

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 20, 2001

1:18 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair (via teleconference)
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

CONFIRMATION HEARINGS:

Commission on Judicial Conduct

Ethel L. Stanton - Sitka

Violent Crimes Compensation Board

Colleen M. Murphy, M.D. - Anchorage

Alaska Judicial Council

Eleanor Andrews - Anchorage

- CONFIRMATIONS ADVANCED

CS FOR SENATE BILL NO. 105(FIN)

"An Act relating to victims' rights; relating to establishing an office of victims' rights; relating to the authority of litigants and the court to comment on the crime victim's choice to appear or testify in a criminal case; relating to compensation of victims of violent crimes; relating to eligibility for a permanent fund dividend for persons convicted of and incarcerated for certain offenses; relating to notice of appropriations concerning victims' rights; amending Rules 16 and 30, Alaska Rules of Criminal Procedure, Rule 9, Alaska

Delinquency Rules, and Rule 501, Alaska Rules of Evidence; and providing for an effective date."

- MOVED HCS CSSB 105(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

HOUSE BILL NO. 49

"An Act extending the termination date of the Board of Parole; and providing for an effective date."

- MOVED HB 49 OUT OF COMMITTEE

SENATE BILL NO. 81

"An Act relating to the nonademption of property transfers; and providing for an effective date."

- MOVED OUT SB 81 OF COMMITTEE

HOUSE BILL NO. 164

"An Act prescribing the rights of grandparents related to child-in-need-of-aid hearings; and amending Rules 3, 7, 10, 15, and 19, Alaska Child in Need of Aid Rules."

- MOVED CSHB 164(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 82(STA)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSSB 82(STA) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 105

SHORT TITLE: VICTIMS' RIGHTS/ PRISONER'S PFD

SPONSOR(S): SENATOR(S) HALFORD

Jrn-Date	Jrn-Page		Action
02/20/01	0432	(S)	READ THE FIRST TIME - REFERRALS
02/20/01	0432	(S)	JUD, FIN
02/28/01		(S)	JUD AT 1:30 PM BELTZ 211
02/28/01		(S)	Moved CSSB 105(JUD) Out of Committee
02/28/01		(S)	MINUTE(JUD)
03/01/01	0555	(S)	JUD RPT CS 4DP SAME TITLE

03/01/01	0555	(S)	DP: TAYLOR, DONLEY, ELLIS, THERRIAULT
03/01/01	0556	(S)	FN1: (COR)
03/01/01	0556	(S)	FN2: INDETERMINATE(LAW)
03/01/01	0556	(S)	FN3: ZERO(REV)
03/01/01	0562	(S)	COSPONSOR(S): TAYLOR
03/14/01	0655	(S)	FIN RPT CS FORTHCOMING 4DP 3NR 1AM
03/14/01	0656	(S)	DP: DONLEY, WILKEN, LEMAN, WARD;
03/14/01	0656	(S)	AM:KELLY; NR: AUSTERMAN, HOFFMAN, OLSON
03/14/01	0656	(S)	FN1: (COR)
03/14/01	0656	(S)	FN2: INDETERMINATE(LAW)
03/14/01	0656	(S)	FN3: ZERO(REV)
03/14/01	0656	(S)	FN4: (LAA)
03/14/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/15/01	0674	(S)	CS RECEIVED NEW TITLE
03/16/01		(H)	MINUTE(JUD)
03/20/01	0735	(S)	RULES TO CALENDAR 3/20/01
03/20/01	0737	(S)	READ THE SECOND TIME
03/20/01	0737	(S)	FIN CS ADOPTED UNAN CONSENT
03/20/01	0737	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/20/01	0737	(S)	COSPONSOR(S): LINCOLN, DAVIS, COWDERY,
03/20/01	0737	(S)	WARD, GREEN
03/20/01	0737	(S)	READ THE THIRD TIME CSSB 105(FIN)
03/20/01	0738	(S)	PASSED Y20 N-
03/20/01	0738	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/20/01	0738	(S)	COURT RULE(S) SAME AS PASSAGE
03/20/01	0740	(S)	TRANSMITTED TO (H)
03/20/01	0740	(S)	VERSION: CSSB 105(FIN)
03/20/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/20/01		(S)	MINUTE(RLS)
03/22/01	0677	(H)	READ THE FIRST TIME - REFERRALS
03/22/01	0677	(H)	JUD, FIN
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	<Bill Postponed>
04/10/01		(H)	JUD AT 5:00 PM CAPITOL 120
04/10/01		(H)	Heard & Held
04/10/01		(H)	MINUTE(JUD)

04/10/01 (H) MINUTE(JUD)
04/20/01 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 49

SHORT TITLE: EXTEND TERMINATION DATE FOR BD OF PAROLE

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/10/01	0050	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0050	(H)	JUD, FIN
01/10/01	0050	(H)	FN1: ZERO(COR)
01/10/01	0050	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/20/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 81

SHORT TITLE: NONADEMPTION OF TRANSFERS IN TRUSTS

SPONSOR(S): SENATOR(S) THERRIAULT

Jrn-Date	Jrn-Page		Action
02/09/01	0326	(S)	READ THE FIRST TIME - REFERRALS
02/09/01	0326	(S)	JUD
02/21/01		(S)	JUD AT 1:30 PM BELTZ 211
02/21/01		(S)	Moved Out of Committee
02/21/01		(S)	MINUTE(JUD)
02/26/01	0500	(S)	JUD RPT 3DP 1NR
02/26/01	0500	(S)	DP: TAYLOR, THERRIAULT, COWDERY;
02/26/01	0500	(S)	NR: ELLIS
02/26/01	0500	(S)	FN1: ZERO(LAW)
03/13/01	0635	(S)	RULES TO CALENDAR 3/13/01
03/13/01	0641	(S)	READ THE SECOND TIME
03/13/01	0641	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/13/01	0641	(S)	READ THE THIRD TIME SB 81
03/13/01	0641	(S)	PASSED Y19 N- E1
03/13/01	0641	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/13/01	0643	(S)	TRANSMITTED TO (H)
03/13/01	0643	(S)	VERSION: SB 81
03/13/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/13/01		(S)	MINUTE(RLS)
03/14/01	0584	(H)	READ THE FIRST TIME - REFERRALS
03/14/01	0584	(H)	JUD

04/20/01 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 164

SHORT TITLE: GRANDPARENTS' RIGHTS REGARDING CINA

SPONSOR(S): REPRESENTATIVE(S) DYSON

Jrn-Date	Jrn-Page		Action
03/09/01	0515	(H)	READ THE FIRST TIME - REFERRALS
03/09/01	0515	(H)	HES, JUD, FIN
03/27/01		(H)	HES AT 3:00 PM CAPITOL 106
03/27/01		(H)	Heard & Held
03/27/01		(H)	MINUTE(HES)
03/29/01		(H)	HES AT 3:00 PM CAPITOL 106
03/29/01		(H)	Heard & Held
03/29/01		(H)	MINUTE(HES)
03/30/01	0793	(H)	COSPONSOR(S): COGHILL, CISSNA
04/03/01		(H)	HES AT 3:00 PM CAPITOL 106
04/03/01		(H)	Moved CSHB 164(HES) Out of Committee
04/03/01		(H)	MINUTE(HES)
04/04/01	0847	(H)	COSPONSOR(S): WILSON, STEVENS
04/05/01	0855	(H)	HES RPT CS(HES) NT 7DP
04/05/01	0855	(H)	DP: COGHILL, WILSON, JOULE, KOHRING,
04/05/01	0855	(H)	STEVENS, CISSNA, DYSON
04/05/01	0855	(H)	FN1: ZERO(HSS)
04/20/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 82

SHORT TITLE: 2001 REVISOR'S BILL

SPONSOR(S): RLS BY REQUEST OF LEGISLATIVE COUNCIL

Jrn-Date	Jrn-Page		Action
02/09/01	0326	(S)	READ THE FIRST TIME - REFERRALS
02/09/01	0326	(S)	STA, JUD
02/20/01		(S)	STA AT 3:30 PM BELTZ 211
02/20/01		(S)	Heard & Held
			MINUTE(STA)
03/01/01		(S)	STA AT 3:30 PM BELTZ 211
03/01/01		(S)	Moved CS(STA) Out of Committee
			MINUTE(STA)
03/07/01	0583	(S)	STA RPT CS 1DP 3NR SAME TITLE
03/07/01	0583	(S)	DP: THERRIAULT; NR: PHILLIPS, HALFORD,

03/07/01	0583	(S)	DAVIS
03/07/01	0583	(S)	FN1: ZERO(S.STA)
03/21/01		(S)	JUD AT 1:30 PM BELTZ 211
03/21/01		(S)	Moved CS(STA) Out of Committee
03/21/01		(S)	MINUTE(JUD)
03/22/01	0768	(S)	JUD RPT CS(STA) 3DP
03/22/01	0768	(S)	DP: TAYLOR, COWDERY, ELLIS
03/22/01	0768	(S)	FN1: ZERO(S.STA)
03/30/01	0879	(S)	RULES TO CALENDAR 1OR 3/30/01
03/30/01	0881	(S)	READ THE SECOND TIME
03/30/01	0881	(S)	STA CS ADOPTED UNAN CONSENT
03/30/01	0881	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/30/01	0881	(S)	READ THE THIRD TIME CSSB 82(STA)
03/30/01	0881	(S)	PASSED Y15 N3 E2
03/30/01	0882	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/30/01	0884	(S)	TRANSMITTED TO (H)
03/30/01	0884	(S)	VERSION: CSSB 82(STA)
03/30/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/02/01	0805	(H)	READ THE FIRST TIME - REFERRALS
04/02/01	0805	(H)	JUD
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	Scheduled But Not Heard
04/20/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

LESLIE D. BOGDA WHEELER, Chair
Violent Crimes Compensation Board (VCCB)
PO Box 878885
Wasilla, Alaska 99687
POSITION STATEMENT: Testified in favor of reappointing Dr.
Murphy to the VCCB.

ELEANOR ANDREWS, Appointee
to the Alaska Judicial Council
P.O. Box 241845
Anchorage, Alaska 99520-1947
POSITION STATEMENT: Testified as appointee to the Alaska
Judicial Council.

JULI LUCKY, Staff

to Senator Rick Halford
Alaska State Legislature
Capitol Building, Room 111
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 105 on behalf of Senator Halford, sponsor, and answered questions.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division

Department of Law (DOL)
PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Answered questions regarding proposed amendments to SB 105.

BLAIR McCUNE, Deputy Director
Central Office
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090

POSITION STATEMENT: During discussion of SB 105, provided comments on proposed Conceptual Amendment 7, and responded to questions.

LARRY JONES, Executive Director
State Board of Parole
Department of Corrections (DOC)
PO Box 112000

Juneau, Alaska 99811-2000

POSITION STATEMENT: Presented HB 49 on behalf of the administration.

WILDA RODMAN, Staff
to Senator Gene Therriault
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 81 on behalf of the sponsor, Senator Therriault.

STEPHEN E. GREER, Attorney at Law
PO Box 24-2903

Anchorage, Alaska 99524-2903

POSITION STATEMENT: Assisted with presentation of SB 81.

REPRESENTATIVE FRED DYSON
Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 164.

MARCI SCHMIDT
2040 Wasilla Fishhook Road
Wasilla, Alaska 99654
POSITION STATEMENT: Testified in support of HB 164.

SHARON LEE SHIELDS
PO Box 0487
Palmer, Alaska 99645
POSITION STATEMENT: Testified in support of HB 164.

BETTY SHORT, President
Alaska Organization for Grandparents Rights
4102 East Turnagain Boulevard
Anchorage, Alaska 99517
POSITION STATEMENT: Testified in support of HB 164.

PAM FINLEY, Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801
POSITION STATEMENT: Presented SB 82.

ACTION NARRATIVE

TAPE 01-68, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:18 p.m. Representatives Rokeberg, Ogan (via teleconference), James, Coghill, and Meyer were present at the call to order. Representative Berkowitz arrived as the meeting was in progress.

CONFIRMATION HEARINGS

Commission on Judicial Conduct

Number 0165

CHAIR ROKEBERG announced that the committee would consider Ethel L. Stanton as appointee to the Commission on Judicial Conduct. He noted that the expiration date regarding this reappointment will be 3/1/04, and that Ms. Stanton is not available to speak at this time.

REPRESENTATIVE JAMES noted for the record that since she has not yet had a chance to do so, she would have preferred to talk with Ms. Stanton before taking action on her reappointment.

CHAIR ROKEBERG reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

Number 0387

REPRESENTATIVE JAMES moved to report the nomination of Ethel L. Stanton to the Commission on Judicial Conduct out of committee. There being no objection, the confirmation was advanced.

Violent Crimes Compensation Board

Number 0418

CHAIR ROKEBERG announced that the committee would consider Colleen M. Murphy, M.D., as appointee to the Violent Crimes Compensation Board. He noted that the expiration date regarding this reappointment will be 3/1/03, and that Dr. Murphy is not available to speak at this time.

Number 0466

LESLIE D. BOGDA WHEELER, Chair, Violent Crimes Compensation Board (VCCB), testified via teleconference and said simply that she wanted to speak in support of reappointing Dr. Murphy to the VCCB. She added that Dr. Murphy has been an outstanding board member.

REPRESENTATIVE JAMES noted that although Dr. Murphy is probably doing a very good job on [the VCCB], she would have preferred to talk with Dr. Murphy before taking action on her reappointment.

Number 0555

REPRESENTATIVE JAMES moved to report the nomination of Colleen M. Murphy, M.D., to the Violent Crimes Compensation Board out of committee. There being no objection, the confirmation was advanced.

Alaska Judicial Council

Number 0583

CHAIR ROKEBERG announced that the committee would consider Eleanor Andrews as appointee to the Alaska Judicial Council.

Number 0607

ELEANOR ANDREWS, Appointee to the Alaska Judicial Council ("the council"), testified via teleconference, and said that she thinks the Alaska Judicial Council is probably one of the most important commissions that the legislature has purview over, and that she has had the pleasure of serving on the council since last November. She noted that the Council has had occasion to make recommendations to the governor regarding a judge position for the superior court in Anchorage. She added that she thinks it was a very deliberative process, and that this process serves the peoples' will very well. She said she would like to continue [serving on the council].

REPRESENTATIVE OGAN opined that under the Alaska State Constitution, Alaska has one of the strongest, most powerful governors in the nation; the governor can appoint judges with impunity because there is absolutely no oversight by the legislature - the elected representatives of the people. He asserted that the only oversight the legislature has is with regard to whom it confirms to serve on the Alaska Judicial Council. He asked whether Ms. Andrews feels she would represent the "majority" of the legislature's philosophy on judges.

MS. ANDREWS said, "Probably not," and noted that she is a Democrat, and that the majority of the legislature is Republican. But, she added, "as you know, our constitution" doesn't require that appointments represent the majority of any body, at any given time. She said that she considers herself to be a constitutional scholar, adding that she believes that the constitution provides for an independent judiciary, and that "we" have a model judiciary. She said that according to her experience the last 36 years in Alaska, it hasn't really mattered who the governor is; by the time the Alaska Judicial

Council finishes its deliberative process, Alaska has judges that serve the citizens well.

REPRESENTATIVE OGAN, after noting that there have been a number of contentions between the judiciary and the legislature in recent years, opined that the majority of legislators feel that Alaska has judges, notwithstanding the separation of powers doctrine, that tread into what should be traditional legislative authority especially with regard to the appropriation of funds, which is tied to the abortion issue. He asked whether Ms Andrews would query potential judicial candidates "along those lines."

Number 0815

MS. ANDREWS said:

I have not seen any evidence of the court system trying to appropriate; I believe that is reserved to the legislature. At any given time, I imagine the legislature, or the executive branch, would take exception to a decision made by the judicial, but I don't believe that they are trying to usurp their powers - certainly not the power of appropriation.

REPRESENTATIVE OGAN said that he respectfully disagrees.

REPRESENTATIVE JAMES thanked Ms. Andrews for coming forward to speak, and acknowledged Ms. Andrews' inclination to continue serving on the council. Representative James said she agreed that the Alaska Judicial Council is a very important council to serve on. Referring to Ms Andrews' responses to Representative Ogan's questions, Representative James opined that Ms. Andrews is indicating an assumption that there is a huge difference between the Republicans and the Democrats on the issue of who would make a good judge. Representative James said she is not convinced that "we" ought to be able to know the difference, and offered her preference for having a judge who weighs everything and comes down with what is probably a nonbiased opinion. Therefore, on the issue of choosing a judge, she said she would rather have, "after the fact," an evaluation of the judge based on his/her performance. She asked Ms. Andrews to comment on these points.

MS. ANDREWS, to clarify, noted again that she did not see an encroachment of the judiciary into legislative authority to appropriate, and she again opined that the current process of

selecting and evaluating judges has provided the state with excellent judges regardless of which governor appointed them. However, on the question of which judges she would support for appointment, clarified that she thought Representative Ogan was asking whether she would support judges that represent the legislative Majority's philosophy, and offered that her previous response was meant to indicate that she would support the appointment of judges with whom the majority of people in Alaska would approve.

CHAIR ROKEBERG asked Ms. Andrews whether she would enquire of a candidate for a judicial position whether he/she is a "strict constructionist" of the law or if he/she would be more "proactive on the bench." He noted that this point does speak to the question of judicial appropriation and judicial "law making." He added that he wanted to know if Ms. Andrews considered this line of inquiry to be appropriate for a council member.

MS. ANDREWS said, "Well, I'd have to think about that, but it didn't come up during the "thirty-some" interviews that the council conducted in January for the two vacancies."

CHAIR ROKEBERG pointed out that a council member would have to raise the question in order for it to come up.

Number 1084

MS. ANDREWS responded, "I'd have to think about whether I thought that was germane, and I don't have an instant off-the-cuff response."

CHAIR ROKEBERG noted, for example, that yesterday, the committee heard legislation regarding legal separation, and he said that it come to light that an Anchorage superior court judge had, "basically, promulgated the concept in case law, and it was ratified by the state's supreme court." He said that he did not think that this is an appropriate activity for the courts. "Therefore, I think those types of things are very germane and they should be asked of every candidate for judgeship - whether they are going to pursue that line of judicial discretion," he remarked.

MS. ANDREWS said:

This is something I can certainly ask the rest of the council. The meetings in January were my first, and I

don't believe I innovated anything. I'm a pretty good interviewer and reviewer of employees - I've hired thousands - but that particular issue was not brought up by any other council member. When we next have our meetings or teleconference, I will share your comments with them.

CHAIR ROKEBERG opined that the question of whether someone leans more towards being a "strict constructionist" does reflect that person's political philosophy to a degree.

MS. ANDREWS explained that the Alaska Judicial Council is supposed to interview candidates based on their legal background, their judicial temperament, and all the other "things" that are in statute; then, during their term of appointment on the bench, if they were to do something that anybody - individual or group - felt was a violation of law or the constitution, then that would become a retention issue, which the council would hear and make an evaluation of for the next ballot.

CHAIR ROKEBERG said he did not disagree entirely with those points, but he noted that he still wants to know whether Ms. Andrews considered the aforementioned line of inquiry to be appropriate for a council member. He opined that it reflects the constitutional separation of powers.

MS. ANDREWS, in response, pointed out that if these were "cut and dried" answers, "we" wouldn't have anything going to the superior court, supreme court, or any other appellate body; it's a matter of the philosophy of the people at any given time. "This is your legitimate concern, and I respect that, but I don't believe it's universal and everlasting, so I can't tell you what I would ask of any given candidate at any given time." She then noted that the term "strict constructionist" is very subjective, and if it were something that was universally understood and accepted, "we" wouldn't even be talking about it.

CHAIR ROKEBERG opined that the term "strict constructionist" is understood within the judiciary.

MS. ANDREWS responded, "No, I don't believe so."

Number 1267

REPRESENTATIVE JAMES mentioned that she agreed with Chair Rokeberg's comments. She offered that when the court

establishes case law, it is usually based on an evaluation of certain law already on the books, and should be accompanied by some underlying support for the case law.

CHAIR ROKEBERG noted that his intention in asking his questions is nonpartisan and stem from his opinion that respect for the constitution should be foremost for anybody appointed to the judiciary; a candidate's perspective on the "line between the legislature and the judiciary" as it pertains to lawmaking and appropriation should be questioned, he added, regardless of political party. He offered that there is a substantial amount of frustration in the legislature regarding the "very active judiciary" and separation of powers.

REPRESENTATIVE COGHILL thanked Ms. Andrews for her work on the council. He offered that past legislative discussions regarding the election of judges comes from the public's frustration that they don't have any input regarding who becomes a judge or who is retained as a judge. He also said it seems as though there has been discussion that the meetings of the Alaska Judicial Council are not done out in the open enough, and he asked Ms. Andrews to comment.

MS. ANDREWS mentioned that there is a "perennial public meeting [attendee]" in Anchorage, who goes to all the public meetings of many different boards and commissions. She noted that all of the [council's] deliberations regarding candidates, with the exception of the interviews, are open to the public. She said she believes that practically all [governmental] business needs to be done in meetings open to the public, except for perhaps discussions surrounding lawsuits or specific personnel issues. She said:

I think that from what I understand of the law and what I've seen in practice in Alaska, that as much as is legally possible, [business] for the Alaska Judicial Council has been conducted in public, and if there is any question about whether something has not been, I would like to take that [information] back to the council members.

Number 1482

REPRESENTATIVE COGHILL noted that rather than voicing an accusation, he was merely relaying that people are frustrated because they feel that they don't have access, and he asked that the council consider this during its deliberations.

MS. ANDREWS offered that during the Alaska Judicial Council's meetings, there is a public hearing portion, and that when the meeting is being teleconferenced, anyone can come and listen in at the council office. She noted that sadly, people participate in public hearings less than they vote, and she then mentioned that at the last election held in Anchorage, only 19 percent of the people voted. She relayed that she would like to do everything possible, including advertise, to induce public involvement because she thinks that the public is served better when they participate in "the peoples' business."

REPRESENTATIVE OGAN commented that Ms. Andrews' remark regarding a lack of "discussion about that kind of a litmus test" merely underscores one of the reasons that the legislature has problems with the judiciary.

CHAIR ROKEBERG said, "I would take exception, Representative Ogan; I wouldn't even call it a litmus test."

MS. ANDREWS noted that she has been on the [council] only four months and has experienced only three days of meetings, all of which were spent interviewing 34 candidates. At that time, she explained, the council had other business on its agenda - which was noticed - but she added that had anyone else (legislator or citizen) been concerned about other things, they would have been welcome to come to the meetings and bring it to the council's attention.

REPRESENTATIVE OGAN noted that confirmation hearings are the forum that the legislature has in which to bring items to the council's attention, and said that he would appreciate Ms. Andrews' conveying his concerns to fellow council members. He said he would like to see the Alaska State Constitution amended such that it would allow the legislature to confirm judges, similar to what is done in the U.S. Constitution.

CHAIR ROKEBERG thanked Ms. Andrews for her testimony, her service on the Alaska Judicial Council, and her willingness to continue serving. He then closed the public hearing on Ms. Andrews' reappointment to the Alaska Judicial Council.

Number 1593

REPRESENTATIVE JAMES moved to report the nomination of Eleanor Andrews to the Alaska Judicial Council out of committee. There being no objection, the confirmation was advanced.

SB 105 - VICTIMS' RIGHTS/ PRISONER'S PFD

[Contains brief note that HB 133 was incorporated into the work draft of SB 105, Version L, which was adopted and discussed at this meeting.]

Number 1600

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 105(FIN), "An Act relating to victims' rights; relating to establishing an office of victims' rights; relating to the authority of litigants and the court to comment on the crime victim's choice to appear or testify in a criminal case; relating to compensation of victims of violent crimes; relating to eligibility for a permanent fund dividend for persons convicted of and incarcerated for certain offenses; relating to notice of appropriations concerning victims' rights; amending Rules 16 and 30, Alaska Rules of Criminal Procedure, Rule 9, Alaska Delinquency Rules, and Rule 501, Alaska Rules of Evidence; and providing for an effective date."

Number 1677

REPRESENTATIVE COGHILL made a motion to adopt the proposed committee substitute (CS) for SB 105, version 22-LS0219\L, Luckhaupt, 4/11/01, as a work draft. There being no objection, Version L was before the committee.

Number 1700

JULI LUCKY, Staff to Senator Rick Halford, Alaska State Legislature, on behalf of Senator Halford, sponsor, confirmed that HB 133 - the governor's bill pertaining to restitution - has been incorporated into Version L of SB 105.

Number 1756

CHAIR ROKEBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 6, lines 8-9:

Following "misdemeanor."

Delete "A copy of the completed form shall be provided"

Insert "The defendant shall provide a copy of the completed form"

Page 7, line 2 through Page 8, line 6:

Delete all material and insert:

(e) The Department of Law is authorized to collect restitution on behalf of the recipient unless

(1) the recipient elects as provided in (f) of this section to enforce the order of restitution without the assistance of the Department of Law; or

(2) the order requires restitution to be made in a form other than payment of a specific dollar amount.

(f) The court shall forward a copy of an order of restitution to the Department of Law when the judgement is entered. Along with the copy of the order, the court shall provide the name, date of birth, social security number, and current address of the recipient of the restitution and the defendant, to the extent that the court has that information in its possession. Upon receipt of the order and other information from the court, the Department of Law shall send a notice to the recipient regarding the recipient's rights under this section, including the right to elect to enforce the order of restitution without the assistance of the Department of Law. The information provided to the Department of Law under this subsection is confidential and is not open to inspection as a public record under AS 40.25.110. The Department of Law or its agents may not disclose the information except as necessary to collect on the restitution.

(g) The Department of Law may not begin collection procedures on the order of restitution until the recipient has been given notice and has been given 30 days after receipt of notice to elect to collect the restitution without the assistance of the Department of Law. A recipient may inform the Department of Law at a later time of the recipient's election to collect the restitution without the assistance of the Department of Law; upon receipt of that information, the Department of Law may no longer proceed with collection efforts on behalf of the recipient. A recipient who has elected under this section to collect restitution without the assistance of the Department of Law may not later request the services of that department to collect the restitution.

(h) If the Department of Law or its agents proceed to collect restitution on behalf of a

recipient under (g) of this section, the actions of the Department of Law or an agent of the Department of Law on behalf of the recipient do not create an attorney-client relationship between the Department of Law and the recipient. The Department of Law or its agent may not settle a judgement for restitution without the consent of the recipient of the restitution.

(i) An action for damages may not be brought against the state or any of its agents, officers, or employees based on an action or omission under this section.

(j) The Department of Law may enter into contracts on behalf of the state to carry out the collection procedures of this section. The Department of Law may adopt regulations necessary to carry out the collection procedures of this section, including the reimbursement of attorneys fees and costs in appropriate cases.

Page 23, lines 19-20:

Following "election to"

Delete "inform the Department of Law of an election to"

Page 22, line 27:

Following "when the"

Delete "order"

Insert "judgement"

Page 23, line 29:

Following: "settle"

Delete "an order of"

Insert "a judgement for"

MS. LUCKY explained that Amendment 1 is a technical amendment that will fix some inconsistencies found after portions of HB 133 was incorporated into Version L of SB 105. In detail, the first section of Amendment 1 will specify that it is the defendant who shall provide a copy of the completed financial information form to the prosecuting authority; the second section of Amendment 1 mirrors the structure of the enabling language for the Department of Law (DOL) regarding restitution with that which pertains to the Division of Juvenile Justice; the third section of Amendment 1 fixes a typo containing duplicate language; and the fourth and fifth sections of

Amendment 1 bring the Division of Juvenile Justice into compliance by replacing references to "order" with "judgement".

Number 1867

CHAIR ROKEBERG asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 1870

CHAIR ROKEBERG made a motion to adopt Amendment 2, which read:

Page 1, line 2:

Delete "**authority of litigants and the court to comment on the**"

Page 2, line 1:

Delete "**Rules 16 and 30**"

Insert "**Rule 16**"

Page 8, lines 7 - 13:

Delete all material.

Insert a new bill section to read:

"* **Sec. 12.** AS 12.55 is amended by adding a new section to read:

Sec. 12.55.151. Court may not reduce or mitigate punishment based on victim's failure to appear or testify. Notwithstanding another provision of law, when sentencing a defendant, a court may not mitigate or reduce the punishment of the defendant based on, or otherwise consider as a mitigating factor or reason to impose a lesser punishment, the failure of the crime victim to appear or testify."

Page 25, lines 25 - 29:

Delete all material.

Re-number the following bill sections accordingly.

Page 26, lines 12 - 16:

Delete all material.

Re-number the following bill sections accordingly.

Page 27, line 1:

Delete "and 34 - 37"

Insert "34, and 35"

Page 27, line 5:
Delete "39, and 40"
Insert "37, and 38"

Page 27, line 7:
Delete "and 34 - 37"
Insert "34, and 35"

Page 27, line 9:
Delete "and 38"
Insert "and 36"

MS. LUCKY explained that an amendment adopted in the Senate Finance Committee prohibits comment on whether a victim chooses to testify or not. To forestall constitutional difficulties, Amendment 2 alters the language to simply clarify that the court may not reduce or mitigate punishment based on the victim's failure to appear or testify, and moves this language to AS 12.55, which is the sentencing statute.

Number 1927

CHAIR ROKEBERG asked whether there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 1941

CHAIR ROKEBERG made a motion to adopt Amendment 3, which read:

Page 2, line 2:
Delete "Rule 501"
Insert "Rules 402 and 501"

Page 16, lines 7 - 12:
Delete all material and insert:
"Sec. 24.65.200. Victims' advocate's privilege not to testify or produce documents or other evidence.
Except as may be necessary to enforce the provisions of this chapter, the determinations, conclusions, thought processes, discussions, records, reports, and recommendations of or information collected by the victims' advocate or staff of the victims' advocate are not admissible in a civil or criminal proceeding, and are not subject to questioning or disclosure by subpoena or discovery."

Page 26, line 10:
Delete "Rule 501"
Insert "Rules 402 and 501"

Page 26, line 11:
Following "testify":
 Insert "or produce evidence"
Following "court":
 Insert "and precluding admissibility of
certain evidence in certain cases"

MS. LUCKY relayed that Mr. Guaneli, Department of Law, is of the opinion that language currently in Version L regarding the victims' advocate's privilege not to testify is not specific enough; Amendment 3 is intended to enumerate specifically what is privileged.

Number 2010

REPRESENTATIVE COGHILL objected for the purpose of discussion.

CHAIR ROKEBERG called an at-ease from 1:53 p.m. to 1:56 p.m.

Number 2017

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), explained that although victims' advocates could not be compelled to testify and neither could their documents be used as evidence, current language in Version L did not preclude someone from going after those records and files during the course of civil discovery and then using the information gleaned from them. Since these records and files come from confidential sources, he said the documents should remain confidential and be contained within the office. Amendment 3 clarifies that these documents are not permissible [as evidence] in proceedings and are not subject to questioning or disclosure by subpoena or discovery. He opined that Amendment 3 preserves the sponsor's intent that the confidentiality of these records be maintained.

MR. GUANELI also explained that Rule 402 of the Alaska Rules of Evidence is a general rule regarding relevant evidence, and that the drafter felt that including specific reference to Rule 402 is necessary because it is indirectly changed by the fact that these records are not admissible or subject to questioning.

Number 2156

CHAIR ROKEBERG asked whether there were any further objections to Amendment 3. There being no objection, Amendment 3 was adopted.

Number 2169

CHAIR ROKEBERG made a motion to adopt Amendment 4, which read:

Page 16, lines 24 - 26:

Delete ", including the governor and lieutenant governor, when acting with regard to executive clemency, judges, and magistrates"

MR. GUANELI explained that Version L defines "justice Agency" to include any number of departments, agencies, offices, et cetera, and that these are the agencies that the victims' advocate, in his/her investigative capacity, could subpoena records from. Included in this list are the governor and lieutenant governor with regard to executive clemency, judges, and magistrates. He opined that this language might lead to problems related to separation of powers, and goes too far. Amendment 4 will exclude the offices of governor and lieutenant governor from investigations by the victims' advocate. In response to a question, he added that with the inclusion of "court" on line 20 of page 16, the language is broad enough to include magistrates, judges, deputy magistrates, supreme court justices, and a variety of judicial officers.

MS. LUCKY noted that Senator Halford does not have any objections to Amendment 4.

Number 2258

CHAIR ROKEBERG asked whether there were any objections to Amendment 4. There being no objection, Amendment 4 was adopted.

Number 2260

CHAIR ROKEBERG made a motion to adopt Amendment 5, which read [original punctuation provided]:

Page 14, Line 31:

Delete "or"

Page 15, line 3, following "rights":

Insert";

(5) a victim counselor concerning a matter made confidential by AS 18.66.200 - 18.66.250; or
(6) a justice agency concerning records that lead to the disclosure of a confidential police informant."

MR. GUANELI, in support of Amendment 5, explained that pages 14-15 contain a number categories of persons or agencies that would be exempt from having their records subpoenaed, including judges, justices, magistrates, and members of juries, and he said it was felt that victims' counselors should be included in this exemption since they already operate under very detailed confidentiality rules and because release of such information would interfere in the victim/counselor relationship. In addition, he explained that any police agency records that might lead to the disclosure of confidential police informants should also be included in the exemption because release of their identities might put them in physical danger.

Number 2346

CHAIR ROKEBERG asked whether there were any objections to Amendment 5. There being no objection, Amendment 5 was adopted.

REPRESENTATIVE BERKOWITZ asked whether the issue of "subpoenaing the privileged informational work product," which he had previously discussed with Ms. Lucky, has been addressed yet.

MS LUCKY noted that an actual amendment addressing that topic has not yet been drafted. She explained that she has made inquiries into whether there is a danger of having attorney/client communications subpoenaed under the current language in Version L. She said that the responses she received from the DOL, the drafter, and the majority counsel indicated that the current language that says, "subject to privileges the witnesses have in the courts of this state", would protect the attorney/client privilege. She sought further comments from Representative Berkowitz, and also said she would be willing to change this language if any member had suggestions for specific changes. She noted one such suggestion is to replace the aforementioned language with "subject to privileges recognized by court rule and statute", and another option offered is to insert language into AS 24.65.130(c)(4) that would include in the exclusions from subpoena the privileged communications of a defendant's attorney. She commented that the latter option might be the more appropriate change since the current language addresses what may be subpoenaed by the advocate while

investigating a victim's complaint that he/she has been denied constitutional and statutory rights.

TAPE 01-68, SIDE B
Number 2480

REPRESENTATIVE BERKOWITZ expressed willingness to consider the former aforementioned option as a conceptual amendment.

CHAIR ROKEBERG called an at-ease from 2:08 p.m. to 2:10 p.m.

Number 2473

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 6.

MS. LUCKY recapped that on page 14, lines 6-7, Conceptual Amendment 6 would delete "Subject to the privileges that witnesses have in the courts" and insert "Subject to the privileges recognized by court rule and statute".

Number 2416

CHAIR ROKEBERG asked whether there were any objections to adopting Conceptual Amendment 6. There being no objection, Conceptual Amendment 6 was adopted.

Number 2399

BLAIR McCUNE, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration, testified via teleconference and suggested that out of an abundance of caution, the language "or an attorney retained by the person or appointed by the court to represent the person" could also be added to subsection (c)(4) on page 15, line 3, after "rights". He noted that this would clarify that an attorney's confidential communications with his/her client cannot be subpoenaed.

Number 2249

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 7, which would insert "or an attorney retained by the person or appointed by the court to represent the person" after "rights" on page 15, line 3. There being no objection, Conceptual Amendment 7 was adopted.

MR. McCUNE, on a slightly different point, clarified that the PDA does not consider itself to be a justice agency under the definition in Version L because it is not concerned with apprehension, prosecution, incarceration, or supervision. He also noted that the Office of Public Advocacy is not a justice agency under this definition either.

REPRESENTATIVE BERKOWITZ, on the point of another conceptual amendment, suggested that "this new bureaucracy" should have a sunset date.

MS. LUCKY stated a preference not to include a sunset date.

REPRESENTATIVE BERKOWITZ opined that if the [Office of Victims' Rights] has a sunset date, the legislature will then have the opportunity to revisit the issue and determine whether the sunset should be removed or if other steps need to be taken.

REPRESENTATIVE JAMES expressed agreement with this concept.

Number 2223

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 8, which would provide a sunset date of July 1, 2005, for the [Office of Victims' Rights].

Number 2200

CHAIR ROKEBERG objected for the purpose of discussion.

MS. LUCKY, in response to questions, explained that Version L has three different effective dates. The first effective date - the immediate effective date - deals with the regulations and receiving money from forfeited permanent fund dividends (PFDs). The second effective date of July 1, 2002, relates to the Office of Victims' Rights, which won't be up and running until then. The third effective, which addresses the restitution provisions, will be January 1, 2002. She mentioned that the fiscal notes total a little over \$500,000. She reiterated that she would prefer not to have a sunset date, but added that a sunset date of 2006 would at least allow the [Office of Victims' Rights] to operate for a full four years.

REPRESENTATIVE BERKOWITZ said, "That'd be fine; I would take that as a friendly amendment."

Number 2152

CHAIR ROKEBERG announced that the amendment to Conceptual Amendment 8 would result in a sunset date of July 1, 2006, for the provisions pertaining to [the Office of Victims' Rights]. There being no objection, the amendment to Conceptual Amendment 8 was adopted.

REPRESENTATIVE JAMES opined that a sunset date would not be injurious to the legislation, and that it makes rational sense to provide a sunset date.

CHAIR ROKEBERG maintained his objection to Conceptual Amendment 8, as amended.

Number 2079

A roll call vote was taken. Representatives James, Meyer, and Berkowitz voted for Conceptual Amendment 8, as amended. Representatives Coghill and Rokeberg voted against it. Therefore, Conceptual Amendment 8, as amended, passed by a vote of 3-2.

MR. GUANELI, in response to questions regarding a memorandum from the drafter pertaining to Section 6, said he believed that Version L, as drafted, is constitutional. He surmised that what the legislature is saying via Section 6 is that the money that was the defendant's, but as a result of some conduct of the defendant, will now go to the victim, and that an equal amount will be owed to the state. He opined that this is proper legislative action and does not constitute an appropriation as is posited by the drafter in his memorandum. He noted that although current statute allows for bail to be forfeited if a defendant violates the conditions of bail, the statute does not stipulate where the funds go. As matter of practice, he added, the funds have been going to the general fund (GF), but nothing in statute precludes the legislature from directing forfeited money elsewhere. He remarked that the incident referred to in the memorandum involved fines owed to the state but which were then paid to private organizations, whereas Section 6 is referring to money owned by the defendant but which, upon forfeiture, is directed by the legislature to go to the victim. He opined that language in Section 6 does not create a dedicated fund problem.

CHAIR ROKEBERG noted that the state has a compelling interest to ensure that victims are receiving restitution, and said that "this" is one way to secure that. He opined that [this

compelling interest] would supersede any interpretation that Section 6 is referring to a dedicated fund. The courts would simply be holding the funds in trust and then issuing it to the victim as form of restitution.

MR. GUANELI confirmed this; it would be another mechanism similar to what the courts currently do when collecting restitution.

Number 1901

REPRESENTATIVE BERKOWITZ, referring to the Eighth Amendment of the U.S. Constitution addressing excessive bail, noted that the defendant is being required to pay bail twice in these instances of forfeiture, [once to the defendant, and then again to the state]. He asked whether there has been any analysis done on this point.

MR. GUANELI surmised that these instances would have to be considered on a case-by-case basis. For example, if bail is set at \$1 million and the defendant violates the conditions of bail, then having to pay \$2 million might be considered inappropriate, but in the normal circumstance, he offered, judges have wide discretion to set an amount of bail. Therefore, he opined, without looking at a specific case, one could not say that Section 6 falls under the excessive bail provision of the U.S. Constitution.

REPRESENTATIVE BERKOWITZ pointed out that language in Section 6 mandates that a matching amount of the forfeited bail be paid to the state. He noted that this raises questions regarding process; he opined that it could be problematic from a constitutional perspective.

MR. GUANELI posited that everyone would agree that if bail is set at \$500, and the defendant has to pay \$500 to the victim and \$500 to the state for a violation of bail conditions, it would not be considered unconstitutional. He acknowledged, however, that as the amount of bail rises, there may be other issues that have to be resolved, and that there may be a point when the courts say, "We can not constitutionally do what this says; we'll pay the victim what the victim is due." He pointed out that the victim would not get the entire amount of the forfeited bail unless there were damages up to that amount; the victim would only get the amount ordered for restitution. He added that a judge might then determine that it would be excessive to pay the state an amount that matched the forfeited bail.

REPRESENTATIVE JAMES asked whether Section 6 stipulates this.

MR. GUANELI said that he did not know that it did, but offered that it was the only interpretation that really makes sense in the context of collecting restitution; the victim is only going to get what he/she is due for damages, which would be determined at a restitution hearing.

REPRESENTATIVE BERKOWITZ said that according to his recollection, "You can only impose [a] bail [amount that's] ... reasonably necessary to secure the defendant's appearance, and bail should be based on the defendant's flight risk and danger to the community." He posited that in essence, Section 6 proposes a third and fourth criteria for imposing bail.

Number 1708

MR. GUANELI offered that on the one hand, there is the question of how much bail the court should impose to begin with to allow the person to get out of jail. He pointed out that bail is not imposed with any regard to how much the victim's restitution is. It is only if the defendant later violates the conditions [of bail] that the question of where forfeited bail should go arises. He opined that if the forfeited bail can go towards the victim's restitution, it should. The question of the overall penalty that the defendant is subject to, he asserted, is something that is taken up at sentencing along with restitution orders, bail forfeitures, and other types of forfeitures, all of which must be done on a case-by-case basis.

MR. McCUNE commented that after careful review of Section 6, he did not see a problem with it. After the bail is forfeited in a criminal case, he explained, it's lost to the defendant. The defendant or the bail bondsman can ask for remission of the forfeiture, which he said he assumes is taken into account, but if the remission fails and the money's forfeited, it's gone. He pointed out that the victim doesn't get a windfall since the language says, "the court shall apply the cash or other security to an order that the defendant pay restitution"; consequently, if the forfeited amount is \$1 million but the restitution order is \$500, only \$500 goes to the victim.

REPRESENTATIVE JAMES pointed out that under the current language, it appears that once the bail is forfeited, the defendant would then be ordered to pay the exact same amount to

the state, and that this seems to her to be doubling the amount of bail.

MR. GUANELI, in response, explained that the process outlined in Section 6 would work thus: If a defendant has to post \$5,000 bail and owes \$1,000 restitution to the victim, the total amount is \$6,000. Upon forfeiture of the bail, \$1,000 would go to the victim first and the remaining \$4,000 would go to the state general fund (GF). The state would then enter a separate judgment of \$1,000 to be paid to the state for the amount of bail still owed. In this way, a defendant who violates the conditions of bail still pays a total of \$6,000, but the victim gets paid restitution first. He added that since the victim is the first payee, the state, then, is responsible for going after any amount still owed for forfeited bail.

REPRESENTATIVE JAMES likened it to a lien that the victim has on the forfeited bail.

MR. GUANELI agreed, and added that the victim has first priority for receiving the money.

CHAIR ROKEBERG said that it certainly seems to be to the public's benefit and in the state's best interest to make sure that restitution is paid to the victim before the GF is increased.

Number 1430

REPRESENTATIVE COGHILL opined that Section 6 still needs clarification; he said it still looks like the defendant could end up paying more than the amount of restitution due.

REPRESENTATIVE BERKOWITZ suggested deleting "forfeited and applied" from page 5, line 9, after "amount".

MS. LUCKY concurred that doing so would clarify that the separate order is not referring to the forfeited amount, but only to the amount of restitution.

Number 1292

CHAIR ROKEBERG indicated that he would treat that suggestion as a motion from Representative Coghill to adopt Conceptual Amendment 9, which would delete "forfeited and applied" from page 5, line 9, after "amount". There being no objection, Conceptual Amendment 9 was adopted.

Number 1233

REPRESENTATIVE JAMES moved to report the HCS for CSSB 105, version 22-LS0219\L, Luckhaupt, 4/11/01, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 105(JUD) was reported from the House Judiciary Standing Committee.

Number 1224

CHAIR ROKEBERG announced that the committee needed to adopt a House Concurrent Resolution to change the title of SB 105.

Number 1212

REPRESENTATIVE JAMES made a motion to adopt the proposed House Concurrent Resolution, version 22-LS0909\A, Luckhaupt, 4/11/01, as a work draft. There being no objection, it was so ordered.

Number 1203

REPRESENTATIVE JAMES moved to report the proposed House Concurrent Resolution, version 22-LS0909\A, Luckhaupt, out of committee with individual recommendations. There being no objection, the House Concurrent Resolution [which later became HCR 18] was reported from the House Judiciary Standing Committee.

[HCS CSSB 105(JUD) was reported from committee.]

HB 49 - EXTEND TERMINATION DATE FOR BD OF PAROLE

Number 1190

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 49, "An Act extending the termination date of the Board of Parole; and providing for an effective date."

Number 1174

LARRY JONES, Executive Director, State Board of Parole, Department of Corrections (DOC), explained that the Division of Legislative Audit has performed a sunset review and recommends that the State Board of Parole be extended. He added that the State Board of Parole supports HB 49. In response to questions, he said the final audit report makes three perfunctory,

administrative-type recommendations, none of which will require statutory changes. He noted that the audit report recommends that the termination date be extended to June 30, 2005, whereas HB 49 provides for a June 30, 2006, termination date. He also mentioned that in past years, [the Division of Legislative Audit] has been trying to provide for longer termination dates for the State Board of Parole because of the cost of doing reviews more often.

REPRESENTATIVE COGHILL commented that parole officers seem to have a lot of power without a lot of oversight, and he then inquired about accountability.

MR. JONES, in response, and for clarification, said that the State Board of Parole is an autonomous board that is ostensibly associated with the DOC but is officially a board that is appointed by the governor. He noted that the State Board of Parole is placed in the DOC for administrative expediency, but is very self-contained and is strictly concerned with parole hearings. He said that the State Board of Parole consciously tries to stay out of the DOC'S business, which includes oversight of parole officers. And although he acknowledged that the State Board of Parole interacts everyday with "the system", he maintained that the State Board of Parole does not have any authority over parole officers. He remarked that the State Board of Parole highly respects the parole officers of the state of Alaska, and feels that the parole officers do a very commendable job.

CHAIR ROKEBERG asked whether any steps have been taken to follow through with the audit report's Recommendation No. 1 regarding notification of a victim's right to comment at parole hearings.

MR. JONES noted that over the last few years there have been statutory additions to the parole process that have provided victims' rights, such as allowing victim participation at parole hearings, which the State Board of Parole views as a positive thing. As more victims become aware of those rights, he explained, they are becoming more participative, which has a profound impact on the decisions made at parole hearings. In response to the question regarding Recommendation No. 1, he reported that current statute holds the State Board of Parole responsible for notifying a victim of an upcoming parole hearing, but in practice, it is the DOC that carries out that responsibility. Recommendation No. 1 suggests that the State Board of Paroled should develop a Memorandum of Understanding (MOU) with the DOC to formally reflect that it is the DOC that

performs this service. He noted that since the DOC maintains a database of victims, and since the State Board of Parole only has a staff of five, it makes logistical sense for the DOC to continue with the notification process; thus the MOU will simply acknowledge in writing what is already being done. He added that he and the "victims' rights coordinator" from the DOC are in the process of drafting the MOU.

Number 0772

MR. JONES, with regard to Recommendation No. 2, explained that there are five citizen board members, none of which are State of Alaska employees, and most serve on the board for a long time; for instance, the current board chair has been on the board for 18 years. Current statute, he continued, states that the governor shall set the board members' compensation, which was last set in 1984 by Governor Sheffield at \$150 per day and \$75 per half-day. He relayed that the audit report indicates that the State Board of Parole should submit something more current with regard to compensation of board members.

REPRESENTATIVE COGHILL asked how out-of-state inmates receive parole hearings.

MR. JONES explained that the State Board of Parole travels to Arizona for "face-to-face hearings."

Number 0626

REPRESENTATIVE JAMES moved to report HB 49 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 49 was reported from the House Judiciary Standing Committee.

SB 81 - NONADEMPTION OF TRANSFERS IN TRUSTS

Number 0595

CHAIR ROKEBERG announced that the next order of business would be SENATE BILL NO. 81, "An Act relating to the nonademption of property transfers; and providing for an effective date."

Number 0585

WILDA RODMAN, Staff to Senator Gene Therriault, Alaska State Legislature, presented SB 81 on behalf of the sponsor, Senator Therriault. She explained that SB 81 will make a correction to

HB 275 [21st Alaska State Legislature], which changed some of the rules of construction applicable to wills and other governing instruments. She noted that Section 1 of HB 275 changed a rule of construction that outlines what happens when a request in a will cannot be carried out, and that Section 2 of HB 275 was meant to take the section pertaining to wills and apply it to trusts. When HB 275 was drafted, she explained, some intended changes were overlooked, and SB 81 will correct these discrepancies in the language. She noted that the Department of Law (DOL) has provided a letter confirming that SB 81 appears to accomplish this, and that the sponsor statement for HB 275 has also been provided.

Number 0491

STEPHEN E. GREER, Attorney at Law, testified via teleconference and assisted with the presentation of SB 81. He concurred that SB 81 is merely a technical correction of legislation adopted last year. Specifically, SB 81 is meant to change the language in the Uniform Probate Code regarding nonademption [of property transfers]. He explained that SB 81 says:

Nonademption refers to rule construction that applies when a person creating a trust or will designates that a specific person is to receive a specific item of property, and at death that is unable to be carried out because the property no longer exists. And the general rule is that the specific request is adeemed or extinguished if the property doesn't exist at the death of the settlor. ... This rule of construction, which can always be altered by a will - or [a] trust, in this case - is applied if nothing's stated.

REPRESENTATIVE BERKOWITZ asked if the following interpretation of Section 2 is correct: "If you sell the property - get rid of it - then the beneficiary gets the money?"

MR. GREER responded:

If you sell the property before you die, and the property no longer exists, then the specific legatee will not receive that property; that's the general rule. And in this particular section, it says that general rule [will] be altered in certain specific situations that are spelled out in the Uniform Probate Code.

REPRESENTATIVE BERKOWITZ said, "So, under these circumstances, if someone gets rid of the property, then the beneficiary gets compensation."

MR. GREER said yes, under certain limited circumstances spelled out in [this] section.

REPRESENTATIVE JAMES added, "If there's any left."

MR. GREER noted that the sponsor statements detail the specific circumstances under which Section 2 of SB 81 would apply.

Number 0238

REPRESENTATIVE JAMES moved to report SB 81 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 81 was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 2:54 p.m. to 2:56 p.m.

HB 164 - GRANDPARENTS' RIGHTS REGARDING CINA

Number 0165

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 164, "An Act prescribing the rights of grandparents related to child-in-need-of-aid hearings; and amending Rules 3, 7, 10, 15, and 19, Alaska Child in Need of Aid Rules." [Before the committee was CSHB 164(HES).]

Number 0160

REPRESENTATIVE FRED DYSON, Alaska State Legislature, sponsor, explained that two years ago, the legislature passed a bill that gives foster parents the right to be heard in disposition hearings and custody hearings. He said he is seeking to do the same thing for grandparents via HB 164. When the state is taking custody of children, he noted, oftentimes it is the grandparents who provide the most stable influence. He added that HB 164 does not make grandparents "a party" in the technical sense, but it does give them a right to be heard in court so that their perspective regarding a child's placement can be taken into account. He said that as far as he knows, there is no one who opposes HB 164, and that every grandparent's organization in the state that he is aware of supports HB 164. He noted, however, that the department has asked not to be

burdened with seeking out eligible grandparents. He pointed out that HB 164 states that the grandparents will have to identify themselves and prove that they are indeed the grandparents - either biologically or legally - before they have a right to provide input before the court.

TAPE 01-69, SIDE A
Number 0001

MARCI SCHMIDT testified via teleconference and said simply that she is in favor of HB 164. She then asked what the term "certain" means as it is used on page 4, line 5, with regard to "child-in-need-of-aid proceedings".

REPRESENTATIVE BERKOWITZ opined that using the term "certain" is merely pro forma.

REPRESENTATIVE DYSON agreed, and said that that is his sense too; it did not create a limitation of any sort, it is simply the way "these legal things" get written.

CHAIR ROKEBERG noted that the language on page 4 is not substantive law anyway; it is merely a court-rule-change provision.

REPRESENTATIVE BERKOWITZ offered that this provision might be referred to if, for example, there is a CINA (child in need of aid) proceeding where an attorney is being sanctioned.

Number 0246

SHARON LEE SHIELDS briefly testified via teleconference in support of HB 164. She relayed that in her situation, she was prohibited from seeing her granddaughter because she attempted to intervene when her granddaughter started reporting physical abuse. She said she believes that grandparents should be recognized for their valuable participation in their grandchildren's lives.

Number 0319

BETTY SHORT, President, Alaska Organization for Grandparents Rights, testified via teleconference and said that HB 164 allows grandparents to have the opportunity to be involved in the hearings held by the state in cases involving their grandchildren. This is a very important procedure, she noted, both for the courts and the Division of Family and Youth

Services (DFYS), which will help properly establish what is in the best interest of the child as is described in AS 25.24.150(c)[(1)-(9)]. She asked how else would the court, caseworker, court-appointed special advocate (CASA), or [guardian] ad litem find out what is in the best interest of the child without gaining input from outside the parties.

MS. SHORT recounted the example of one grandparent who has evidence - phone recordings, affidavits, witnesses, and police reports - but no one at DFYS will see or talk to her, or return her phone calls. In her own case where she had reported abuse of [her grandchild], she said the caseworker did not even bother to interview any of the witnesses who had seen the abuse occurring, but had instead sent a letter to the mother that the charges of abuse were unfounded. After hiring an attorney and going to court, she explained, the results of a further investigation by a [guardian] ad litem convinced the magistrate to confer guardianship to Ms. Short. She offered that grandparents could help speed up investigations with their input and past knowledge, as well as provide a safe and familiar haven for the grandchildren while any investigation takes place.

Number 0545

CHAIR ROKEBERG closed the public hearing on HB 164.

REPRESENTATIVE BERKOWITZ expressed the concern that HB 164 mandates that the department provide written notice to a grandparent, but does not provide any exception if the grandparent's presence is not in the best interest of the child.

REPRESENTATIVE DYSON opined that such a situation is provided for. He referred to page 2, line 25, which says:

However, the court may limit the presence of the foster parent or other out-of-home care provider and any grandparent of the child to the time during which the person's testimony is being given if it is (1) in the best interest of the child; or (2) necessary to protect the privacy interests of the parties and will not be detrimental to the child.

REPRESENTATIVE BERKOWITZ pointed out that the gap between Section 2 and Section 3 is that the department is going to send a notice and then the court is going to make a determination. There is no provision if the department has information that would indicate that the best interest of the child or the

privacy interests would be negatively impacted; HB 164 does not give the department any discretion.

REPRESENTATIVE DYSON acknowledged that there are some cases where the child is in need of aid because the grandparent is the perpetrator of crimes against the child. He pointed out that the court does have the discretion to determine whether a grandparent should be at the hearing or in the presence of the child.

REPRESENTATIVE BERKOWITZ argued that if the department has that kind of information, it should also have the discretion to refrain from sending notification to that particular grandparent.

REPRESENTATIVE DYSON agreed that perhaps a conceptual amendment could be adopted such that the department would be released from the responsibility to notify if the court has found that the grandparent has participated in crimes against the child.

REPRESENTATIVE BERKOWITZ pointed out, however, that this solution would still require a court determination. He opined that the department should have the discretion to refrain from sending notice if, for example, it discovers during the course of an investigation prior to any court proceeding that the grandparent [should not have access to the child].

REPRESENTATIVE DYSON observed that this could lead to a "sticky" situation because many of the grandparents with whom he has spoken say they are uneasy about leaving that sort of decision to the discretion of a single person in the DFYS administration. He reminded members that most of these cases will have a guardian ad litem appointed who will be looking out for the best interest of the child.

CHAIR ROKEBERG opined that if there is a public record that a grandparent has committed an offense against the child, the department should have the discretion not to notify that grandparent.

REPRESENTATIVE JAMES pointed out that there could also be situations in which the grandparent is unfit to be with the child but does not have any record of abuse.

Number 0970

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 1 to Section 3, to the effect that if a grandparent has been convicted of a crime against the child in question, or is subject to a no contact order, the department is relieved of the responsibility of notifying the grandparent of the proceedings. There being no objection, Conceptual Amendment 1 was adopted.

Number 1047

REPRESENTATIVE JAMES moved to report CSHB 164(HES), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 164(JUD) was reported from the House Judiciary Standing Committee.

SB 82 - 2001 REVISOR'S BILL

Number 1058

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 82(STA), "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

Number 1084

PAM FINLEY, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that CSSB 82(STA) is intended to clean up statutory language without making any policy changes or decisions. She noted that she had submitted a sectional analysis.

CHAIR ROKEBERG noted that the committee staff counsel has reviewed the bill and recommends that the committee move it.

Number 1117

REPRESENTATIVE JAMES REPRESENTATIVE moved to report CSSB 82(STA) out of the House Judiciary Standing Committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSB 82(STA) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1138

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.