ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 25, 2001
1:24 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 157
"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 157(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 126
"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

- MOVED HB 126 OUT OF COMMITTEE

HOUSE BILL NO. 243
"An Act relating to sexual assault or abuse of a minor."

- HEARD AND HELD

CS FOR SENATE BILL NO. 19(HES)
"An Act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch.

132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date."

- MOVED HCS CSSB 19(HES) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 10
Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 19, relating to certain federal child support enforcement requirements, so that the phrase "relating to child support payments" may be added to the bill's title.

- MOVED HCR 10 OUT OF COMMITTEE

HOUSE BILL NO. 247
"An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 166
"An Act relating to the time of filling by appointment a vacancy in the office of United States senator."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 157
SHORT TITLE:TRUST COMPANIES & FIDUCIARIES
SPONSOR(S): REPRESENTATIVE(S)MURKOWSKI

Jrn-Date	Jrn-Page		Action
02/28/01	0463	(H)	READ THE FIRST TIME - REFERRALS
02/28/01	0463	(H)	L&C, JUD
03/28/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/28/01		(H)	Heard & Held
03/28/01		(H)	MINUTE(L&C)
04/18/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/18/01		(H)	Bill Postponed
04/19/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/19/01		(H)	Moved CSHB 157(L&C) Out of

			Committee
04/19/01		(H)	MINUTE(L&C)
04/20/01	1089	(H)	L&C RPT CS(L&C) NT 2DP 3NR
04/20/01	1089	(H)	DP: ROKEBERG, MURKOWSKI; NR: HALCRO,
04/20/01	1089	(H)	CRAWFORD, MEYER
04/20/01	1090	(H)	FN1: ZERO(CED)
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 126
SHORT TITLE:REMOVAL OF MEMBERS OF THE PF BOARD
SPONSOR(S): RLS BY REQUEST OF LEG BUDGET & AUDIT

Jrn-Date	Jrn-Page		Action
02/14/01	0317	(H)	READ THE FIRST TIME - REFERRALS
02/14/01	0317	(H)	JUD, FIN
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 243
SHORT TITLE:VERIFY AGE REQD FOR DEFENSE IN SEX CRIMES
SPONSOR(S): REPRESENTATIVE(S)DYSON

Jrn-Date	Jrn-Page		Action
04/10/01	0930	(H)	READ THE FIRST TIME - REFERRALS
04/10/01	0930	(H)	JUD
04/10/01	0930	(H)	REFERRED TO JUDICIARY
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 19
SHORT TITLE:CHILD SUPPORT ENFORCEMENT/SOC SEC.#
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/09/01	0028	(S)	READ THE FIRST TIME - REFERRALS
01/09/01	0028	(S)	RES, HES, FIN
01/09/01	0028	(S)	FN1: ZERO(REV)
01/09/01	0028	(S)	GOVERNOR'S TRANSMITTAL LETTER
01/24/01		(S)	RES AT 3:30 PM BUTROVICH 205
01/24/01		(S)	Moved CSSB 19(RES) Out of Committee
01/24/01		(S)	MINUTE(RES)
01/25/01	0168	(S)	RES RPT CS 5DP 1NR NEW TITLE
01/25/01	0169	(S)	DP: TORGERSON, PEARCE, LINCOLN, TAYLOR,

01/25/01	0169	(S)	KELLY; NR: ELTON
01/25/01	0169	(S)	FN1: ZERO(REV)
01/29/01		(S)	HES AT 1:30 PM BUTROVICH 205
01/29/01		(S)	Heard & Held
01/29/01		(S)	MINUTE(HES)
02/05/01		(S)	HES AT 1:30 PM BUTROVICH 205
02/05/01		(S)	Moved CS(HES) Out of Committee
02/05/01		(S)	MINUTE(HES)
02/06/01	0287	(S)	HES RPT CS 3DP 2NR NEW TITLE
02/06/01	0288	(S)	DP: GREEN, LEMAN, DAVIS;
02/06/01	0288	(S)	NR: WARD, WILKEN
02/06/01	0288	(S)	FN1: ZERO(REV)
02/14/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/14/01		(S)	Heard & Held
02/14/01		(S)	MINUTE(FIN)
02/15/01	0385	(S)	FIN RPT CS(HES) 8DP
02/15/01	0385	(S)	DP: KELLY, DONLEY, AUSTERMAN, HOFFMAN,
02/15/01	0385	(S)	OLSON, WILKEN, WARD, LEMAN
02/15/01	0385	(S)	FN2: ZERO(REV)
02/15/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/15/01		(S)	Moved Out of Committee
02/15/01		(S)	MINUTE(FIN)
02/20/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
02/22/01	0470	(S)	RULES TO CALENDAR 2/22/01
02/22/01	0478	(S)	READ THE SECOND TIME
02/22/01	0478	(S)	HES CS ADOPTED UNAN CONSENT
02/22/01	0479	(S)	ADVANCED TO THIRD READING UNAN CONSENT
02/22/01	0479	(S)	READ THE THIRD TIME CSSB 19(HES)
02/22/01	0479	(S)	PASSED Y14 N4 E2
02/22/01	0479	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
02/22/01	0479	(S)	TAYLOR NOTICE OF RECONSIDERATION
02/22/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
02/22/01		(S)	MINUTE(RLS)
02/26/01	0508	(S)	RECONSIDERATION NOT TAKEN UP
02/26/01	0508	(S)	TRANSMITTED TO (H)
02/26/01	0508	(S)	VERSION: CSSB 19(HES)
02/28/01	0451	(H)	READ THE FIRST TIME -

			REFERRALS
02/28/01	0451	(H)	HES, JUD, FIN
03/22/01		(H)	HES AT 3:00 PM CAPITOL 106
03/22/01		(H)	Moved HCS SB 19(HES) Out of Committee
03/22/01		(H)	MINUTE(HES)
03/23/01	0703	(H)	HES RPT HCS(HES) NT 2DP 3NR 2AM
03/23/01	0703	(H)	TITLE CHANGE: HCR 10
03/23/01	0703	(H)	DP: WILSON, DYSON; NR: COGHILL, JOULE,
03/23/01	0703	(H)	STEVENS; AM: KOHRING, CISSNA
03/23/01	0704	(H)	FN2: ZERO(REV)
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HCR 10
SHORT TITLE:SUSPEND UNIFORM RULES FOR SB 19
SPONSOR(S): HEALTH, EDUCATION & SOCIAL SERVICES

Jrn-Date	Jrn-Page		Action
03/26/01	0727	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0727	(H)	JUD, FIN
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE LISA MURKOWSKI
Alaska State Legislature
Capitol Building, Room 408
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 157.

TERRY LUTZ, Chief Financial Institution Examiner
Central Office
Division of Banking, Securities & Corporations (DBSC)
Department of Community & Economic Development (DCED)
PO Box 110807
Juneau, Alaska 99811-0807
POSITION STATEMENT: Assisted with the presentation of HB 157 and answered questions.

ROBERT D. STORER, Executive Director
Alaska Permanent Fund Corporation (APFC)
Department of Revenue (DOR)
PO Box 25500
Juneau, Alaska 99802-5500

POSITION STATEMENT: Presented HB 126 and answered questions.

REPRESENTATIVE FRED DYSON
Alaska State Legislature
Capitol Building, Room 104
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 243.

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: Assisted with the presentation of HB 243 and answered questions.

BARBARA MIKLOS, Director
Central Office
Child Support Enforcement Division (CSED)
Department of Revenue (DOR)
550 West 7th Avenue, Suite 310
Anchorage, Alaska 99501
POSITION STATEMENT: Presented SB 19 on behalf of the administration.

JULIA LOUISE TENNISON (ph)
(no address provided)
Chugiak, Alaska 99567
POSITION STATEMENT: During discussion of SB 19, recounted difficulties that she has experienced because of the federal requirements regarding social security number disclosure.

ACTION NARRATIVE

TAPE 01-74, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:24 p.m. Representatives Rokeberg, James, Coghill, and Meyer were present at the call to order. Representatives Berkowitz and Kookesh arrived as the meeting was in progress.

HB 157 - TRUST COMPANIES & FIDUCIARIES

Number 0073

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 157, "An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date." [Before the committee was CSHB 157(L&C).]

Number 0078

REPRESENTATIVE LISA MURKOWSKI, Alaska State Legislature, sponsor, noted that the [statutes related to trust companies] have been around since 1949 and have remained practically unchanged since then. She suggested that it is time to update these statutes, which she referred to [informally] as the "Trust Company Act." Via HB 157, regulations pertaining to trust companies will be put into place; up to this point in time, the [Division of Banking, Securities & Corporations (DBSC)] has been regulating Alaska's few trust companies by referencing the statutes that pertain to banking. She remarked that she and the DBSC have been working together on this legislation since her first term of office, and now the DBSC, the banking industry, and all other persons who have looked at HB 157 are comfortable with it. In conclusion, HB 157 will simply provide a regulatory process for the trust companies already in Alaska, and companies that are being encouraged to come to Alaska.

CHAIR ROKEBERG, after noting that there are two proposed amendments, asked the sponsor whether she has objections to either.

REPRESENTATIVE MURKOWSKI said she does not.

Number 0336

TERRY LUTZ, Chief Financial Institution Examiner, Central Office, Division of Banking, Securities & Corporations (DBSC), Department of Community & Economic Development (DCED), said that he thinks HB 157 is an important bill and is badly needed.

REPRESENTATIVE COGHILL asked whether there would be "any major earthquakes within the industry as a result of defining all of these responsibilities."

MR. LUTZ said, "We really don't know; we've put out as much information as we could, and [gotten] as may comments as we

could .... One can only guess what might come out of the woodwork." He opined that HB 157 is a good product and would not be "stepping on any toes."

REPRESENTATIVE MURKOWSKI added that those who work with trust companies have been involved with the DBSC every step of the way; therefore, she opined, no one is anticipating any great shakeups.

CHAIR ROKEBERG also affirmed that those in the legal community who work on trusts have been intimately involved in developing HB 157.

REPRESENTATIVE COGHILL asked whether HB 157 puts a higher barrier on entrepreneurs who might want to enter this industry.

MR. LUTZ opined that HB 157 would make the process of entering the industry easier. Although the "numbers are higher for capital standards," he noted, the director can adjust "the capital."

Number 0611

CHAIR ROKEBERG closed the public testimony on HB 157. He then asked for an explanation of Amendment 1 [22-LS0139\O.1, Bannister, 4/25/01], which read:

> Page 3, following line 27:
> Insert a new paragraph to read:
> "(6) handles escrow transactions and is a title insurance company that has a certificate of authority issued under AS 21.09, a title insurance limited producer that is licensed as required by AS 21.66.270, or an employee of the title insurance company or title insurance producer when acting in the scope of the employee's employment; in this paragraph,
> (A) "escrow transaction" has the meaning given in AS 34.80.090;
> (B) "title insurance company" has the meaning given in AS 21.66.480;
> (C) "title insurance limited producer" has the meaning given in AS 21.66.480;"
>
> Renumber the following paragraphs accordingly.
>
> Page 5, line 5:
> Delete "(a)(1) or (8)"

Insert "(a)(1) or (9)"

REPRESENTATIVE MURKOWSKI explained that Amendment 1 would clarify how title insurance companies fit into HB 157.

CHAIR ROKEBERG noted that this new subsection (6) "just refers to title insurance companies and the escrow transactions relating to those." He added that current statute makes a distinction between escrow agents and title companies acting as escrow agents.

Number 0708

CHAIR ROKEBERG made a motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0722

CHAIR ROKEBERG referred to Conceptual Amendment 2, which read [original punctuation provided]:

Page 5, Line 2, after "settlors"
Delete ";"
Insert: "."

Page 5, Line 2, after "settlors"
Insert: "However, the limitation on the number of settlors listed above may be changed by the Dept by regulation or order in accordance with (b), of this section."

Page 5, Line2
Delete: "in"
Insert: "In"

Page 5, Line 5, after "(8)"
Insert: or (17)

CHAIR ROKEBERG noted that Conceptual Amendment 2 allows the DCED flexibility when it is appropriate in a particular situation to have more than ten settlors.

Number 0779

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 2. There being no objection, Conceptual Amendment 2 was adopted.

REPRESENTATIVE BERKOWITZ asked whether HB 157 is based on model legislation.

MR. LUTZ explained that the DBSC used a combination of the model act provided by the Conference of State Bank Supervisors (CSBS), and trust acts in place in 15-20 other states. He noted that he has not encountered any strenuous objections to HB 157. Over the years, he explained, there have been a lot of questions and amendments to the legislation, but the entities involved have indicated that they are now comfortable with the result.

Number 0907

REPRESENTATIVE MEYER moved to report CSHB 157(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 157(JUD) was reported from the House Judiciary Standing Committee.

HB 126 - REMOVAL OF MEMBERS OF THE PF BOARD

Number 0941

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 126, "An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

Number 0967

ROBERT D. STORER, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), explained that HB 126 inserts into statute the provision that public members of the board of trustees of the APFC may only be removed for cause. The board of trustees consists of six members: Two members are commissioners and the other four are public members appointed by the governor to serve for four-year staggered terms. What the APFC is asking for is language consistent with that of 19 other boards and commissions, including the State Pension Investment Board, which oversees the management of the assets of the retirement system.

MR. STORER noted that it takes some time for a board member to be educated and understand the role of managing large institutional assets. He explained that although HB 126 does not give tenure and replacement of board members is still allowed, HB 126 would ensure that there is continuity of board

members and that institutional memory would be passed on for the benefit of all board members. Investment management of large funds is becoming more and more sophisticated, he said, and the APFC, for example, can take over a year to study an issue before acting upon it.

CHAIR ROKEBERG requested that a list of the aforementioned 19 other boards be added to members' packets. He asked why the primary tenet is for corporate boards of directors to have staggered terms.

MR. STORER reiterated that it is to provide continuity of management, be it a public fund or "Corporate America", so that the institutional memory of how decisions are made is perpetuated.

REPRESENTATIVE JAMES said she is pleased to see HB 126 before the committee; she noted that it is similar to legislation she had sponsored in the past but which was vetoed by the governor. She said she agrees wholeheartedly that the APFC board of trustees needs continuity and that members should not be removed on a political whim. She opined that because it handles huge sums of money on behalf of the state, the APFC board of trustees is the most important board that Alaska has.

Number 1010

MR. STORER, in response to questions, explained that there had never been a board member replaced at the APFC until the Hickel Administration took office; either a board member resigned or his/her term expired. The Hickel Administration replaced five of the six board members, leaving the chair in place. This person remained in place until Governor Knowles was elected, at which time, again, five of the six board members were replaced, keeping the same chair. When this person's term expired, the current chair filled the vacancy. Mr. Storer noted that each time these replacements took place, the incoming board members had to be educated "from scratch." He added that in neither instance had there been a problem with the performance of the board.

REPRESENTATIVE JAMES observed that during the entire history of the APFC, there has not been one single appointment to the board that she has objected to; all of the candidates have been excellent choices. In conclusion, she said that she did not see any need for appointees to the APFC board of trustees to list

what political party they belong to; the duties of the board have nothing to do with politics.

CHAIR ROKEBERG recognized the presence of members from the APFC and board of trustee member, Clark Gruening, whom the chair thanked for his service. Chair Rokeberg closed the public hearing on HB 126.

Number 1429

REPRESENTATIVE JAMES moved to report HB 126 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 126 was reported from the House Judiciary Standing Committee.

HB 243 - VERIFY AGE REQD FOR DEFENSE IN SEX CRIMES

Number 1460

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 243, "An Act relating to sexual assault or abuse of a minor."

Number 1477

REPRESENTATIVE FRED DYSON, Alaska State Legislature, sponsor, remarked that he considers it offensive and opportunistic for someone who molests a minor to claim that [he/she believed] the minor was of age. He opined that most such defenses are patently invented. He explained that HB 243 adds language which states that if a perpetrator is going to use that claim as a defense, he/she will have had to have done something to verify the age of the minor, such as viewing a government-issued ID card, speaking with a parent who says that the child is of age, or something along those lines.

Number 1552

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), explained that the legislature has declared that having sexual relations with persons under the age of 16 is against the law and it is an even more serious offense if that person is under the age of 13. At the same time, however, it is recognized in statute - and, according to the Alaska Supreme Court, under the Alaska State Constitution as well - that

defendants can try to convince the jury that they honestly and reasonably believed that the victim was over the age of sixteen.

MR. GUANELI noted that it didn't used to be this way. In law school, one of the first things students learn about criminal law is how to allocate mental states and burdens of proof. He said that some of the kinds of cases discussed when he attended law school were statutory rape cases, with the question being did the state have to prove that the defendant knew that the [youth] was of a certain age. Generally, he said, the answer was no; "you run the risk, when you have sex with people who look young, that they turn out to be [too] young." Over the years, however, things have changed, and the Alaska Supreme Court now holds the position that the defendant may try to convince the jury that he/she honestly and reasonably believed that the victim was over 16.

MR. GUANELI pointed out that in 1994, the Alaska Court of Appeals determined that the legislature has the ability to set some parameters on such a defense, for example, by requiring that the defendant did everything reasonably possible to ascertain the age of his/her sexual partner. He recounted that a couple of common statements used as a defense regarding a mistake as to age are: "She told me that she was over 16." and, "Her friends told me that she was over 16." Mr. Guaneli mentioned a specific case in which the defendant said that the girl, who later turned out to be 14, had told him on the Internet that she was in college. With regard to using such a defense, a recent Alaska Court of Appeals decision [State v. Fremgen] said that even if the victim is under the age of 13, the defendant could still try to prove that he/she believed the victim was much older. In this case, Mr. Guaneli noted, the defendant claimed that the girl had told him that she had had many sexual partners and had told him about sexual acts she had performed, and because of these statements, he perceived her to be old enough.

Number 1755

MR. GUANELI observed that in today's society, with exposure to television (TV), movies, and music, young people are more sophisticated than in the past and are more willing to use obscene words and gestures. To allow someone to use this kind of behavior by today's youth to build the defense that he/she believed that a young person was over 16, makes a mockery of the law; HB 243 is designed to counter such claims. In addition to honestly and reasonably believing that the child was 16, HB 243

also requires that the defendant take some reasonable measures to verify it, which could include checking a driver's license or speaking with the child's parent. Mr. Guaneli recounted a case in which a man had asked to see a young girl's driver's license but when she couldn't produce one, he had sex with her anyway; such behavior indicates that although some people do think about how old someone with whom they intend to have sex is, they are still specifically preying on someone who looks young and vulnerable.

MR. GUANELI relayed that in Steve v. State, the Alaska Court of Appeals said that while a person may not be able to tell exactly how old someone is by looks alone, it is still possible to tell that someone is a young teenager; accordingly, "it is fair to expect people to exercise caution when choosing a youthful sexual partner." He opined that HB 243 says that it is not enough to listen to what the young person says or what his/her friends say, or to assume that because of the child's gestures, words, or manner of dress, that the young person is of the age of consent.

REPRESENTATIVE MEYER asked whether requesting proof and being shown an ID card that later proved to be fake would still be adequate for an affirmative defense.

MR. GUANELI opined that it would be because the defendant made a reasonable effort to ascertain the child's age. He added that the same is true with regard to the sale of alcohol and tobacco.

REPRESENTATIVE MEYER noted that it is becoming easier to manufacture fake ID cards.

Number 1963

REPRESENTATIVE DYSON explained that HB 243 would only come into play when the perpetrator is using [a mistake as to age] as a defense. "What we're trying to do is cut the ground out from underneath exploitive older people who are abusing children and trying to get off using this [defense]; they've got to use reasonable care to ascertain that they are not committing a crime." If word of this legislation spreads, and people start being more responsible, he said, that would be wonderful. On another point, he noted that 30-40 percent of the children in Alaska who are being molested are male; on a national level, that percentage may be higher.

REPRESENTATIVE JAMES mentioned that she did not believe that only the older person should be reprimanded in some cases; "it takes two to tango," she noted, and in some cases the young people also play a part.

REPRESENTATIVE BERKOWITZ said he respectfully disagrees with the assertion that HB 243 only comes into play when the defendant uses the defense [of a mistake as to age]; it comes into play every time lawful participants "get together." He suggested that what the sponsor is essentially saying, via HB 243, is that "in order to have sex, people have to ask for their papers first"; even where it's lawful and consensual, the situation is still one of compelling honest citizens to ask for each other's papers. He opined that putting people in a position of requiring individuals to [show their papers] is a step away from the kind of free society that he supports.

REPRESENTATIVE BERKOWITZ, on another point of concern, noted that HB 243 says, "reasonable measures does not include mere statements by the victim or the victim's friends". In essence, he opined, HB 243 is saying that the judgment of the legislature supplants the judgment of the jury; "we're taking away discretion from the jury," and doing so does damage to the current legal system.

REPRESENTATIVE DYSON noted that, "we're talking about 15 years old and younger." He offered that there is long tradition in the western democracies that children below the age of majority are unable to make major decisions on their own behalf. Society does not want children making major decisions on their own; the child's parents should be making the major decisions. "We do that with medical care and we do that with alcohol and tobacco," he added. If Representative Berkowitz's argument is to be consistent, he suggested, then "kids ought to be able to make the decisions about alcohol and tobacco without [age] being verified."

Number 2153

MR. GUANELI pointed out that in some cases in which the defense of a mistake as to age is being used, the victims are as young as 12; notwithstanding whether someone consented to the act, different rules should apply for a person who is 12, 13, 14, or 15. Alaska statutes already include a three-year range, he noted, so the provisions of HB 243 will not generally pertain to the "high school relationships" that often occur, as long as a person is within three years of age of the other person. He

opined that HB 243 does not affect the jury's deliberations; it only affects the kinds of excuses that offenders can bring before juries, which, according to the Alaska Court of Appeals, is perfectly within the constitutional prerogative of the legislature. It is a policy judgment, he added.

MR. GUANELI, in response to the question of why reference to victims under the age of 13 is being stricken via HB 243, reiterated that the recent court of appeals decision in State v. Fremgen said that even if the victim is under the age of 13, the defendant could still try to prove that he/she believed the victim was much older. Thus, striking the reference to victims under the age of 13 merely reflects that decision. He noted that he did not know the final outcome of that case with regard to whether the defendant has been found guilty.

REPRESENTATIVE BERKOWITZ opined that adding "**and (2) undertook reasonable measures to verify that the victim was that age or older**" doesn't seem to change the current statute much at all given that it already says, "the defendant reasonably believed the victim to be that age or older", because this "reasonable belief" is arrived at in part by looking at the young person.

CHAIR ROKEBERG noted that one change it makes is to allow an affirmative defense for sexual intercourse with a young person if the parent verifies the child's age.

REPRESENTATIVE BERKOWITZ pointed out that:

> You don't just talk with someone and then have [sexual] contact with them. These statements are going to be in the context of physical presence. "So I ask this girl if she was old enough and she said she was, and while I was looking at her, she appeared to be [old enough]"; so therefore the statement that "reasonable measures" does not include mere statements' doesn't really lend much to the debate, because it's not a mere statement. It's a statement in conjunction with the victim's appearance, or the other circumstances. So, that "reasonable measures" section here doesn't really change the status quo.

Number 2397

REPRESENTATIVE JAMES recalled that two of her foster children - one, a girl of 14, the other, a girl of 13 - had been sexually active since the ages of 11 or 12, and both looked to be at

least 16 years old. She said she maintains the position that it isn't "just the guy's fault."

CHAIR ROKEBERG, in opposition to Representative Berkowitz's suggestion that HB 243 does nothing, said he thinks that because paragraphs (1) and (2) are conjunctive due to the addition of "**; and**", it requires that an action be taken by the defendant to verify the victim's age.

REPRESENTATIVE BERKOWITZ countered that since the existing statute says, "the defendant reasonably believed the victim to be that age or older" and HB 243 adds "**; and (2) undertook reasonable measures to verify that the victim was that age or older**", in order to reasonably believe something, clearly, a person must have already undertaken reasonable measures to verify it.

CHAIR ROKEBERG remarked that having a belief does not presuppose having undertaken a step to support that belief.

REPRESENTATIVE BERKOWITZ argued, "How could you form a reasonable belief if you hadn't undertaken reasonable measures?"

CHAIR ROKEBERG noted that because of the way young girls behave and dress in this day and age, these outward manifestations could lead to the formation of such a belief. He mentioned that perhaps the legislature should review the age levels listed in all of Alaska's sex crime statutes.

TAPE 01-74, SIDE B
Number 2480

REPRESENTATIVE BERKOWITZ said that if reasonable belief is conditioned on reasonable measures, then these should include checking ID as well as a whole other universe of things that are not listed HB 243. He noted that he has already established that although HB 243 is excluding mere statements, "you don't have a mere statement in conjunction with having physical intercourse with somebody; rather, you're having a mere statement in conjunction with the other person being present."

REPRESENTATIVE KOOKESH expressed disbelief that this legislation is even being discussed because, according to the written sponsor statement, "HB 243 will force sexual predators who prey upon minors to go through a similar process" of checking ID. By the very fact that they're a sexual predator, he argued, "what makes you think they're going to follow the law and check an

ID?" With regard to a sexual predator taking reasonable measures, he pointed out that those people are already breaking one aspect of the law anyway, so it is unreasonable to expect them to follow some other part of the law. "It just doesn't make any sense to me," he stated; "we're putting a lot of faith in a person who is already described as a sexual predator, and we expect him to follow the law to ask for ID?"

CHAIR ROKEBERG said that he agrees with Representative Kookesh on that point, but he also pointed out that in current statutes regarding sexual assault and sexual abuse, there is a whole litany of different levels of crime as well as a number of "age hurdles and separations." There are multiple "statutory rape statutes" in Alaska, he noted. He then suggested that HB 243 could only be used to entrap somebody who had not taken steps to verify a younger partner's age in a consensual sexual situation. He asked whether this is the intent of HB 243.

REPRESENTATIVE DYSON said his intention is to "undercut the guys who are breaking the law who use this as a defense. Just to say, 'He (or she) said they were of age, and boy, Judge, I sure believed it,' I want to force them to go the next step."

REPRESENTATIVE JAMES asked which folks the sponsor intends this legislation to affect: Is it the 25-year-old who has sex with a 13-year-old, or is it the 18-year-old who has consensual sex with a 13- to 14-year-old? She also asked how many people "get off" by using a defense of mistaken age; how big is the problem HB 243 purports to fix?

REPRESENTATIVE DYSON said that he is interested in addressing the problem of people who engage in sexual relationships with children who are more than three years younger than themselves - those people who are significantly older than the youth they prey on. He recounted that while growing up, everybody knew not to mess around with "San Quentin Quail." He stated that in Canada, at least up until he reached the age of 30, the penalty was capital punishment. This sent an incredibly restraining message; it was not just a "hand slap." He said he hopes to send the message, via HB 243, that it is dangerous in Alaska to take sexual advantage of young children.

Number 2124

REPRESENTATIVE JAMES opined that the best way to "fix that problem" would be to remove paragraph (1); in this way, everyone

who is over 21 and has sex with somebody that's under 16 would be "done" - no excuses.

CHAIR ROKEBERG suggested that having de facto statutory rape laws are no longer sufficient; perhaps it is time to do something to get the message out to young people that statutory rape is against the law.

REPRESENTATIVE BERKOWITZ opined that they should first have some empirical evidence before coming to that conclusion.

REPRESENTATIVE JAMES mentioned that she "would like to have more than [a charge of] promiscuity for some of these girls who go out there and do this."

MR. GUANELI, on the question of how often the defense of a mistake as to age comes into play, said it probably arises in perhaps a couple of dozen cases a year. He added that he is unable to say how often it is used successfully. The danger created by the current law, he opined, is revealed in the Fremgen case in which the defendant, as part of his defense, was allowed to tell the jury how the victim had described to him all the various sexual acts that she had performed with various partners, and which he claimed lead him to believe that she was old enough; such a defense paints a picture in the minds of the jurors of someone who is promiscuous and who doesn't deserve society's protection.

MR. GUANELI noted that HB 243 is not drafted to say that only checking ID or asking the parents would be acceptable reasonable measures to verify someone's age, other steps might also be acceptable but are simply not listed specifically. He said he agreed with Chair Rokeberg that "**; and**" is conjunctive and means that a defendant has to take another step beyond "reasonably believed". It is too easy to simply say, "She was dressed that way"; such a statement tends to prejudice the jury against someone whom current law has declared is the victim.

Number 1963

MR. GUANELI, in response to the question regarding what HB 243 does, said:

> The defendant is going to have to say, "I honestly believed that she was 16 or 17," which is all the current law requires. And, in addition to that, is going to have to prove that some other measures were

> taken to verify that belief. So, ... the defendant may be able to say, "Well she looked older and I believed it, but I didn't stop at that, I did something to verify it." If the defendant can't do that, if the defendant can't show that to the judge at the beginning, then the judge will say, "You can't present this to the jury at all." ... The judge has got to make some additional threshold determinations of whether or not this defense is even available, whether there is even any evidence that the defendant can raise. If the defendant has done absolutely nothing, has just looked at the girl and based on his subjective view of what looks 16 and what doesn't, that's not going to be enough. Something more has to be done; ... I think that's the thrust of this.

REPRESENTATIVE BERKOWITZ noted that current statute doesn't say "honest belief", it says "reasonable belief", and the new language says "reasonable measures", that is, the stuff that makes up a reasonable belief. He posited that, "You can't get to 'reasonable belief' without undertaking 'reasonable measures', but 'reasonable belief' doesn't mean mere statements, and you're never going to have mere statements; it's going to be in a context." He requested that someone tell him, succinctly, whether HB 243 "changes anything that isn't already there."

MR. GUANELI responded:

> There is a [paragraph] (1) and a [paragraph] (2), and in between the (1) and the (2) there is an "**and**"; ... the courts generally interpret separately numbered provisions to mean something different. ... I believe ... they are going to interpret this as requiring something additional as a means of verification.

Number 1829

REPRESENTATIVE BERKOWITZ countered: "But when (1) equals (2) - when (1) and (2) are the same - then you're really not adding anything."

REPRESENTATIVE JAMES suggested amending paragraph (2) to say only "**undertook reasonable measures to verify that the victim was that age or older**", and then delete the remainder. She opined that in this way, paragraph (2) would not restrict what could be done to verify a person's age.

REPRESENTATIVE DYSON mentioned that people who sell alcohol and tobacco are making judgment calls based on "reasonable belief" when they decide which patrons to "card."

CHAIR ROKEBERG pointed out that a vendor is different than a sexual predator. To expand on Representative James' point, he noted that putting too many "sideboards" on what can be used as an affirmative defense runs the risk of being found unconstitutional. He suggested amending paragraphs (1) and (2) to read "**(1)** reasonably believed the victim to be that age or older**; and (2) does not include mere statements by the victim or the victim's friends that the victim is that age or older**". Upon further consideration, he opined that HB 243 is unconstitutional.

MR. GUANELI noted that the Fremgen case is the impetus for deleting the very last clause of paragraph (2) pertaining to victims under the age of 13; the age of the victim can no longer restrict the use of a mistake as to age as an affirmative defense. He added, however, that the Steve case affirms that the legislature can require that the defendant did everything reasonably possible to verify the victim's age if using such a defense. He opined that this is what HB 243 does, and that it is constitutional.

REPRESENTATIVE BERKOWITZ noted that procedurally, the Alaska Court of Appeals affirmed the trial court's decision in the Fremgen case to allow the defendant to raise the defense of a mistake as to age, regardless of the victim's age. He explained that there are two components to a criminal act: a guilty mind and a guilty act; there has to be some kind of criminal intent. In the Guest case, he noted, the court said, "We believe that the charge of statutory rape is legally unsupportable ... unless a defense of reasonable mistake of age is allowed. To refuse such a defense would be to impose criminal liability without any criminal mental element."

CHAIR ROKEBERG suggested that the sponsor "tune this thing up." He opined that although the sponsor is on the "right track," the committee has to make sure that the legislation could "pass constitutional muster."

[HB 243 was held over.]

SB 19 - CHILD SUPPORT ENFORCEMENT/SOC SEC.#

Number 1491

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 19(HES), "An Act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date." [Before the committee was HCS CSSB 19(HES).]

Number 1460

BARBARA MIKLOS, Director, Central Office, Child Support Enforcement Division (CSED), Department of Revenue (DOR), explained that in 1996, congress passed welfare reform with the intention of making people self-sufficient and not dependent on public money. One important aspect of helping families maintain self-sufficiency is child support, and to this end, congress added requirements that states pass laws to help child support programs collect child support as well as facilitate child support collection between states. The Alaska State Legislature passed legislation in 1996, 1997, and 1998 that met the requirements imposed by congress in the welfare reform legislation. In fiscal year (FY) 1999 the CSED collected and distributed $81 million in child support, in FY 2000 $85 million was collected and distributed, and in FY 2001 the CSED is expecting to collect and distribute $91 million. The CSED believes that the tools it was given have helped increase child support collections and disbursements.

MS. MIKLOS noted that legislation passed in 1997 and 1998 was to be "sunsetted" this year for the purpose of revisiting the issues involved. She opined that CSED is doing much better than it was three years ago in terms of the Alaskan public; although there are still some problems and issues to be resolved, complaints of the CSED have dramatically decreased. She explained that it is very important to pass SB 19 this year because it will help the CSED maintain some very effective programs, and also because congress will impose financial penalties on Alaska by withholding federal child support funding (approximately $15 million) and funding for the public assistance program (approximately $55 million) if such legislation is not enacted.

MS. MIKLOS noted that SB 19 started out as a couple of paragraphs simply authorizing sunsets to be repealed. She explained that one of the changes made to the bill as it made its way through the process was to remove all references to collecting social security numbers from hunting and fishing licenses. This change was made possible because the CSED applied for and received a waiver from the federal government exempting Alaska from the requirement of collecting social security numbers from those documents. Another change involved placing five-year sunsets on provisions requiring the exchange of social security numbers and provisions requiring social security numbers on various applications such as occupational licenses and driver's licenses. Another five-year sunset was placed on a financial data match program, which provides for an automated match between the CSED and various financial institutions for collections purposes.

Number 1198

MS. MIKLOS said that in starting out, SB 19 was intended to only address welfare reform and its requirements. During the process, however, a couple of provisions have been added on, both with the agreement of the CSED. One provision - Section 11 - states that violation of AS 25.27.075(a), which requires employers to report personnel information to the CSED, would not give rise to a private cause of action. Another provision - Section 12 - although unrelated to welfare reform, added language to ensure that any child support payments received during the last five business days of the prior month because of the payroll cycle would be credited to the next calendar month as intended by the obligor.

MS. MIKLOS explained that Sections 1-10, 13, 14, and 17 relate to the new sunset requirements. Section 15 repeals all sunsets; Section 16 says that all those sections that are repealed and don't come back are repealed immediately; and Section 17 says that July 1, 2003, is the new sunset date for all sections that continue to have a sunset. She noted that since the CSED already believes that the most important thing it should do with social security numbers is hold them sacred and ensure that they are not misused, it would prefer to have a longer sunset period; she added that the CSED is very vigilant and sends out monthly messages to all its employees reminding them of their responsibility to hold certain information, including social security numbers, confidential. She said that the CSED would rather have the opportunity to focus on those kinds of programs

and safeguards as opposed to spending the resources to come back before the legislature and debate the social security number issue.

MS. MIKLOS, in response to questions, explained that the effective date of 2003 in Section 17 pertains to sections of SB 19 that remove the social security number requirements from existing law. This means that those requirements will remain in effect until July 1, 2003. She noted, however, that the CSED's preference would be to leave the social security number requirements in place until 2004, although removing any sunset date from those requirements would be more preferable. As long as there is a sunset date on the social security number requirements, since the CSED is required by federal law to use the social security numbers as referenced in the sections contained in Section 17, it will also be required to come back before the legislature to debate the issue. At the request of Representative James, Ms. Miklos repeated her calculations regarding how much child support money has been collected and distributed by the CSED since 1999 and how much of a financial penalty would imposed on Alaska for noncompliance of the federal government's regulations.

REPRESENTATIVE COGHILL noted that he would prefer that [state government] not collect any social security numbers, and he mentioned that there is a national debate in congress on this issue.

MS. MIKLOS, in response to a question, said that no federal funds would be withheld by having the effective date of Section 17 remain July 1, 2003.

Number 0583

JULIA LOUISE TENNISON (ph), testified via teleconference. She explained that she has experienced great difficulties because of the federal requirement that she disclose her social security number when renewing her Alaska driver's license. She recounted the details of the legal processes that she has undertaken to straighten out her situation. She noted that although the Alaska Court of Appeals has not yet finished with her case, it has waived the filing fee and has relayed to her that it considers her case worthy of review.

MS TENNISON reminded the committee that when the legislature passed the legislation requiring her to disclose her social security number, it did so with the inclusion of a finding and

intent section that described the federal requirements as "unreasonable and constitutionally questionable". The legislation also included a nonseverability clause, which said that if any part of the legislation is found to be unconstitutional, then so is all of that legislation. She then cited numerous constitutional and statutory points to back up her argument that such federal requirements are unconstitutional.

TAPE 01-75, SIDE A
Number 0001

MS. TENNISON said she did not understand why there is a distinction being made between a person who has never been issued a social security number and someone who was issued a social security number but then had "gotten rid of" it. She also noted that she did not completely understand the ramifications of signing an affidavit to the effect that she has never had a social security number issued to her.

CHAIR ROKEBERG suggested to Ms. Tennison that she also send her testimony to Alaska's congressional delegation, since the social security number disclosure requirements are federal mandates.

MS. TENNISON pointed out that there are no federal mandates requiring anyone to disclose his/her social security number; instead, mandates were placed on states to make statutory changes enabling the collection of social security numbers in order to continue receiving federal funds. She expressed displeasure that the legislature sold everybody's freedom for $70 million per year.

REPRESENTATIVE BERKOWITZ pointed out that the committee recently passed legislation that will prevent people from being penalized if they don't have a social security number to put on a driver's license application.

REPRESENTATIVE COGHILL clarified that this pending legislation has removed the requirement that a person who does not disclose his/her social security number on a driver's license application must fill out the aforementioned affidavit. He agreed with Ms. Tennison that the legislature is responsible for the current statutes regarding social security number disclosure.

MS. TENNISON concluded by asking why she should face the possibility of being arrested simply for refusing to provide a social security number on a driver's license application. She

suggested that the legislature should get rid of any such statutory requirements because, she opined, they are unconstitutional.

Number 0346

REPRESENTATIVE COGHILL moved to report HCS CSSB 19(HES) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS CSSB 19(HES) was reported from House Judiciary Standing Committee.

HCR 10 - SUSPEND UNIFORM RULES FOR SB 19

Number 0369

CHAIR ROKEBERG announced that the last order of business would be HOUSE CONCURRENT RESOLUTION NO. 10, Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 19, relating to certain federal child support enforcement requirements, so that the phrase "relating to child support payments" may be added to the bill's title.

Number 0402

REPRESENTATIVE COGHILL moved to report HCR 10 out of committee with individual recommendations. There being no objection, HCR 10 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 453

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.