case. "We feel the balance would be jury nullification," she related. Ms. Moss explained that HB 140 instructs the court to allow a defendant the right to inform the jury of its right to judge the defendant and the law as it applies to that defendant.

REPRESENTATIVE GATTO questioned whether [this legislation] sets up an activist jury.

MS. MOSS replied yes and offered that this occurred when the colonists were still under British rule. There were activist juries that were judging British laws applied to colonists.

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REPRESENTATIVE GRUENBERG mentioned that Legislative Legal and Research Services is in the process of drafting a legal opinion, and therefore he requested that the committee be allowed to review the opinion prior to voting on the legislation. He then referred to language on page 2, lines 4-5, and related his understanding that this won't apply in civil cases.

MS. MOSS concurred.

REPRESENTATIVE GRUENBERG surmised then that per HB 140 only the defendant has a right to such a jury instruction, the prosecution doesn't have a similar right.

MS. MOSS concurred.

REPRESENTATIVE GRUENBERG asked whether the sponsor has any legal opinions on HB 140.

MS. MOSS answered that although she doesn't have a legal opinion from Legislative Legal and Research Services, she does have a memo from Mr. Luckhaupt, legislative counsel. The memo from Mr.

Luckhaupt read as follows: "While jury nullification isn't inherently illegal or unconstitutional, allowing instruction and argument to jurors regarding jury nullification could result in due process or equal protection violations as the law may not be fairly applied in an equal, consistent, and nondiscriminatory manner." The aforementioned, she opined, is exactly why the sponsor introduced the legislation. The sponsor, she went on to relay, is concerned that people have been charged with felonies instead of misdemeanors due to pleading down and not fully prosecuting misdemeanors. Furthermore, the sponsor believes that the committee should review the trial and jury process. In further response to Representative Gruenberg, Ms. Moss specified that the sponsor hasn't requested an opinion from the attorney general or anyone else.

REPRESENTATIVE GRUENBERG asked whether Ms. Moss has knowledge of any trial court in the state being asked to give a jury nullification question. If so, he asked whether it was given in any trial court in the state.

MS. MOSS recalled receiving testimony in 2002 that confirmed such.

REPRESENTATIVE GRUENBERG requested then that the witnesses comment whether they have been instructed or requested an instruction, or refused to give instructions. He referred to the aforementioned as unreported rulings. Representative Gruenberg related his gut belief that jury nullification has been requested, but it hasn't been allowed.

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MARGIE CROOK, Member, Fully Informed Jury Association, explained that she was asked to be part of the Fully Informed Jury Association after helping women in prison in Alabama, many of whom should never have been convicted. She said that she'd learned that America has 5 percent of the world's population and 25 percent of the world's prisoners. Although DNA has proven many to be innocent, not all prisoners can be proven innocent that way. The aforementioned is why it's important, she opined, for jurors to know their rights and that they can judge both the law and the facts in order to avoid incarcerating the innocent. Ms. Crook offered her belief that in Marbury v. Madison, the court said that any law which is repugnant to the constitution is null and void and jurors have the right to so judge it and refuse to convict somebody who's being tried under such a law. She thanked the committee for reviewing this legislation, and

expressed her hope that Alaska will lead the way for other states in regard to returning justice to the courts.

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ROB CLIFT shared his belief that it is the right of the jury to judge the law, not just the facts in the case. He relayed that he's sat at jury selection and has observed potential jurors being dismissed from service when the individual indicated he/she would [utilize jury nullification]. Furthermore, Mr. Clift said he has heard judges instruct jurors that they are not allowed to [utilize jury nullification]. Therefore, if the desire is to protect individual liberty, then HB 140 is important legislation. Mr. Clift opined that juries are in place so that they can judge the law. Since the nation is founded on common law, every jury should be informed of [jury nullification]. In conclusion, Mr. Clift encouraged the committee to move HB 140 forward.

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STEPHEN LAFFERTY related his support for HB 140 and encouraged the committee to vote in support of the legislation as well.

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FRANK TURNEY, Member, Fully Informed Jury Association, noted that he provided the committee with an educational packet from the American Jury Institute, the Fully Informed Jury Association, a white paper on the history of jury nullification, as well as an essay by former Supreme Court Justice William Goodloe on jury nullification. Former Supreme Court Justice Goodloe, he relayed, points out the following:

> The Founders view of the jury as being of paramount importance in defending liberty is easily seen when examining the words of the Constitution. There are only 14 words describing freedom of speech and of the press in the Constitution. But there are 186 words describing trial by jury in the Constitution. It is guaranteed in the main body in Article 3, Section 2, Paragraph 3, and in two amendments, the Sixth and the Seventh. No other right is mentioned so frequently, three times, or has as many words devoted to it. It is plain that our Founders viewed the jury trial right as the most important right since it gave birth to, and defended, all other rights.

MR. TURNEY then highlighted that Oregon, Maryland, Georgia, and Indiana specify in their constitutions that a jury has the right to judge the law as well as the facts and controversy. Furthermore, over 20 states, under free speech, recognize jury nullification under liable and civil cases. Those states that include jury nullification in liable cases include criminal cases. Mr. Turney opined that the Bill of Rights is in more jeopardy than ever. He expressed hope that HB 140 will be passed out of committee and on to the full body for a vote. With regard to jury instructions, he noted that he and other defendants have requested jury nullification instructions in Alaska and have been denied by the court and the judges. He then turned attention to the Vietnam era when people absconded and left the state. In those cases, some jurors were given instructions while others were not. In the cases in which the jurors were given instructions [regarding jury nullification], the individual was found not guilty whereas when the instructions [regarding jury nullification] weren't given to the jury, the individual was found guilty. Therefore, it's important for the jury to receive instructions from the judge that it has the right to nullify. He noted that the defendant has the right to inform the jury of its nullification rights. In conclusion, he expressed hope that HB 140 passes.

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REPRESENTATIVE GATTO asked if Mr. Turney knows what a stacked jury is.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. TURNEY replied yes, adding that it's probably the most illegal thing: jury consultants, who choose the jury scientifically. The aforementioned is done in Fairbanks, he noted. Mr. Turney highlighted that Former Supreme Court Justice Sandra Day O'Connor has spoken about the unfairness of jury consulting, which results in no checks and balances. Jury stacking is one reason jurors should be fully informed of their rights and responsibilities to render a verdict. In conclusion, he relayed that those who are interested in more information about their rights and responsibilities can call 1-800-Teljury or visit www.sfija.org.

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RICK SIKMA related his support for HB 140. He opined that it's very important for juries to be informed and given the freedom to make decisions as to what is right. This topic, he said, reminds him of the following quote from John Adams: "It is not only right, but his duty to find the verdict according to his own best understanding, judgment, and conscious though in direct opposition of the court." When people reach into their consciousness to make decisions in court that's when fairness will be found in the court, he opined. He expressed hope that the committee would vote to pass HB 140.

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WAYNE MCCREADY testified in favor of HB 140. He pointed out that citizens pass judgment on the lawmakers at the ballot box, and therefore he said he believes citizens are just as capable of passing judgment on the laws state lawmakers pass. He relayed that he was a potential juror under Judge Funk when he said he couldn't swear to that oath. The aforementioned resulted in Judge Funk stating that it wasn't the job of the jurors to judge the law, but rather is the job of the lawmakers. The judge went on to say that any individual who had a problem with the law should testify to the lawmakers as to the need to change the law. Mr. McCready said he totally disagrees with that.

REPRESENTATIVE GRUENBERG relayed that the content of the jurors' oath can be found in the Alaska Rules of Criminal Procedure, Rule 24(f), as follows:

> Do each of you solemnly swear or affirm that you will well and truly try the issues in the matter now before the court solely on the evidence introduced and in accordance with the instructions of the court?

REPRESENTATIVE GRUENBERG noted that these rules could be found on the Internet or in any library. He then referred to the 1982 Alaska Court of Appeals case, Hartley v. State, 653 P.2d 1052, 1055, in which the court says, "We reject this argument and the doctrine of nullification". He surmised that HB 140 would overrule that portion of the Hartley case.

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SHAWN KITTLE related his support for HB 140 and asked the committee to approve the legislation.

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NATHAN SMOOT stated that the founding documents weren't meant to be parsed by lawyers and judges. He highlighted that one of the wonderful aspects of the rights afforded by the creator and recognized by the constitutions of the state and the nation is that the founding documents are understood by the common citizen. Jury nullification, he opined, merely allows jurors to be informed of their rights. Mr. Smoot related his support for HB 140 and expressed hope that the committee will forward it on so that the defense is able to educate jurors of their rights. He then questioned why the government or elected officials would prefer a jury that's ignorant of its rights, unless they desired tyranny. Mr. Smoot said that the purpose of his 11 years of military service was to defend the U.S. Constitution and the rights he holds dear. He expressed disbelief that elected officials would prefer an ignorant constituency.

MR. SMOOT, in conclusion, drew attention to a proclamation that was first recognized by former Governor Walter Hickel and has been signed twice by Governor Sara Palin. He read the proclamation as follows [original punctuation, along with some formatting changes, provided]:

> WHEREAS, September 5, 2008, will mark the 338th anniversary of the day when the jury refused to convict William Penn of violating England's Conventicle Acts, despite clear evidence that he acted illegally by preaching a Quaker sermon to his congregation.
>
> WHEREAS, by refusing to apply what they determined was an unjust law, the Penn jury not only served justice, but provided a basis for the U.S. Constitution's First Amendment rights of freedom of speech, religion, and peaceable assembly.
>
> WHEREAS, September 5, also marks the anniversary of the day when four of Penn's jurors began nine weeks of incarceration for finding him not guilty. Their later release and exoneration established forever the English and American legal doctrine that it is the right and responsibility of the trial jury to decide on matters of law and fact.
>
> WHEREAS, the Sixth and Seventh Amendments are included in the Bill of Rights to preserve the right to trial

by jury, which in turn conveys upon the jury the responsibility to defend, with its verdict, all other individual rights enumerated or implied by the U.S. Constitution, including its amendments.

NOW, THEREFORE, I, Sarah Palin, Governor of the state of Alaska, do hereby proclaim September 5, 2008, as: Jury Rights Day in Alaska, in recognition of the integral role the jury, as an institution, plays in our legal system.

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OLIVER FLESHMAN relayed that one of the things that keeps him in Alaska is how much liberty is valued. Therefore, Mr. Fleshman said that he is in favor of any legislation that promotes liberty. In conclusion, he asked the committee to support HB 140.

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KAREN VERNON urged the committee to pass HB 140 as she firmly believes in the legislation. She noted her agreement with the prior speakers.

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LONNIE VERNON requested the committee's support for HB 140 as it is necessary. [Jury nullification] is part of the constitution, he pointed out.

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RITA HYMES related that she is in favor of HB 140. She informed the committee that she was born in a foreign country and in order to become a citizen she had to learn the U.S. Constitution. In fact, she opined that she is likely more familiar with the U.S. Constitution than most high school graduates. Although the U.S. Constitution is a very important document that judges take an oath to uphold, regrettably they seem to forget it once on the bench. She opined that HB 140 is merely reaffirming the jury's right to utilize jury nullification. She further opined that it should be reaffirmed simply as a matter of checks and balances, especially since jury instructions at the state and federal level have ignored [jury nullification]. In conclusion, Ms. Hymes encouraged the committee to review this matter and support HB 140.

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VICTOR BUBERGE related his support for HB 140. He shared his belief that juries should be fully informed and that all jury cases, including civil cases should have a fully informed jury. Mr. Buberge also suggested that defendants should have better access to discovery in all cases.

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ADAM BIJAN reminded members that they are all servants of the people, who are the masters that set the rules. Mr. Bijan said that although he supports HB 140, there are some changes that need to be made to it. One small change he recommended was to [acknowledge] that the jury is the exclusive judge of the facts and the law. Furthermore, if a judge doesn't inform/instruct the jury, the judge should be dismissed. He noted his support of Mr. Buberge's comment that juries should be fully informed in criminal as well as civil cases. "How can people be the masters and not be able to decide and judge the facts and the law," he questioned. In conclusion, Mr. Bijan reiterated his support of HB 140 as written, although he noted the need for a few changes.

REPRESENTATIVE GRUENBERG asked Mr. Buberge whether he had anything specific in mind with regard to his comments about greater access.

MR. BUBERGE informed the committee that he has been fighting a traffic ticket for nearly three years, a situation with which Representative Coghill is familiar. He explained that he passed a parked emergency vehicle that had its lights flashing. Although the law was appropriate as written, law enforcement officials were writing tickets inappropriately. He further explained that he has been attempting to obtain evidence since he filed the case. The case is currently in appeal, and he still doesn't have access to some of the tapes and notes. In fact, some of the information of the tapes and videos happens to be missing or have been altered. Mr. Buberge pointed out that the law specifies that [the parties] are supposed to have access to the original evidence.

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RANDY GRIFFIN related that he is in favor of HB 140. The legislation, he observed, has the following two elements: the defendant has the right to inform the jury of its right to judge

the application of the law and a juror may not be disqualified for expressing a willingness to perform the things mentioned in this particular law. He expressed concern that during the initial screening of prospective jurors they aren't asked whether they are knowledgeable about jury nullification or the Fully Informed Jury Association. The language on page 2 somewhat covers the aforementioned, but perhaps contains a loophole in that jurors could be dismissed without specifying it's because of the juror's knowledge of jury nullification or the association. He then highlighted the Lautenberg Act in which the federal government attempts to take away the right to keep and bear arms when an individual has been convicted of a misdemeanor domestic violence. The aforementioned, he said, is horrendous and is a violation of the Second Amendment. Although he said that he has never been involved in domestic violence, he could see the potential for this to apply to anyone who might get caught in a shoving match when tempers flare. He opined that such a situation is ripe for jury nullification. He held up poaching as another example of a matter that some might view as a situation in which jury nullification could come into play. In conclusion, Mr. Griffin characterized HB 140 as a good thing to preserve.

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MARK RICHARDS related his support for HB 140 and requested that the legislators support it as well. He characterized jury nullification as a critical and essential right that was given by our forefathers.

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MIKE PRAX spoke in favor of HB 140, which he characterized as necessary to correct a misunderstanding by the courts. He then pointed out that the Alaska State Constitution specifically says, "all political power is inherent in the people". The aforementioned is important and isn't an empty statement. He noted that the governor has clemency power and prosecutors can exercise discretion with regard to prosecuting a case, and therefore they essentially have veto power. Since the power is inherent in the people, even when giving the aforementioned power to the governor and prosecutors, the people should retain the power to decide the fairness of the law as well as the facts of the case. He relayed that when he was called for jury duty there were questions about whether jurors were aware of the Fully Informed Jury Association and people were excused if they were knowledgeable of the power of the jury to judge the law.

The aforementioned is tantamount to the court stacking the jury in favor of the state, he opined. "It just makes complete sense to me that the juror should have the ability to vote their conscience as applied to the law," he remarked.

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KEN THESING related his support for HB 140. He opined that jurors should have the ability to identify a bad law for what it is. He further opined that there is an opportunity for corruption at all levels. In fact, a recent development in the Obama citizenship status clearly illustrates the aforementioned. He told the committee that about 20 suits were brought to cause President Obama to provide a $12 document that he spent over $1.5 million to block from view. Last Saturday, an attorney from Southern California flew and drove a great distance to attend a symposium at the University of Iowa; this attorney informed Justice Roberts that criminal conduct was occurring in the highest court in the land. A clerk of the court erased pleadings from the docket and ultimately erased all the information the day before the inauguration. The power of the people to nullify a bad law or corruption has to be retained, he stressed. Mr. Thesing said that he also believes that judges and sheriffs should be elected. As has been said, the pyramid of power is turned upside down; the power should be returned to the people, he said. He further said that the common man has common sense to know right from wrong, while politics, prestige, and power corrupt it.

MR. THESING related that this morning he called Representative Holmes and Representative Gatto's offices to encourage them to support HB 140. The staffers who answered referred him to the Legislative Information Office as the most effective way to be heard. Therefore, he expressed the desire to have his call counted and to leave contact information to substantiate his view. The staffers refused to take his information. In conclusion, Mr. Thesing related the following quote: "It starts with a soapbox on the street corner, goes to the ballot box in the election cycle, and then goes to the jury box in the court room. And if tyranny cannot be overtaken and stomped down, it goes then to the cartridge box in our fight against tyranny."

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SCHAEFFER COX related his support for HB 140. He then said that he's confident that the laws passed by the Alaska State Legislature are well-intentioned, skillfully crafted, and by-

and-large serve their intended purpose. However, inevitably laws will occasionally be twisted from their original intent. The aforementioned occurs in the absence of the legislature, and therefore necessitates juries. Mr. Cox requested that the committee pass HB 140 "so that we the people can exercise discretion and mercy congruent with the original intent of the laws you craft on our behalf." He said he likes HB 140 because it is a way for the legislative branch to exercise its power to clarify and curtail the discretion of the judicial branch. Although judicial tyranny is no better than executive tyranny, it seems to be accepted more often because the judicial branch seems to be cloaked in "a shroud of feigned impartiality."

MR. COX opined that one should disclose one's partiality because no one can really be impartial. The judicial branch will be biased toward the preservation of its own power, which is a natural tendency. However, the legislature and the [jurors] are supposed to keep that in check. In response to Chair Ramras, he offered his belief that justice is in the best interest of the common man, the best interest of the jury to punish those who do evil and who are causing harm to others and exonerate people when the case isn't in the interest of the greater good or is incongruent with the intent of the original law. Mr. Cox related that he would trust a jury of his peers far more than he would trust the discretion of a judge. He expressed further concern when a judge chooses those on the jury and reminded the committee that Patrick Henry has written that a jury should consist of one's peers who personally know the accused and approach the case with bias. The aforementioned, he acknowledged, is quite different than that which is embraced today.

[Following was a brief discussion of a past federal case.]

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RICK SVOBODNY, Acting Attorney General, Department of Law (DOL), began by explaining that he was originally going to review the jury system and how it came to be, what it is today, and why some people are called more than others. However, he said that he would only like to address why some people are called more than others. In Alaska, a representative sampling of a community is chosen, which is what is now meant by a jury of one's peers. Although the language "jury of your peers" is not found in the Alaska Constitution, the language "impartial jury" is used. The Alaska courts have defined an impartial jury to mean a representative sample from the community [in which the

defendant resides]. Alaska uses the permanent fund dividend (PFD) applicant list to randomly select jurors from the area in which the crime occurred. Therefore, in some smaller population areas, some people end up serving more often than others.

ACTING ATTORNEY GENERAL SVOBODNY then turned to the legislation before the committee, which he characterized as a substantial and major change to the criminal justice system in Alaska. The aforementioned would also be the case if HB 140 were enacted in any other state. Although there was testimony to the contrary, he said he found no state constitution [referring to jury nullification]. However, he acknowledged that those in support of legislation such as HB 140 point to the state of Indiana, which has some language in its constitution about the jury trying the facts and the law. Still, the criminal jury instructions in Indiana, in essence, relate the same instructions as Alaska's jury instructions. Both relate that the jury is to determine the facts in the case while the legislature makes the laws and the courts determine the laws. He characterized the aforementioned "as part and parcel to a representative democracy." The adoption of HB 140 would result in no longer having a representative system of democracy, but rather an individual would have the ability to make the law in any particular criminal case.

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ACTING ATTORNEY GENERAL SVOBODNY, in response to Representative Gruenberg's earlier question, related that there are a substantial number of cases in Alaska that deal with jury nullification. The cases have arisen after requests for jury nullification instructions, which the Alaska Supreme Court has said isn't allowed. It has also been determined that arguments against the law itself aren't allowed to be made, nor are questions about jury nullification allowed during jury selection. Jury nullification exists and nothing can be done about that because when jurors deliberate what is said or done isn't known and a juror may not follow the instructions to follow the law. Acting Attorney General Svobodny questioned why the legislature is present, if it allows the laws it passes to be ignored. The legislature, he opined, is present to make good public policy calls. Juries don't hear the type of information legislators hear when making public policy decisions, rather they hear evidence about the facts of a particular situation.

ACTING ATTORNEY GENERAL SVOBODNY said that in general, criminal cases aren't really that complicated. For instance, the case

may be whether an individual was driving or whether that individual was under the influence of alcohol. Those aren't complicated questions, he opined. He pointed out that currently juries may not find out why an individual was driving under the influence of alcohol, but HB 140 would change that. Under HB 140, the question could become whether it's a good/compelling reason to ignore the law if an individual says he/she drank too much because of the death of a parent. Although the jury in such a situation may decide to ignore the law in an individual case, he questioned whether that's good public policy.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

ACTING ATTORNEY GENERAL SVOBODNY opined that the entire system is different in terms of what the legislature does, that is setting public policy by hearing information in general about a particular problem versus the types of decisions juries make in criminal cases.

ACTING ATTORNEY GENERAL SVOBODNY acknowledged that during the Revolutionary War jury nullification occurred often in the Thirteen Colonies and ultimately there is language about it in the Declaration of Independence. The Declaration of Independence discussed the wrongs done by the king. For example, it said, "The king was transporting us beyond the seas to be tried for pretended offenses." Acting Attorney General Svobodny recalled testimony about the 1700s' Zanger case, which dealt with a civil liable matter and whether truth was a defense to liable.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

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CHAIR RAMRAS asked whether the administration supports jury nullification.

ACTING ATTORNEY GENERAL SVOBODNY offered his understanding that the governor has not yet offered a position on HB 140.

CHAIR RAMRAS asked whether DOL supports or opposes HB 140.

ACTING ATTORNEY GENERAL SVOBODNY offered that when he practiced law in Oregon he was interested in a district attorney position in Lake View. Upon visiting Lake View, he discovered that there had been several murders of American Indians by white people and several murders of white people by American Indians. In all the

cases in which the American Indians were murdered by white people, the white people were found not guilty whereas in all the cases in which white people were murdered by American Indians the American Indians were found guilty. Furthermore, a sign on the bridge entering Lake View said, "No Indians allowed in town after dark." The aforementioned is jury nullification and is wrong. Acting Attorney General Svobodny said that when he thinks of jury nullification, he thinks of cases such as those of O. J. Simpson, Rodney King, and cases involving the Ku Klux Klan in the 1960s. The idea behind jury nullification is to focus on criminals people believe should be given sympathy. He said that in his experience jury nullification focuses on hate. Therefore, he opined that passage of HB 140 says that some people will be convicted/not convicted on the whim of a small group of people, which he said isn't justice.

CHAIR RAMRAS noted that some who've testified today would argue that the court system is biased and that due to jury instructions the jury isn't satisfactorily hearing a case. Chair Ramras opined that folks have sensitivity toward hate crimes. He highlighted that there is an imperfection in the system and that HB 140 embodies the recognition that the judicial system and jury system is imperfect as well.

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ACTING ATTORNEY GENERAL SVOBODNY reminded the committee that at one time priests officiated over trials, which were done by ordeal. Those trials were really an appeal, he explained, because the jury consisted of 12-24 people who had to know everything about the defendant. During that time, juries could nullify and served as the accuser, judge, and finders of fact. Since then there has been a substantial change in the jury system with more guarantees to arrive at the correct result.

REPRESENTATIVE GRUENBERG asked if Acting Attorney General Svobodny saw any potential problems with HB 140 that haven't been addressed. For instance, what other matters could fit under the title of HB 140.

ACTING ATTORNEY GENERAL SVOBODNY responded that perhaps the title could include the death penalty.

REPRESENTATIVE GRUENBERG asked if there is any problem with the legislation only allowing for the jury to acquit [the defendant] despite the law. He questioned the possibility of a jury deciding it could convict despite the law.

ACTING ATTORNEY GENERAL SVOBODNY said that he doesn't believe the legislation only goes one way, rather he said he believes it allows for both. The legislation allows the jury, without instructions on the law, to find a lesser included offense. For instance, an individual is charged with keying a car. In such a case, he questioned what would stop a jury from determining that assault or sexual assault is a lesser included offense. Although the aforementioned is a ridiculous example, once the door is open to lesser included offenses there's the possibility of an individual being convicted of a crime he/she wasn't charged with.

CHAIR RAMRAS, upon determining no one else wished to testify, closed public testimony on HB 140. He then announced that HB 140 would be held over.

3:06:35 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:06 p.m.

POSITION STATEMENT: Provided comments during discussion of HJR 30.

ACTION NARRATIVE

1:07:52 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Ramras, Holmes, Coghill, Gatto, and Lynn were present at the call to order. Representatives Dahlstrom and Gruenberg arrived as the meeting was in progress. Representative Chenault was also in attendance.

HB 140 - JURY NULLIFICATION

1:08:38 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 140, "An Act relating to juries in criminal cases; and providing for an effective date."

CHAIR RAMRAS noted that public testimony on HB 140 was closed.

REPRESENTATIVE COGHILL, speaking as the sponsor, indicated that HB 140 is meant to provide jurors with more of an independent voice because currently they are totally under the control of the judge, and thus need more discretion of their own; "My general move is to try to include the jurors in the application of the law ... and the exoneration or conviction of people who are charged by the state." He relayed that he favors Amendment 1, which, he posited, would address concerns regarding what he called "renegade juries"; Amendment 1, labeled 26-LS0603\A.1, Luckhaupt, 3/31/09, read:

> Page 1, line 1, following "**cases;**":
> Insert "**amending Rule 16, Alaska Rules of Criminal Procedure;**"
>
> Page 2, following line 8:
> Insert new subsections to read:
> "(g) Except as provided in (h) of this section, Rule 16, Alaska Rules of Criminal Procedure, applies to discovery in cases where the defendant requests that the jury be informed of the jury's power to judge the just application of the law and to vote on the verdict according to conscience.

(h) At least 30 days before trail, the defendant shall disclose to the prosecution

(1) the defendant's intent to request that the jury be informed of the jury's power to judge the just application of the law and to vote on the verdict according to conscience;

(2) the legal theory of the defendant's claim that the law is unjustly applied to the defendant;

(3) a list of witnesses, other than expert witnesses, that the defendant is likely to call in support of the claim that the law is unjustly applied to the defendant."

Page 2, following line 8:
Insert a new bill section to read:
"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section the read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.017(g) and (h), added by sec. 1 of this Act, have the effect of amending Rule 16, Alaska Rules of Criminal Procedure, by requiring certain disclosures by the defendant."

Renumber the following bill sections accordingly.

CHAIR RAMRAS offered his belief that Amendment 1, by amending Rule 16 of the Alaska Rules of Criminal Procedure, would provide safeguards for jury nullification.

1:14:25 PM

RICK SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), said Amendment 1 would allow for discovery of the legal theory that's going to be presented to the jury. Presently, both sides know what the theory [for the prosecution] is going to be because that information is provided in the indictment, and although the prosecution doesn't get information about the defense's case because Alaska doesn't have reciprocal discovery, that generally hasn't been a problem because the prosecution can usually figure out what the factual disputes will be. However, in instances where the defendant seeks jury nullification, there is no way for the prosecution to know what theory will be used in an attempt to justify the defendant's actions in committing a crime. He indicated a preference for having that type of discovery if HB 140 ends up passing.

REPRESENTATIVE HOLMES asked why [Amendment 1's reciprocal discovery] wouldn't be barred by existing Alaska Supreme Court decisions, given that it would occur before the guilt phase of a trial is over.

MR. SVOBODNY pointed out that Amendment 1 simply stipulates that the prosecution shall be informed of what theory will be used in an attempt to justify the defendant's actions in committing a crime. He explained that in the Alaska Supreme Court case, Scott v. State, 519 P.2d 774 (Alaska 1974), the court allowed the State to be notified of legal defenses - theories - but not of who the defense's witnesses would be. Under HB 140, "it'll be cowboy time" with no one knowing beforehand what legal theory would be presented by the defense.

CHAIR RAMRAS made a motion to adopt Amendment 1 [text provided previously].

1:19:12 PM

REPRESENTATIVE HOLMES objected.

REPRESENTATIVE GRUENBERG asked whether the DOL would support HB*140 if Amendment 1 were not adopted.

MR. SVOBODNY said no. In response to other questions, he clarified that [the DOL] doesn't support HB 140, either with or without Amendment 1, but feels that HB 140 would be "less worse" with the adoption of Amendment 1. In response to further questions, he acknowledged that Amendment 1 has potential constitutional difficulties, but doesn't think it would increase the risk that the whole bill would be found unconstitutional. House Bill 140 is doing away with representative government, he remarked, adding that although it is technically correct to say that the concept of jury nullification is not inherently unconstitutional and simply has equal protection and due process problems, and although constitutional scholars differ on what "deciding law" means, "under either theory, this is new." In response to questions, he reiterated his comments regarding Scott.

REPRESENTATIVE GRUENBERG pointed out, though, that [counter to Scott,] Amendment 1 requires the defense to provide the prosecution with a list of the witnesses the defense will be calling. Doesn't this increase the risk of unconstitutionality?

MR. SVOBODNY observed that there is always a risk of something being declared unconstitutional whenever the prosecution asks for information from the defense. "My view is, the bill will be found unconstitutional and it is less likely that ... [Amendment 1] - if it were attached to another bill that dealt with something else - would be found unconstitutional than the entire idea of the bill."

1:23:38 PM

A roll call vote was taken. Representatives Coghill, Gatto, Lynn, and Ramras voted in favor of Amendment 1. Representatives Dahlstrom, Gruenberg, and Holmes voted against it. Therefore, Amendment 1 was adopted by a vote of 4-3.

1:24:08 PM

REPRESENTATIVE COGHILL moved to report HB 140, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE COGHILL said he disagrees with the argument that passage of HB 140 would result in lawlessness, surmising that everyone in the criminal justice system except for jurors are currently entrusted with understanding their roles in the system.

REPRESENTATIVE DAHLSTROM said, "We as a legislature determine the law, and I think we run into a huge problem when we have different regions of the state interpreting the laws ... [differently]." If HB 140 were to pass, it would become common knowledge that a person could go to a particular area of the state and get away with certain crimes simply because of how jurors in that area are applying the law.

REPRESENTATIVE GATTO said he's seen this occur in situations involving the crime of driving under the influence (DUI); jurors that have been convicted of DUI themselves are willing to forgive defendants charged with DUIs. "I'm very concerned about application, here; ... I believe in trusting the citizens, but laws are difficult to understand," he remarked, adding that jurors would have to read all laws, which even legislators don't do except in part.

REPRESENTATIVE COGHILL offered his belief that Amendment 1 addresses the jury's power to judge the just application of the law.

CHAIR RAMRAS noted that the appointee to the position of attorney general, Wayne Anthony Ross, has bragged about his use of jury nullification in a case in Kotzebue.

REPRESENTATIVE GRUENBERG said he opposes HB 140 because it only goes one way, and if a guilty defendant is acquitted then that can't be cured because the case would then not be reviewable.

CHAIR RAMRAS indicated that he agrees with Mr. Ross regarding jury nullification.

1:30:36 PM

A roll call vote was taken. Representatives Coghill and Ramras voted in favor of reporting HB 140, as amended, from committee. Representatives Gatto, Lynn, Gruenberg, Holmes, and Dahlstrom voted against it. Therefore, HB 140, as amended, failed to be reported from the House Judiciary Standing Committee by a vote of 2-5.

HB 194 - LOW-SPEED MOTOR VEHICLES

1:31:42 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 194, "An Act relating to the operation of low-speed vehicles." [Before the committee was CSHB 194 (TRA).]

1:32:07 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, noted that HB 194 was introduced at the urging of constituents in two of her communities, and offered that low-speed vehicles ("LSVs") are very useful in small communities such as those in her district, and fill a transportation niche not being met by standard passenger vehicles, which are not efficient at low speeds or over short distances. House Bill 194 would give smaller communities - those with [a population of less] than 35,000 - the option to allow LSVs on roads that have a maximum speed limit of 45 miles per hour (mph).

1:33:07 PM

REID HARRIS, Staff, Representative Peggy Wilson, Alaska State Legislature, added on behalf of the sponsor, Representative Wilson, that the intent of HB 194 is to increase the number of roads available to LSVs in order to promote their use in small communities, and that the bill does so [in part] by allowing LSVs in certain, qualifying communities to be used on roads that have a maximum speed limit of 45 mph; currently, LSVs cannot be used on roads that have a maximum speed limit of more than 35 mph. The National Highway Traffic Safety Administration (NHTSA) and Alaska's Division of Motor Vehicles (DMV) define an LSV as a passenger vehicle that has four wheels, has a maximum gross vehicle weight rating (GVWR) of 3,000 pounds, and can attain a minimum speed of 20 mph and a maximum speed of 25 mph. The NHTSA has adopted regulatory standards for LSVs that require much of the same technology found in standard passenger vehicles, including headlights, taillights, turn signals, reflectors, a windshield that conforms to federal standards, and seatbelts for all designated seats.

MR. HARRIS noted that the term "low-speed vehicle" refers to a legal class of vehicle that meets the aforementioned standards, and not to slow-moving vehicles such as farm, construction, or snow-removal equipment. The bill provides a unique opportunity for small and rural communities to allow themselves a new form of transportation. Such vehicles are convenient and can be cheaper for short trips than standard passenger vehicles; not all people want to drive their full-size vehicle the short distance to the grocery store, for example, particularly given the high price of gasoline in rural communities. Low-speed vehicles can reduce gasoline usage, dramatically cut down the amount of air-borne pollution a community produces, satisfy the demand for reduced-emission transportation, and be powered by gasoline, electricity, or a combination of both gasoline and electricity.

MR. HARRIS said that although there are concerns that LSVs will cause congestion on public roads, the bill seeks to alleviate those concerns by requiring that qualifying communities have a population of less than 35,000 and not be connected by road to Anchorage or Fairbanks. Furthermore, the bill stipulates that an LSV may only cross a highway that has a maximum speed limit greater than 45 mph if the crossing is made at an intersection where the roads on both sides of the highway are eligible for LSV use. In conclusion, he mentioned that the bill also stipulates that otherwise qualifying communities must also pass a local ordinance allowing for the operation of LSVs as provided for in the bill; this will ensure that LSVs are welcome in the

communities that choose to accept them, and not a burden on those communities that do not.

REPRESENTATIVE DAHLSTROM, noting that she believes in the intent of HB 194, asked what position law enforcement agencies, the DMV, and insurance companies have taken on the bill.

MR. HARRIS said he's not yet spoken with representatives from any of those groups, but surmised that law enforcement officers would be able to ticket any LSV that isn't complying with the law. In response to other questions, he reiterated that LSVs are required to have all the standard safety features that regular passenger vehicles are required to have, and indicated that studded tires are probably available for LSVs, and that certain models might come with all-wheel drive and traction control.

REPRESENTATIVE GATTO expressed concern that LSVs be capable of driving in [winter] conditions.

CHAIR RAMRAS, in response to comments, noted that existing law already addresses LSV usage, and that HB 194 would just be expanding that existing law.

MR. HARRIS remarked that it would be up to an LSV's owner to decide whether he/she wanted to drive his/her LSV in less than optimum driving conditions. In response to a question, he reiterated that LSVs can be powered by gasoline, electricity, or a combination of both gasoline and electricity, adding that LSVs are required to be self propelled. In response to another question, he offered his understanding that [Segway-type] vehicles are not LSVs, and would probably not be practical for the communities HB 194 is intended to address.

1:43:37 PM

GERALD HERBRANDSON, Solar Wind of Alaska, said that there are currently 10 LSVs operating in Petersburg, with a combined mileage of well over 10,000 miles. These LSVs are small, four-door sedans with hatchbacks; they seat four adult passengers comfortably; they have all the same lights that conventional cars have; and, with snow tires or studded tires, they are very aggressive in snow and slush, and have bypassed four-wheel drive vehicles that have gotten stuck. The only difference between regular vehicles and LSVs is that the LSVs go slower and conserve energy. In Petersburg, there a couple of short stretches of the highway that have a maximum speed limit greater

than 35 mph, and so passage of HB 194 would allow LSVs on even those stretches, thereby making LSVs ideally suited for the community of Petersburg and other similar communities.

MR. HERBRANDSON offered his belief that regular passenger vehicles are not well-suited to driving short distances, whereas LSVs are ideal for such trips, and that most drivers [in Petersburg] generally don't drive very far when taking care of daily errands. Low-speed vehicles are energy efficient, convenient to use, and can be fully insured through numerous insurance companies. He mentioned that he's given the local police chief a ride in an LSV, and found the police chief to be supportive of the concept of LSVs. In conclusion, he mentioned that LSVs do have heaters, and that he appreciates the opportunity [being provided via HB 194] for people to be more energy conscious.

1:46:45 PM

MEGAN PASTERNACK, in response to a question, relayed that her LSV, which she has owned for more than a year, still has less than 3,000 miles on it. She offered her understanding that currently there are at least nineteen LSVs in Southeast Alaska, two in Kodiak, and possibly more throughout the rest of the state. Her LSV is a fully enclosed vehicle with a crush-proof body; it has lights, windshield wipers, mirrors, front wheel drive, and turn indicators; it meets or exceeds the federal motor vehicle safety standards for LSVs - "FMVSS 500"; and it is fully insured. She opined that HB 194 is about much more than just cheap transportation - it is also another much-needed step toward helping eliminate pollution and protecting the environment, and will help legislators, Alaska's communities, the state of Alaska, the United States, and the world. House Bill 194 will help those who must transit 45-mph zones for work or other purposes and who have had reservations about owning an LSV because of the current 35-mph limitation; if the bill passes, such people would then be able to make the decision to join others who are trying to [lessen] their carbon footprints.

MS. PASTERNAK said that as an LSV driver, she is very conscious of the traffic around her, and does not impede others who wish to go faster than her allowed speed of 25 mph; that to that end, she waits to enter a roadway until approaching traffic [has gone past], and pulls over whenever possible to allow other drivers to pass her. She surmised that other LSV drivers are just as conscientious. Many LSVs are in use in Europe, and have been for quite some time. She offered her understanding that one of

the reasons LSVs are safe is that when involved in a crash, they are so lightweight that they tend to just bounce away rather than absorb the full force of the impact. House Bill 194 has great flexibility in that it requires individual communities to decide, based on local conditions, whether to allow LSVs to travel in 45-mph zones. Although some have argued that owners of LSVs won't be contributing to the building and upkeep of roads and highways because they won't be purchasing [as much if any] fuel and thus won't be paying the associated taxes, she would be more than willing to pay a tax or fee specific to LSVs when registering or renewing license tabs, she relayed. Furthermore, she posited, her 1,200-pound LSV does far less damage to the roads then overloaded dump trucks that traverse them.

MS. PASTERNAK, in conclusion, opined that if legislators would like to do more to encourage LSV usage, they should also consider allowing LSVs to be modified so that they can go 35 mph; her LSV had that capability but the modification allowing such had to be removed in order for her to comply with Alaska's LSV registration and licensing requirements.

REPRESENTATIVE DAHLSTROM asked whether the DMV supports HB 194.

1:50:55 PM

CARL SPRINGER, JR., Registrar, Director's Office, Division of Motor Vehicles (DMV), Department of Administration (DOA), said the DMV is not opposed to the bill and has the understanding that it would only change which roads LSVs could travel on and would have no effect on the DMV's workload. In response to another question, he said that the two-year registration fee of $100 is the same for LSVs as it is for regular passenger vehicles. In response to a further question, he explained that the federal and state definitions of what constitutes an LSV address the minimum and maximum speeds at which an LSV can travel, not the size or type of engine or how much horsepower it has; if an LSV is modified to exceed that maximum speed, it cannot be registered as an LSV in Alaska. In response to more questions, he said that LSVs are manufactured to meet their own standards, which are not as stringent as those of regular passenger vehicles; that such standards [in part] address the crash-worthiness of vehicles in head-on collisions; that he does not have any information regarding rear-end collisions of LSVs compared to regular passenger vehicles; that any such collisions will most likely cause damage unless the vehicle impacting the LSV is traveling at a very slow speed; that because LSVs are

required to have seatbelts, they can therefore also accommodate child restraint systems; and that LSVs do not have airbags.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 194.

REPRESENTATIVE GRUENBERG, in response to a question, relayed that he would not be offering the amendment labeled 26-LS0715\P.3, Luckhaupt, 4/1/09, which read:

> Page 1, line 6, following "may":
> Insert "**operate that vehicle**"
>
> Page 1, line 7:
> Delete "**operate that vehicle**"
>
> Page 2, lines 3 - 8:
> Delete all material and insert:
> "**(2) across an intersection with** [CROSS] a highway that has a maximum speed limit **greater than is permissible** [OF MORE THAN 35 MILES AN HOUR IF THE CROSSING IS MADE AT THE INTERSECTION WITH A HIGHWAY THAT IS AUTHORIZED] for low-speed vehicles **under this subsection**."

REPRESENTATIVE HOLMES said she thought that that amendment would clarify the one part of the bill that she found confusing.

REPRESENTATIVE WILSON, in response to a question, relayed that both she and the Department of Transportation & Public Facilities (DOT&PF) prefer the language currently in [CSHB 194(TRA)].

MR. HARRIS, in response to a question, relayed that LSVs cannot drive on the shoulder of the road but can pull over on it in order to let other vehicles pass; LSVs are to be operated in the same fashion as regular passenger vehicles.

1:58:15 PM

REPRESENTATIVE LYNN moved to report CSHB 194(TRA) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 194(TRA) was reported from the House Judiciary Standing Committee.

HB 138 - CRUELTY TO ANIMALS

1:58:53 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 138, "An Act relating to cruelty to animals."

CHAIR RAMRAS moved to adopt the proposed committee substitute (CS) for HB 138, Version 26-LS0351, Luckhaupt, 4/2/09, as the work draft. There being no objection, Version P was before the committee.

REPRESENTATIVE GATTO, speaking as the sponsor, pointed out that currently a person could be charged with a felony for destroying a painting of a family pet, but could only be charged with a misdemeanor for destroying the actual pet the painting is of, and opined that this doesn't make any sense to him; HB 138, therefore, is intended to correct this by amending the cruelty to animals statute.

2:02:22 PM

SANDRA WILSON, Staff, Representative Carl Gatto, Alaska State Legislature, relayed on behalf of the sponsor, Representative Gatto, that HB 138 would establish the two separate crimes of cruelty to animals in the first degree and cruelty to animals in the second degree. Under the proposed crime of cruelty to animals in the first degree, knowingly inflicting severe and prolonged physical pain or suffering on an animal, [committing the crime of cruelty to animals in the second degree three or more times within 10 years,] killing or injuring an animal by use of a decompression chamber, or intentionally killing or injuring a pet or livestock via poison would be a class C felony, whereas under the proposed crime of cruelty to animals in the second degree, failing - with criminal negligence - to care for an animal and thus causing the death of or severe physical pain or prolonged suffering to an animal, or knowingly killing or injuring an animal with the intent to intimidate, threaten, or terrorize another person would be a class A misdemeanor.

REPRESENTATIVE GATTO indicated that the proposed crime of cruelty to animals in the first degree pertains to intentional acts, whereas the proposed crime of cruelty to animals in the second degree could in part pertain to unintentional acts.

MS. WILSON, in response to a question, pointed out that Section 3 of HB 138 establishes the crime of cruelty to animals in the second degree.

REPRESENTATIVE GATTO, in response to questions, expressed doubt that anyone would report the accidental death of a family pet.

MS. WILSON added that under current law, the definition of the term "animal" [for purposes of Title 11] excludes fish, and that [although it might not ever be reported] under both the bill and current law, even the accidental death of a family pet would constitute a class A misdemeanor.

CHAIR RAMRAS asked how proposed AS 1161.142(f)(3) would be enforced; under that provision, the court could "prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

REPRESENTATIVE GATTO said the enforcement of that provision would fall to others rather than to the legislature. In response to further questions, he offered his understanding that the humane destruction of animals, even via the use of poison, is exempted; the bill's primary intent is to address willful and deliberate acts of animal cruelty.

2:10:15 PM

CHAVA LEE, Executive Director, Gastineau Humane Society (GHS), pointed out that slitting open the belly of a guinea pig, nailing one end of its intestines to the ground and then watching it run around in circles is a deliberate act and constitutes animal cruelty; currently, however, there's not much that can be done about such behavior. Accidentally stepping on a cat, for example, and killing it is still just an accident, whereas throwing a bag kittens into a body of water and watching them drown is animal cruelty. She said that although the GHS doesn't get many calls about acts that turn out to be actual cruelty, the GHS does get a lot of calls about acts that turn out be the result of stupidity. With the latter type of calls, staff attempts to educate callers about how to care for their and their children's animals. From her perspective, she remarked, she can see a big difference between stupidity and cruelty: cruelty constitutes a deliberate, obvious, and disgusting act.

MS. LEE said that that type of animal cruelty is perpetrated by human beings committing deliberate and painful acts of violence on innocent animals, and it is a known fact that such people often go on to commit similar acts of violence on human beings. She offered her hope that [the legislature] will pass HB 138,

surmising that it will put some teeth into the animal cruelty statutes so that such crimes can be prosecuted. She noted that not all reported instances of animal cruelty end up being prosecuted; once such cases are investigated, they are often found to be situations in which people are behaving stupidly rather than intentionally cruelly.

CHAIR RAMRAS - noting the existing pressures on law enforcement, the Alaska Court System (ACS), and the Department of Law (DOL) - questioned at what point would pursuing animal cruelty cases begin to encroach on the resources necessary for pursuing cases involving crimes against a person.

REPRESENTATIVE GATTO pointed out that 70 percent of the abused women at shelters say that their abuser first started abusing animals; there is a direct link between those who abuse animals and those who abuse women. "Perhaps a call early on would result in no call later on," he remarked.

CHAIR RAMRAS reiterated his concern about putting pressure on the existing criminal justice system.

REPRESENTATIVE GRUENBERG disclosed a possible conflict of interest in that he and the next testifier are married.

2:17:52 PM

KAYLA EPSTEIN, after mentioning that she serves on two animal-related boards, said that she is for HB 138. She then recounted a few instances wherein animals have warned human beings of danger and/or sacrificed themselves on their human's behalf, and then indicated that she was providing the committee with a picture of some Malamutes and of a cat that was burned alive. She said that a few years ago, she learned about a police officer who refused to charge a man for kicking a dog sufficient to break its ribs. How can a police officer charge a man with a misdemeanor for kicking a dog, when burning a cat alive is also only a misdemeanor, she queried. She offered her understanding that [law enforcement] is now being more proactive towards animal cruelty because they now see the relationship between animal cruelty and cruelty towards humans. Animal cruelty is very significant in domestic violence (DV) cases, is often used by abusers to punish their partners and children, and many women won't leave a bad situation for fear of what their abuser will do to their pets or livestock when they leave.

MS. EPSTEIN offered her understanding that members' packets include a letter from a friend who's dog was seriously injured when it attempted to protect its owner from an attacker, a man who was well known by the police as a violent man with a criminal record; the officer who investigated her friend's case didn't think he could charge the attacker with anything significant, and so suggested she not pursue charges even for the animal abuse. Referring to a recent case involving a drunken man who'd stabbed several of his neighbor's sled dogs, she raised the question of what would happen if next time this man instead goes into a school yard.

2:23:01 PM

DALE BARTLETT, Deputy Manager, Animal Cruelty Issues, The Humane Society of the United States (HSUS), indicated that he would be speaking in support of HB 138. He acknowledged that under both current law and HB 138, three or more convictions for the crime of cruelty to animals within a 10-year period would be a felony, and that HB 138 provides that certain other types of cruelty to animals crimes would also be a felony. Although Alaska law is in line with most of the rest of the country - with 46 states having felony animal cruelty laws - Alaska is the only state that requires previous convictions in order to charge the person with a felony.

MR. BARTLETT - with regard to the link between animal cruelty and violence against people, particularly women - noted that the latest research indicates that those who are capable of horrendous acts of violence against animals are likely to be involved in other violent crimes. For example, the Chicago police department released a study in 2008 illustrating a startling propensity of offenders charged with crimes against animals to commit other violent offenses toward human victims. In that study, investigators found that 86 of those arrested for animal cruelty or animal fighting had two or more past arrests; 70 percent had been arrested for felonies - including homicide; 70 percent had been arrested for narcotics crimes - including trafficking crimes; and 65 percent had been arrested for battery crimes. A study conducted in Massachusetts of those arrested for animal cruelty illustrates that 70 percent had been convicted of other crimes within 10 years - either post or prior to their animal cruelty arrest. A Canadian police study illustrates that 70 percent of those arrested for animal cruelty had prior records of violent crimes, including homicide.

MR. BARTLETT opined that it's clear from all this research that those capable of atrocious acts of animal cruelty are dangerous to society, and therefore stronger laws are needed in order to properly deal with such people. In the largest study of serial killers ever undertaken, nearly half admitted to committing animal cruelty as adolescents, and over one-third admitted to harming or killing animals as adults. Referring to earlier comments, he opined that if a person is able to slit an animal open and nail its intestines to the floor, then that is indicative of a level of violent criminal behavior that most people are simply not capable of; such an act constitutes a significant crime. On the issue of using limited resources to pursue cruelty to animals crimes instead of property crimes, he said that if someone broke into his garage and stole some property, he would be far less concerned than if that person had broken into his garage and killed his dog.

MR. BARTLETT, in conclusion, opined that there really should be a distinction in the law for the willful and malicious killing of an animal. In response to a question, he remarked that theoretically, having a stronger punishment would be a greater deterrent, and that deterrence is not the only goal of the law. He elaborated:

> I think that ... by classifying something as a felony, it clearly indicates that the legislature believes that this is a serious offense, and that message is taken up by investigators, by prosecutors, and by judges. Often, with animal cruelty cases, one of the biggest ... challenges we face is for ... officers and judges who see rape and murder [cases] on a regular basis to [be convinced] ... that these significant animal cruelty crimes are a part of that same paradigm ....

2:30:05 PM

NANCY K. EDLUND said that as families in society become more dispersed, more and more people are viewing their animals as extended family members, and so abuse of these animals, no matter what their species, is a very serious matter to these people. As such a person herself, she said in conclusion, she supports HB 138.

2:30:42 PM

LUCINDA EDLUND said it has been difficult to hear examples of severe animal cruelty and then find that they are just misdemeanor crimes. This is really an embarrassment to her as a human being, she remarked, adding that she doesn't know how serious and prolonged abuse of animals cannot be taken seriously; it's outrageous to think that such atrocities are not felonies. In conclusion, she said she supports HB 138, and implores the legislature to adopt HB 138 and show that the abuse of animals is being taken very seriously.

2:32:33 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), relayed that the DOL opposes raising the penalty for the crime of cruelty to animals from a class A misdemeanor to a class C felony. In 1978, the criminal code revision committee debated this same issue, whether the crime of cruelty to animals ought to be a felony or a misdemeanor, and although the State's first chief prosecutor advocated for it to be a felony, the vote was in strong opposition based on the concept of proportionality, which is also the basis, now, for the DOL's opposition to HB 138, particularly since in Alaska, most domestic violence assaults are resolved only as class A misdemeanors due to a lack of resources. This opposition doesn't mean that the crime of cruelty to animals isn't an important or serious offense, but it is the DOL's position that one year in jail is enough of a penalty for such behavior.

MS. CARPENETI noted that last year, when the legislature made a third conviction for such an offense within a 10-year period a class C felony, that was thought to be a pretty reasonable compromise, particularly in terms of proportionality and the way [the DOL] deals with limited resources in the criminal justice system. In conclusion, she said that the DOL opposes raising the penalty for first and second convictions of this crime.

REPRESENTATIVE GRUENBERG asked whether a history of animal cruelty is an aggravating factor.

MS. CARPENETI said it's not a provision of law, but judges do take all evidence of past behavior into consideration.

REPRESENTATIVE GRUENBERG pondered whether another approach might be to simply make a history of animal cruelty an aggravating factor when sentencing someone for a felony-level crime against

a person; doing so could perhaps address the issue of escalating behavior.

MS. CARPENETI indicated that she would research that point further. In response to another question, she said she would research what sentence the crime of cruelty to animals typically results in, but surmised that most cases don't result in a multi-year sentence, so there might be room for more serious sentences.

2:38:10 PM

REPRESENTATIVE LYNN questioned whether the bill could be altered so that the proposed class C felony would only apply to the most egregious behavior.

MS. CARPENETI offered her belief that that provision of the bill is already limited to only the most egregious behavior; regardless, the DOL would still argue that the existing penalty of one year in jail is adequate. In response to further questions, she pointed out that current law already prohibits the poisoning of pets or livestock, the torturing of animals, and knowingly killing or injuring an animal with the intention of intimidating, threatening, or terrorizing another person; such behavior is currently a class A misdemeanor, and the bill, in part, is proposing to make some of those behaviors a class C felony.

CHAIR RAMRAS relayed that HB 138, Version P, would be held over.

HB 9 - CAPITAL PUNISHMENT

2:43:08 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 9, "An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure." [Before the committee was the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, which had been adopted as the work draft on 2/23/09, and amended on 4/6/09.]

CHAIR RAMRAS noted that public testimony on HB 9 was closed.

2:43:56 PM

REPRESENTATIVE GRUENBERG mentioned that he'd read a newspaper article indicating that the U.S. Supreme Court has recently ruled that [giving weight to] confessions, even voluntary ones, if they are the product of prolonged interrogation, is unconstitutional.

[Chair Ramras turned the gavel over the Vice Chair Dahlstrom.]

REPRESENTATIVE GRUENBERG indicated that this ruling appears to be in conflict with the provision of Amendment 3, as amended, that stipulated the death penalty could be sought if there is a videotaped voluntary confession by the defendant to the murder, and characterized this ruling by the U.S. Supreme Court as a significant one. Noting that he would be opposing passage of HB 9, he suggested that the committee consider either removing that potentially conflicting language from the bill or holding the bill over in order to do more research regarding whether that U.S. Supreme Court opinion really would impact the language of Amendment 3, as amended.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

2:47:50 PM

REPRESENTATIVE LYNN remarked that HB 9 raises life and death issues, not only for murderers but also for potential future victims. He then spoke a bit about religion and some religious beliefs and stories, but acknowledged that from a religious perspective, there don't appear to be any absolutes with regard to the death penalty. Murder victims have no choice and receive no trial; in contrast, murderers make the choice to kill - and such choices have consequences - and they receive a trial. At trial, when defendants are found guilty of murder, the odds are that they actually are guilty. He likened having the death penalty to allowing for abortion, and surmised that from a logical perspective, if one is provided for, then the other should be provided for as well. Being prolife, which he is, he remarked, means protecting citizens from murderers, and many believe that capital punishment provides the best way of providing that protection. On the question of whether capital punishment is a deterrent, he said he doesn't know if that is really the case, but noted that although most statistics indicate that it is not, once a person has been executed, that certainly deters him/her from killing in the future.

REPRESENTATIVE LYNN observed that ample evidence provided indicates that many innocent people have been wrongfully convicted and sentenced to death; odds are, therefore, that if Alaska institutes capital punishment, innocent people will be put to death by the State, in other words, in part, by legislators. He added: "Would any of us here, at this committee table, pull the switch or personally inject the poison, inject that needle? If we can't do that maybe we shouldn't ask somebody else to do it." A person serving a life sentence but later found to be innocent could be released from prison and perhaps compensated to some small degree. However, an innocent person that's been executed can't be resurrected. Some have argued that a life sentence without possibility of parole is worse punishment than execution, but families of murder victims suffer their own life sentence - a lifetime sentence of sorrow. From a practical standpoint, if the State executes several murderers but no deterrence results, at least those dead murderers won't murder again, but if murderers are not executed and then kill again, then the State will, in effect, have enabled the murder of more innocent people.

REPRESENTATIVE LYNN offered an example of one murderer who'd killed a 14-year-old girl, and then, after he was released from prison, murdered a mother of three children; because this murderer was not executed for the murder of the girl, another person was murdered. Can a sentence of life in prison without the possibility of parole take the place of capital punishment and provide for the desired level of public safety? Sure it can. But can the judicial system be depended upon to protect people via appropriate sentencing? "I have my doubts on that," he remarked, surmising that if the judicial system did a better job of protecting the public's safety, then perhaps there would be less demand for the death penalty. Furthermore, he queried, if a judge sets a violent criminal with multiple prior offenses loose on society, and that criminal commits additional heinous crimes, should that judge then be removed from the bench, suffer liability, or be put in jail himself/herself as an enabler?

REPRESENTATIVE LYNN, on the issue of whether the death penalty would be disproportionately applied to minorities, opined that it is probably more accurate to instead say that the death penalty would be disproportionately applied to poor folks, who, regardless of their race, won't have the money to hire a "legal dream team." Being a member of a minority, or being poor, or living in a horrific environment is problematic, but it's no excuse for committing crimes. "Unfortunately, we do live in an

imperfect world, where prejudice too often translates [into] ... gross unfairness, ... and bigots still exist, ... [but] that's reality " he added. With regard to the issue of cost and the question of whether a life sentence without the possibility of parole is more expensive than the death penalty, he said he doesn't care about which is more expensive because he believes that cost shouldn't be the determining factor for whether or not to establish capital punishment - life shouldn't have a price tag.

REPRESENTATIVE LYNN also questioned how much sense it makes to impose a death penalty but then not carry it out for 10-20 years [due to numerous appeals]; to be any kind of a deterrent, the punishment should come shortly after the sentence. He relayed that when he ran for U.S. Congress in 1972 in California, he supported capital punishment and stated so in his campaign literature; however, even then, he believed that any capital punishment law should be applied fairly and be limited to only the most egregious and most heinous of crimes, and that's still his position today. He said that his sympathy for victims and their families is boundless. Although imprisonment without the possibility of parole sounds good, in today's tolerant judicial system, how many judges can be trusted to put murders in prison and then truly throw away the key? Probably not enough, he surmised.

REPRESENTATIVE LYNN recalled prior testimony indicating that it is quite difficult to empanel a jury for a major trial in Bush Alaska due to the limited number of residents and close family relationships in such areas. He also offered his understanding that any jury members empanelled for a capital punishment case must be "death penalty qualified." Such a requirement would narrow the pool of prospective jurors in rural Alaska even further. Moreover, if such a jury ever were empanelled, would that really be a jury of one's peers, since all jurors would have to be in favor of the death penalty? He questioned whether to truly be a jury of one's peers, jurors empanelled for a death penalty case should instead be made up of people with differing views on the subject - just like in everyday life - and whether this issue could raise constitutional concerns.

REPRESENTATIVE LYNN noted that the bill prohibits the execution of the mentally retarded and defines mental retardation as an intelligence quotient of 70 or below. In other words, when it comes time to receive a sentence, if the defendant has an intelligence quotient of 71, then he/she will be executed, but not if he/she has an intelligence quotient 70. This raises the

question of who would be picking the intelligence quotient test, from the many that are out there, that would be used to determine mental retardation for purposes of possibly instituting the death penalty. Would an intelligence quotient of 70 on one test also be an intelligence quotient of 70 on another test? Furthermore, which type of intelligence would be being tested? His concerns about this issue, he remarked, have not yet been answered to his satisfaction, and opined that this issue needs to be addressed before the State starts putting people to death. These aspects of the bill and the complex questions surrounding them are another illustration of the practical difficulty of writing fair capital punishment legislation.

REPRESENTATIVE LYNN concluded by saying that although he worries about the effectiveness of lifelong imprisonment compared to capital punishment, he is not convinced that any legislature in the world is capable of creating capital punishment legislation that has the level of fairness that should be demanded of it before it's used, and by saying that he would be voting "No" on HB 9.

3:01:18 PM

REPRESENTATIVE GRUENBERG provided members with a copy of the aforementioned newspaper article regarding the recent U.S. Supreme Court ruling that even a voluntary confession may not be used in federal court if the defendant was held in questioning for more than six hours before he/she made the confession, citing the fact that there have been a number of people who've confessed to a crime but were later proven to be innocent by DNA evidence and had simply confessed because of undue police pressure. This highlights three points: one, that scientific evidence can change; two, that legal standards can change; and three, that they can be changed via a single vote on the U.S. Supreme Court. The issue, here, is finality: when all is said and done, a death sentence [that has been carried out] is final - there is no reconsideration, there is no appeal, and it cannot be undone to correct a mistake. He said he would strongly support legislation that established lifetime sentences without possibility of parole, because then if something changes, justice in an individual case could still be provided for. The U.S. Supreme Court ruling, with its limitation of six hours, sets a bright line demarcation for ease of administration, but in the case of HB 9, such a ruling and the difference of a mere 15 minutes of police questioning could mean the difference between taking someone's life or not.

3:05:06 PM

REPRESENTATIVE COGHILL noted that the issue of confidence in the people who operate the judicial system has been raised, and indicated his belief that the bill's standard of proof beyond a reasonable doubt will address that issue. Noting that there are several advocacy groups standing up for the rights of those on death row, he questioned who would be standing up for the rights of the innocent people who were murdered, particularly given the extensive judicial process already in place for those accused of murder compared to the lack of any such process afforded to murder victims or their families. He said he thinks instituting the death penalty, regardless of the costs involved, is the way to rectify the apparent lack of recognition afforded murder victims and their families. In conclusion, Representative Coghill added:

> I think if we move forward with this bill, what we do is we make our system stand up and take note of its failures, number one, because if we're failing people who are sentenced to death, then we're certainly failing people who are sentenced to life in prison - ... and they never even get a second look, nobody goes out and takes a look at ... [their cases]. So I think it's good for the justice system to have to bear the responsibility, and therefore I'm voting for the bill.

CHAIR RAMRAS agreed, adding that he is satisfied with having had Amendment 3, as amended, adopted, and with moving the bill forward.

3:10:10 PM

REPRESENTATIVE HOLMES relayed that for a variety of reasons, she would be voting against HB 9. One reason pertains to the cost of the bill; the fiscal notes, which she surmised are probably conservative, total about $85 million in the first five years, and that's before the State would even come close to actually executing someone under the bill. Moreover, because the fiscal notes only estimate costs over the next five years, they don't include a lot of the implementation costs because they wouldn't occur within the first five years. For that same money, there are a lot of other things the legislature could be doing. New Jersey, in recent years, repealed its death penalty laws, but only after spending about $.25 billion and never actually

executing anybody, and New Mexico has also recently repealed its death penalty laws.

[Chair Ramras turned the gavel over the Vice Chair Dahlstrom.]

REPRESENTATIVE HOLMES said she is also opposed to HB 9 because according to information from other states, it's pretty clear that innocent people will be executed despite any procedural safeguards that might be put in place - as long as its humans running the system, there are going to be errors, some due to problems with contaminated biological samples, and some due to problems with false confessions. Testimony has indicated that racial elements were at play back when Alaska had the death penalty, and so she is worried that the death penalty will again be disproportionately applied to minorities. She said she is also concerned about the requirement that jurors be "death penalty certified," concurring that defendants would be disenfranchised because such a jury would not really be a jury of one's peers.

REPRESENTATIVE HOLMES said she is also worried about the moral issues raised, and that the bill won't actually be applied only to the most heinous of crimes because what constitutes heinous would be hard to categorize in law. She said she has concern that the bill is unconstitutional for a variety of reasons, among them that it [doesn't specifically prohibit] the execution of a minor, and, with the adoption of Amendment 2, now contains a reciprocal discovery provision. Another concern she said she has is that the ongoing appeal process for death penalty cases will simply run the families of victims through the wringer over and over again when appeals come up.

REPRESENTATIVE HOLMES concluded by saying that in the end, she is deeply troubled by the potential for a system that is run by humans in all of its phases to result in human errors with regard to only executing those who are actually guilty, and so she will therefore be voting "No" on the bill, and urges other members to do the same.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

3:15:38 PM

REPRESENTATIVE GATTO offered his understanding that the cost of incarceration can at times be even higher than the cost of an execution, and indicated a belief that because other states have the death penalty, that Alaska's legislation will be found

constitutional. He said he wants certain people to know that the penalty for heinous murders will be the harshest of punishments - execution - surmising that it is the fear of possibly being executed that will deter crime. He expressed favor with having a death penalty process that takes a long time, because that will give plenty of opportunity for [an innocent] person to be exonerated before he/she is executed.

3:17:55 PM

REPRESENTATIVE DAHLSTROM said she has some reservations about HB 9, acknowledging that the potential for human error is one of the biggest risks that all legislation faces. She said she believes, however, that there are some acts so heinous that the person committing them is more of an animal than a human being, and so she will therefore be voting "Yes" on HB 9.

3:19:04 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVES HOLMES and GRUENBERG objected.

3:19:20 PM

A roll call vote was taken. Representatives Gatto, Dahlstrom, Coghill, and Ramras voted in favor of reporting the proposed CS for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, as amended, from committee. Representatives Lynn, Gruenberg, and Holmes voted against it. Therefore, CSHB 9(JUD) was reported from the House Judiciary Standing Committee by a vote of 4-3.

HJR 30 - DEATH PENALTY FOR JOSHUA WADE

3:19:46 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 30, Relating to the case of the United States v. Wade and to the decision of the Attorney General of the United States with respect to that case.

3:20:41 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor, relayed that HJR 30 has a very narrow focus on a specific issue, that of asking the federal government to consider whether capital punishment should be a sentencing option in the case of Joshua Wade. He noted that the language on page 2 lines 13-22, read:

> **WHEREAS** the United States Department of Justice has created a capital case review procedure to assist the United States Attorney General in making decisions on whether to seek the death penalty; and
> **WHEREAS** the capital case review procedure requires each United States Attorney to submit for review all cases involving a pending charge of an offense for which the death penalty is a legally authorized sanction, regardless of whether or not that United States Attorney recommends seeking the death penalty; and
> **WHEREAS**, during the capital case review, a review committee makes a recommendation to the United States Attorney General as to whether the death penalty should be sought in a case; and

REPRESENTATIVE STOLTZE noted that the language on page 2, lines 26-28 read:

> **BE IT RESOLVED** that the Alaska State Legislature urges the United States Attorney General to consider all the evidence and, if justified by the evidence, carefully consider the death penalty as a sentencing option for Joshua Wade.

REPRESENTATIVE STOLTZE explained that under current federal procedure, the issue of whether a particular case warrants consideration of the death penalty as a sentencing option must be determined before the trial starts, and that HJR 30 is merely a statement that the legislature wants to have the death penalty be considered in this situation. In conclusion, he mentioned that he has not yet spoken with the victims' families about HJR 30.

REPRESENTATIVE GRUENBERG expressed concern about getting involved in ongoing litigation in a criminal case, in that doing so would be setting a precedent such that the legislature's involvement in a variety of cases would be requested in the future.

3:27:29 PM

SUSAN C. ORLANSKY, Attorney at Law, Feldman Orlansky & Sanders, asked the committee to vote against HJR 30, adding that her position on the resolution is not based on whether the U.S attorneys prosecuting Joshua Wade should or should not seek the death penalty, but rather on a separation of powers issue and division of responsibility. She surmised that the legislature would not appreciate the U.S. Attorney's Office telling the legislature how to do its job, even if such advice were to come in the form of a mild resolution. Similarly, she said, she thinks it is not appropriate for the legislature to seek to influence the handling of a particular criminal case. The U.S. Attorney's Office already has standards, guidelines, and procedures for determining when to treat a case as a capital case; such a determination influences the office's budget, its allocation of manpower, may require a decision to not investigate or prosecute someone else, and reflects its obligation to have consistent, nationwide standards so that the government can't be accused of behaving in an arbitrary or unfair fashion when deciding to ask for the most extreme penalty.

MS. ORLANSKY pointed out that those outside of the U.S. Attorney's Office don't have all the facts that weigh into such decision making, and so for the legislature to start telling prosecutors what to consider or how to exercise their discretion in a particular case appears to her to set a bad precedent. She surmised that everyone has recently seen how high profile cases can be mishandled, especially when decisions are rushed or when prosecutors are perhaps influenced by a desire to make headlines. Winning a conviction or a particular penalty doesn't accomplish anything if the process is flawed and has to be set aside. If the goal is to see Joshua Wade prosecuted fairly and effectively and be punished appropriately if convicted, then the best approach would be to let the prosecutors do their job in a professional manner uninfluenced by public pressures. She said she is not aware of the legislature having previously taken a public position on how federal or state prosecutors should handle a particular case, and she thinks, therefore, that the legislature's not having done so reflects a wise deference and appropriate perspective on the different roles of different branches of government. In conclusion, she urged the committee to follow that same course and vote against HJR 30.

3:30:30 PM

RICH CURTNER said he would be speaking against HJR 30, opining that it sets bad public policy by attempting to influence ongoing litigation and the discretion of the [U.S. Attorney] The U.S. Department of Justice (DOJ) has strict protocol for handling [death penalty cases], and HJR 30 could be seen as possibly having influenced the U.S. Attorney's Office decisions. House Joint Resolution 30 sends some bad messages to the citizens of Alaska: one, it disregards the verdict of the 12 Alaskan jurors who initially found Mr. Wade not guilty; two, it makes an assumption about the State's criminal justice system and the presumption of innocence, since Mr. Wade has not yet been convicted, and so the resolution could be viewed as an attempt to presume guilt and influence the system; and three, it could potentially result in a change of venue due to additional pretrial publicity. In conclusion, he pointed out that HJR 30 would be speaking to the same people that prosecuted then U.S. Senator Ted Stevens, and opined that caution should be taken whenever the legislature proposes any resolution that could be viewed as an attempt to influence the DOJ's treatment of ongoing litigation.

3:33:22 PM

SUE JOHNSON, Coordinator, Alaskans Against the Death Penalty (AADP), said that HJR 30 appears to involve one branch of government - the legislative branch - attempting to influence another branch of government - the judicial branch. The federal government already has a thoughtful process in place that allows a criminal case to be elevated to the level of a death penalty case. She said she thinks that it would therefore be very inappropriate for the legislature to get involved in such a decision or to even be perceived as getting involved. She also pointed out that many family members of murder victims are very opposed to executing those who have killed their loved ones.

REPRESENTATIVE HOLMES said she would be voting against HJR 30 because she feels it would be setting a bad precedent for legislators to be weighing in on criminal cases.

CHAIR RAMRAS, having previously ascertained that no one else wished to testify, closed public testimony on HJR 30.

3:35:25 PM

REPRESENTATIVE DAHLSTROM moved to report HJR 30 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HOLMES objected.

A roll call vote was taken. Representatives Dahlstrom, Coghill, Gatto, and Ramras voted in favor of reporting HJR 30 from committee. Representatives Lynn, Gruenberg, and Holmes voted against it. Therefore, HJR 30 was reported from the House Judiciary Standing Committee by a vote of 4-3.

3:36:41 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:36 p.m.