

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 2, 2005

1:11 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 155

"An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines."

- MOVED CSHB 155(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 132

"An Act relating to sentencing for certain crimes committed against the elderly; and providing for an effective date."

- MOVED CSHB 132(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 107

"An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure."

- HEARD AND HELD

HOUSE BILL NO. 131

"An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the

criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 155

SHORT TITLE: USE CRIMINAL FINES FOR YOUTH COURTS

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

02/16/05 (H) READ THE FIRST TIME - REFERRALS  
02/16/05 (H) JUD, FIN  
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 132

SHORT TITLE: CRIMES AGAINST ELDERLY

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

02/09/05 (H) READ THE FIRST TIME - REFERRALS  
02/09/05 (H) JUD, FIN  
02/23/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/23/05 (H) Heard & Held  
02/23/05 (H) MINUTE(JUD)  
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 107

SHORT TITLE: ATTY FEES: HUNTING/FISHING INTERFERENCE

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/24/05 (H) READ THE FIRST TIME - REFERRALS  
01/24/05 (H) RES, JUD  
02/02/05 (H) RES AT 1:00 PM CAPITOL 124  
02/02/05 (H) Heard & Held  
02/02/05 (H) MINUTE(RES)  
02/09/05 (H) RES AT 1:00 PM CAPITOL 124  
02/09/05 (H) Heard & Held  
02/09/05 (H) MINUTE(RES)  
02/16/05 (H) RES AT 1:00 PM CAPITOL 124  
02/16/05 (H) Moved CSHB 107(RES) Out of Committee  
02/16/05 (H) MINUTE(RES)  
02/18/05 (H) RES RPT CS NT 3DP 1DNP 4NR  
02/18/05 (H) DP: OLSON, ELKINS, RAMRAS;  
02/18/05 (H) DNP: SEATON;  
02/18/05 (H) NR: GATTO, LEDOUX, CRAWFORD, KAPSNER  
02/18/05 (H) FIN REFERRAL ADDED AFTER JUD  
03/02/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 131

SHORT TITLE: ACCESS DEVICE & I.D. DOCUMENT CRIMES

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

|          |     |                                 |
|----------|-----|---------------------------------|
| 02/09/05 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/09/05 | (H) | JUD, FIN                        |
| 02/23/05 | (H) | JUD AT 1:00 PM CAPITOL 120      |
| 02/23/05 | (H) | Scheduled But Not Heard         |
| 03/02/05 | (H) | JUD AT 1:00 PM CAPITOL 120      |

**WITNESS REGISTER**

SARA NIELSEN, Staff  
to Representative Ralph Samuels  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 155 on behalf of the sponsor,  
Representative Samuels.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 155, provided  
comments on a proposed CS.

JONATHON LACK, Member  
Board of Directors  
Anchorage Youth Court (AYC)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB  
155, encouraged its passage, and relayed the support of Sharon  
Leon and Joseph Ehrheart for HB 155.

WHITNEY CUSHING  
Homer, Alaska

POSITION STATEMENT: During discussion of HB 155, provided  
comments on behalf of himself, Katie Gavenus, and Ginny  
Espenshade.

MARK WARTES, Chair  
Board of Directors  
North Star Youth Court  
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 155 and said he looks for the legislature's support.

MELISSA McCUMBY, Program Director  
Valdez Youth Court  
Valdez, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 155.

PATTY WARE, Director  
Division of Juvenile Justice (DJJ)  
Department of Health & Social Services (DHSS)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 155, provided comments, suggested a change to the proposed CS, and responded to questions.

BEN MULLIGAN, Staff  
to Representative Bill Stoltze  
Alaska State Legislature

POSITION STATEMENT: Presented a proposed CS for HB 132 on behalf of the sponsor, Representative Stoltze; presented HB 131 on behalf of the sponsor, Representative Stoltze.

RANDY RUARO, Assistant Attorney General  
Legislation & Regulations Section  
Office of the Attorney General  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of a proposed CS for HB 132; responded to comments during discussion of HB 131.

JIM POUND, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 107 on behalf of the sponsor, Representative Ramras.

SAM TRIVETTE, AARP;  
President  
Retired Public Employees of Alaska (RPEA)  
Alaska Public Employees Association/Alaska Federation of Teachers (APEA/AFT)  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 131 on behalf of the AARP.

MICHELLE LOGAN, Detective  
Anchorage Police Department (APD)  
Municipality of Anchorage (MOA)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 131.

JAY FOLEY, Co-Executive Director  
Identity Theft Resource Center (ITRC)  
San Diego, California

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 131.

STEVE CLEARY, Executive Director  
Alaska Public Interest Research Group (AkPIRG)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 131.

LINDA WILSON, Deputy Director  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 131, provided comments, mentioned concerns, and responded to a question.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 131, responded to comments and questions.

JOHN B. SKIDMORE, Assistant District Attorney  
Third Judicial District (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 131, addressed concerns and responded to questions.

**ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [1:11:35 PM](#). Representatives McGuire, Anderson, Dahlstrom, and Gruenberg were present at the call to order. Representatives Coghill, Kott, and Gara arrived as the meeting was in progress.

HB 155 - USE CRIMINAL FINES FOR YOUTH COURTS

[1:12:16 PM](#)

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 155, "An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines."

SARA NIELSEN, Staff to Representative Ralph Samuels, Alaska State Legislature, sponsor, on behalf of Representative Samuels, characterized HB 155 as simply an accounting bill that gives the legislature the authority to appropriate to the youth courts up to 25 percent of the fines collected by the Alaska Court System (ACS). Youth courts comprise a program that helps young offenders by intervening early to set them on the "right track" and works to deter them from becoming adult offenders. The Anchorage Youth Court (AYC) is the oldest in Alaska, and in the first two quarters of the current fiscal year (FY), youth courts dealt with 471 youth offender referrals, resulting in 8,833 hours of community [work] service (CWS) being ordered. Although HB 155 allows the legislature to appropriate monies to youth courts, it does not mandate it. She noted that members' packets include a proposed committee substitute (CS) for HB 155, Version 24-LS0614\G, Bullock, 2/28/05, that is intended to address concerns expressed by the ACS.

[1:13:48 PM](#)

REPRESENTATIVE ANDERSON moved to adopt the proposed CS for HB 155, Version 24-LS0614\G, Bullock, 2/28/05, as the work draft.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He asked for a description of the differences between HB 155 and Version G.

MS. NIELSEN relayed that the differences pertain to estimations regarding the collection of fines.

REPRESENTATIVE GRUENBERG noted that Version G includes new Sections 3 and 4.

CHAIR McGUIRE mentioned that members' packets include an e-mail from the ACS that provides a more in-depth explanation of why the changes offered in the CS are necessary.

[1:14:30 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that the CS addresses the fact that the ACS's computer accounting system cannot yet, in all locations, break out fines from forfeitures. The CS will allow the ACS to give the legislature a yearly estimate of fines rather than an exact amount; he noted that such is already done regarding surcharges.

REPRESENTATIVE GRUENBERG withdrew his objection.

CHAIR McGUIRE announced that Version G was before the committee.

MR. WOOLIVER remarked that as a general matter, the ACS is very supportive of youth courts, considering them to be very worthwhile on a number of levels.

[1:16:46 PM](#)

JONATHON LACK, Member, Board of Directors, Anchorage Youth Court (AYC), after mentioning that he also serves on the [Alaska Juvenile Justice Advisory Committee (AJJAC)], said that youth courts throughout the state are remarkable in producing young people who are involved in the program and in training them to take an active role in the community. Youth courts excel at punishing first time juvenile offenders severely and far more quickly than the regular juvenile justice system (JJS). He too characterized HB 155 as an accounting bill, and offered his belief that the fiscal note from the Division of Juvenile Justice (DJJ) reflects an amount anticipated only if the legislature does appropriate funds as allowed by the bill. House Bill 155 will give youth courts some reassurance that they will be funded every year and that the current legislature understands the importance of youth courts. He encouraged passage of the bill and co-sponsorship of it.

[1:19:17 PM](#)

MR. LACK relayed that Sharon Leon - Executive Director, Anchorage Youth Court (AYC) - and Joseph Ehrheart - United Youth

Courts of Alaska (UYCA) - have indicated agreement with his comments and support the bill.

1:20:31 PM

WHITNEY CUSHING - speaking on behalf of himself, Katie Gavenus, and Ginny Espenshade - relayed that he is the past student president of the United Youth Courts of Alaska (UYCA), and opined that no other group can be found with a greater commitment to community and volunteerism. During his terms on the UYCA, he said he found that the students and directors involved in the UYCA have an unmatched frugality and resolve to carry out justice. He opined that the youth courts of Alaska have filled in an integral part of the court system, and have saved the state money through profound ways, such as by reducing the number of juveniles that go through regular juvenile courts, and by addressing recidivism rates. He offered his belief that the chances are great that a juvenile going through a youth court will never show up in any of Alaska's other court systems. Even in times of economic downturns, he said, he believes it is necessary to invest in [youth] courts. He thanked the legislature for recognizing youth courts as an integral part of Alaska's justice process, and concluded by saying, "Over thousands and thousands of hours are employed by youth courts; youth court is basically justice structured to employ volunteerism."

1:22:50 PM

MARK WARTES, Chair, Board of Directors, North Star Youth Court, said he agrees with all of the comments from Anchorage and [Homer], and relayed that the board unanimously supports HB 155. He mentioned that he has served on at least "three major youth boards here in the Fairbanks area," and the North Star Youth Court is the only organization in which youths serve their communities. It is an exciting program to be part of, he remarked, adding that he looks for the legislature's support.

1:23:50 PM

MELISSA McCUMBY, Program Director, Valdez Youth Court, relayed that the DJJ's juvenile probation officer handles Cordova, Glennallen, and Valdez and so any relief the Valdez Youth Court is able to provide is greatly appreciated. She noted that the juvenile probation officer handled 41 referrals, 36 percent of which Valdez Youth Court was able to address. She also mentioned that the Valdez Youth Court handles city ordinance

violations, such as minors in possession of alcohol or tobacco and curfew violations. To date, the Valdez Youth Court has imposed 187 hours of CWS and collected \$377 of restitution for victims.

1:25:07 PM

PATTY WARE, Director, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that the DHSS and the DJJ are very strong supporters of youth courts. She mentioned that statewide in FY 04, in terms of holding youths accountable through the use of their peers, youth courts handled 10 percent of the DJJ's volume. Characterizing youth courts as an excellent program, she said that Alaska has long been a leader [in this venue]. She suggested, however, that Section 2 of Version G, lines 11-12, be altered by deleting the reference to the United Youth Courts of Alaska, and relayed that this suggested change was engendered by a request from youth courts that the DHSS, rather than the UYCA, be responsible for the distribution of the funds authorized by the bill.

REPRESENTATIVE GRUENBERG asked whether such a change would incur any indirect costs.

1:28:09 PM

MS. WARE mentioned that although the DJJ has submitted a small fiscal note, the estimated costs are contingent upon the legislature actually appropriating monies as allowed by the bill, and would fund a half time program coordinator position. She characterized this fiscal note as small given the level of programming and technical assistance it would support. She opined that were youth courts to be asked, they would express appreciation of the DJJ's interaction with them.

REPRESENTATIVE GRUENBERG asked how many youth courts are in Alaska.

MS. WARE said that 14 youth courts are operating currently and 5 are in various stages of development.

REPRESENTATIVE GRUENBERG asked whether the aforementioned half time position is really necessary.

MS. WARE replied, "We based that figure on an additional 34-40 youth courts, based on a figure of about \$900,000, based on the amount of money that would have been taken from the [ACS's]

finances collected." In response to further questions, she indicated that the fiscal note addresses future fiscal years, but not the current fiscal year because the existing infrastructure is sufficient to manage the 14 youth courts already in existence as well as the 5 under development.

[1:30:53 PM](#)

REPRESENTATIVE GRUENBERG suggested possibly narrowing the title if additional issues aren't going to be addressed by the bill.

MS. WARE indicated she is not aware of any other issues that could be addressed by the bill.

[1:32:23 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete from page 1, lines 11-12: ", or (2) the United Youth Courts of Alaska". There being no objection, Amendment 2 was adopted.

[1:33:03 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, to narrow the title "so it just covers what's in the bill."

CHAIR MCGUIRE asked whether there were any objections to Conceptual Amendment 2 "and title resolution to follow." There being none, Conceptual Amendment 2 was adopted.

[1:34:00 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 155, Version 24-LS0614\G, Bullock, 2/28/05, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 155(JUD) was reported from the House Judiciary Standing Committee.

HB 132 - CRIMES AGAINST ELDERLY

[1:34:35 PM](#)

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 132, "An Act relating to sentencing for certain crimes committed against the elderly; and providing for an effective date."

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, sponsor, relayed on behalf of Representative Stoltze that he and the sponsor considered the committee's suggestions and created a proposed committee substitute (CS) for HB 132, Version 24-LS0421\G, Luckhaupt, 3/1/05.

RANDY RUARO, Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law (DOL), said that because of members' concerns regarding possible issues related to the U.S. Supreme Court case, Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004), Version G no longer references sentencing; now provides that the proposed changes to penalties for crimes against the elderly will be located in Title 11; contains language clarifying [what the mental intent of the perpetrator must be in order for Section 2 of the bill to apply] - he mentioned that the intent is for the defendant to get notice of the possible enhanced penalty via the charging documents, thus alleviating any "Blakely problems"; and no longer contains the language that was formerly located in subsection (b)(6) of the original version that referenced criminal mischief crimes - that language has been deleted and the remaining paragraphs have been renumbered.

[1:37:15 PM](#)

REPRESENTATIVE GARA said the changes in Version G satisfy his concerns, and relayed that after further review, he now concurs with Mr. Ruaro's interpretation of the bill.

CHAIR McGUIRE offered her understanding that she'd closed public testimony at the bill's last hearing.

REPRESENTATIVE GRUENBERG asked Mr. Ruaro to clarify which language has been deleted from Version G.

MR. RUARO said it was the language referring to property crimes such as using a key to damage the paint job on a car.

[1:39:34 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 132, Version 24-LS0421\G, Luckhaupt, 3/1/05, out of committee with individual recommendations and the accompanying fiscal notes.

CHAIR McGUIRE pointed out that Version G had to be adopted as work draft first.

REPRESENTATIVE DAHLSTROM moved to adopt the proposed CS for HB 132, Version 24-LS0421\G, Luckhaupt, 3/1/05, as the work draft. There being no objection, Version G was before the committee.

REPRESENTATIVE DAHLSTROM again moved to report the proposed CS for HB 132, Version 24-LS0421\G, Luckhaupt, 3/1/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 132(JUD) was reported from the House Judiciary Standing Committee.

HB 107 - ATTY FEES: HUNTING/FISHING INTERFERENCE

[1:40:26 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 107, "An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure." [Before the committee was CSHB 107(RES).]

JIM POUND, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, presented HB 107 on behalf of Representative Ramras. He said:

[House Bill 107] is based on language, in part written years ago, about a growing concern that the legislature had of individuals and groups obstructing hunting, trapping, and even wildlife viewing in this state. When an obstruction takes place, there often is a criminal charge filed against the individual. [He/she] can also be sued by the aggrieved person; juries have awarded as much as \$200,000 in some of these cases. But under the current system and current statute, reasonable attorney fees and costs are not awarded.

This has a chilling effect, as those costs are directly passed onto the plaintiff in the case. An individual has to consider, before they go to court, how much it's going to cost to pursue a civil case even if they prevail; HB 107 corrects this error in the law. It allows the court to authorize reasonable

and actual attorney fees and costs to the prevailing party. It sends a clear message to those who would attempt to prevent people from enjoying their outdoor activities. It also tells Alaska's hunters, trappers, and wildlife viewers that we support them in their activities.

MR. POUND, in conclusion, urged the committee's support of HB 107.

CHAIR McGUIRE reminded members that CSHB 107(RES) was before the committee.

[1:42:25 PM](#)

REPRESENTATIVE GARA raised the issue of unintended consequences. Using the example of those who fish in combat fishing areas, he indicated that he wouldn't want to see a lot of lawsuits "coming out of a weekend at the Russian River."

MR. POUND offered his understanding that the language on page 2, line 8, should address that concern because it specifies that "lawful competitive practices" are exempted from the bill.

REPRESENTATIVE GARA argued that he still has a concern because some things that occur are not necessarily part of a competitive process; instead, they occur because somebody is "just being a jerk - they're not trying to compete with you, they're just cluelessly walking over your line or something like that." He said he would like to see this issue addressed before the bill gets to the house floor. He noted that trout fisherman try to keep a low profile - they try not to splash through the water, they crouch a little bit so as not to scare the fish away - and so according to the wording of the bill, a person would be interfering with a trout fisherman if he/she were walking around splashing through the water. Does the language in the bill now say that anybody who gets hypersensitive about "stream ethics" can sue for full attorney fees?

MR. POUND opined, "The fact that we're dealing with a 'prevailing party' clause ... would eliminate the frivolous lawsuits of that nature." He mentioned that much of the wording in the bill is part of current statute and that HB 107 proposes to add the aforementioned clause [to AS 16.05.791(b)]. He offered his belief that this would not increase the number of lawsuits, and that the prevailing party [clause] was originally designed to address concerns pertaining to commercial fishing.

REPRESENTATIVE GARA, in response to a question, clarified that the language which causes him concern is located in Section 1 of the bill. That language is part of existing law, AS 16.05.790(a), and says in part:

a person may not intentionally obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish or game by

(1) placing one's self in a location in which human presence may alter the

(A) behavior of the fish or game that another person is attempting to take or view

REPRESENTATIVE GARA remarked that scaring fish away could qualify as behavior addressed in the aforementioned paragraph (1)(A); this, along with the proposed changes to AS 16.05.791(b), would make it financially rewarding for a person to sue someone for scaring fish away because the person would be able to get back all of his/her attorney fees. "It seems to me that an unintended consequence would be to make annoyances that people normally deal with now ... profitable to complain about," he added.

[1:48:43 PM](#)

MR. POUND offered instead that the plaintiff will still be losing time and various other things and thus would not find it worthwhile to pursue such a case.

CHAIR McGUIRE acknowledged Representative Gara's concern, and suggested that the dialog on this issue continue.

REPRESENTATIVE GARA remarked that regardless of whether a person would find it worthwhile to pursue a lawsuit, the bill does allow a person to get back full attorney fees if he/she brings a lawsuit because someone scared his/her fish away. "Fishermen are pretty serious about what they do, and I can tell you that people ..., when they deal with ... bad behavior at a fishing stream, it ruins their day, and they would sue somebody over it," he predicted. He asked that the sponsor consider changing the bill so that it allows for the recovery of 80 percent of attorney fees. Such a change, he opined, would still accomplish most of the bill's goals, to punish someone for bad behavior, without making it lucrative enough for someone who's had a bad day [fishing] to go out and file a lawsuit.

MR. POUND said [the sponsor] wouldn't have an objection to such a change. He pointed out, however, that the language in Sections 3 and 4 has become a more important part of the bill because the state has actually lost money by not having that language in statute; such language would have eliminated some of the lawsuits that Alaska State Troopers and wildlife protection officers have been faced with.

REPRESENTATIVE GARA asked what the motivation for the bill is.

MR. POUND said that most of the motivation stems from circumstances involving trapping [and hunting]: trap lines up in the Interior have been cut, injured animals have been released from traps, and people have come between a hunter and a moose or caribou in order to keep the hunter from shooting it.

[1:52:04 PM](#)

REPRESENTATIVE COGHILL surmised that the increase in multi-use activities on trails has created tension between different user groups. For example, some of the activities now occurring on trapping trails can spring traps, and some of the activities now occurring on ski trails can damage snow machines. He mentioned he has a concern regarding how to quantify or define physically interfering or tampering with a person's viewing experience, for example.

CHAIR McGUIRE suggested that the committee ought to ensure that the behavior to which the bill can apply is intentional behavior, and although the bill does specify "intentionally obstruct or hinder", it goes on to also specify what the behavior actually is; she noted that this language is part of existing law, and that in order for the bill to apply, the state will have to prove that someone did something intentionally.

REPRESENTATIVE COGHILL noted that some people might consider viewing trees more pleasurable than viewing the skyline, and so if one brushes a trail, that could "mess up somebody's view." He offered an example wherein a person building a house obstructed the view that another person had paid for - the courts required the person obstructing the view to remove the top story of his house. "As we get into more and more multiple uses in Alaska, we better be really clear [about] what we're talking about," he concluded.

[1:56:10 PM](#)

REPRESENTATIVE GRUENBERG mentioned that his wife is active in creating dog parks, and he has concern that the creation of such could run afoul of HB 107 as currently written even if that is not the intent.

MR. POUND pointed out that the sponsor is just using existing law as the vehicle for the proposed changes, which are intended to address two actual cases. One proposed change is designed to give the police more authority and ensure that they are not inadvertently the subject of a lawsuit.

REPRESENTATIVE GRUENBERG cautioned against unintended consequences.

[1:58:05 PM](#)

REPRESENTATIVE GARA said the bill appears to address situations in which rafters or those in motor boats travel through water in which someone is fishing for trout, for example; this is a behavior that can anger those that are fishing. Under the bill, lawsuits engendered by such cases could result in the plaintiff being awarded full attorney fees.

MR. POUND remarked that such lawsuits could be filed under existing law.

REPRESENTATIVE GARA countered that under the bill it will be for "real money."

REPRESENTATIVE GRUENBERG asked whether it is the intent to "have actual costs and [attorney] fees on appeal?" He opined that if that is not the intent, then the bill would not alter Rule 508 of the Alaska Rules of Appellate Procedure.

REPRESENTATIVE COGHILL mentioned that the bill appears to include licensed activities, except for [wildlife] viewing, and so he is wondering if "that has any snags to it." He suggested that there should be some mechanism in the bill to quantify [obstructing and hindering].

CHAIR McGUIRE remarked that existing law, as detailed in the bill, appears to raise concerns. she suggested that the sponsor and members work together to come up with a committee substitute (CS) or amendments that will address those concerns.

[2:03:09 PM](#)

REPRESENTATIVE GRUENBERG opined that the language currently in existing AS 16.05.790(d) would seem to already include law enforcement officers. If that is the case, why include the change proposed by Section 2?

MR. POUND said that although it might seem that current law already addresses situations involving law enforcement officers, the court has ruled otherwise in a recent case where a "fish and wildlife" helicopter was flying too low over commercial fishing grounds.

REPRESENTATIVE GRUENBERG said he'd like to see whether that case has been appealed. Just because a judge makes an erroneous decision, it doesn't mean that the law has to be changed, he remarked, noting that the such cases can be appealed.

MR. POUND offered his understanding that "they settled."

REPRESENTATIVE GRUENBERG suggested that the committee get a legal opinion on whether current law does cover such situations.

CHAIR MCGUIRE indicated that HB 107 would be held over.

HB 131 - ACCESS DEVICE & I.D. DOCUMENT CRIMES

[2:05:50 PM](#)

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 131, "An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

[2:06:05 PM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, sponsor, relayed on behalf of Representative Stoltze that "access [identification (ID)] theft is a growing problem in Alaska" and nationwide; between 2002 and 2004, the number of complaints regarding access ID theft rose over 152 percent. Alaska currently ranks second [in the nation] in the number of complaints issued per 100,000 people. House Bill 131 proposes to increase the penalty, from a class A misdemeanor to a class C felony, for the theft of an access device, for the fraudulent use of an access devise, and for fraudulently

obtaining an access device or identification document. The proposed changes are meant to provide deterrence and punishment for such crimes.

2:08:17 PM

SAM TRIVETTE, AARP; President, Retired Public Employees of Alaska (RPEA), Alaska Public Employees Association/Alaska Federation of Teachers (APEA/AFT), after mentioning that he has been involved in the corrections industry for over 32 years, said his experience has shown him that it is clear that law enforcement resources are stretched to the "nth degree," and that when such is the case, if a crime is felony, it will get a lot much more attention than a misdemeanor. He relayed that at a recent seminar regarding identity theft, there was testimony by police officers acknowledging "how complicated this situation is and how much the impact is upon seniors, especially, who sometimes just don't understand the systems as they change over the years." He relayed that the AARP supports HB 131 because it thinks that by increasing the penalty for "this crime," the chances are much more likely that police will get involved and prosecute the crime. He noted that police have also relayed to him that since many ID theft crimes are committed by people in other states, if the crime is not a felony, law enforcement agencies in those other states will essentially "blow you off." Offering a personal example wherein his parents had items stolen by caretakers, he opined that there is a need for sending a strong message that law enforcement will use its best and strongest efforts to prosecute such crimes as felonies.

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MICHELLE LOGAN, Detective, Anchorage Police Department (APD), Municipality of Anchorage (MOA), after noting that she has worked in the APD's fraud unit for the past three years, testified in support of HB 131. She relayed that during the past year and a half, she has seen a noticeable increase in the number of identity theft reports. Some of the reports involve crimes that are committed by perpetrators in Alaska, but often ID theft originates in other states. She mentioned that victims of ID theft have to spend a lot of time getting their credit reports "back on track." Most ID theft the APD sees involves credit card fraud, she remarked, adding that although HB 131 is not specifically an ID theft bill, if it is passed, it will greatly enhance the efforts of law enforcement to combat ID theft and will give the APD the tools with which to put together more meaningful cases for prosecution purposes.

MS. LOGAN, with regard to comments by Mr. Trivette, said that it is not that law enforcement will "blow off" misdemeanor cases; rather, there are just limited resources with which to pursue misdemeanor cases. In fact, unless a crime is a felony, it doesn't even get referred to the "detective division." She indicated that she has experienced frustration when charging a person with fraudulent use of an access device when the crime is currently only a misdemeanor. She provided examples regarding credit card theft wherein multiple charges were made but individually the amounts being charged only warranted a misdemeanor. In conclusion, she opined that adoption of HB 131 will send a message that Alaska is serious about protecting its citizens against ID theft and is serious about prosecuting those that perpetrate crimes of ID theft.

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JAY FOLEY, Co-Executive Director, Identity Theft Resource Center (ITRC), relayed that the ITRC works one on one with victims of identity theft in assisting them in clearing their names, from the simple cases of credit card "skimming" and fraud, to the most complicated criminal identity theft cases. Any and all enhancement of penalties dealing with the subject of identity theft will be a welcome relief, he remarked; all too frequently, law enforcement agencies are taxed too greatly to pursue these cases, and when they are fortunate enough to pursue them, it is almost a mockery to the victim to have the court system rule that the crime is a minor misdemeanor.

MR. FOLEY said that in the instances when a perpetrator does go to court, he/she should face tougher penalties, which should act as a deterrent to future identity thieves. Referring to a study the ITRC released in 2003 regarding the aftermath of identity theft, he said it indicates that on average, a victim will spend about 600 hours cleaning up the mess left by the thief, will incur up to \$1,400 in expenses not including legal fees, and will suffer from a wide range of emotional issues because of the betrayal and a lack of support. He said that identity theft victims in Alaska are imploring the legislature's consideration of HB 131.

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REPRESENTATIVE GARA asked whether there are laws that prevent the cardholder of a stolen credit card from being held liable for the charges incurred by the thief.

MR. FOLEY said yes. Under the Fair Credit Reporting Act and other federal laws, a cardholder is only responsible for the first \$50 of loss. A caveat, however, is that this limitation only applies if the cardholder reports the theft promptly, so if the cardholder doesn't notice the theft within a certain number of days or fails to report it within that time period, then he/she will become responsible for all charges.

REPRESENTATIVE GARA asked whether federal law preempts states from regulating "that area," from saying that cardholders are not responsible for credit card debt incurred without consent.

MR. FOLEY, although offering his belief that states would be preempted from such, recommended that the legislature speak with counsel of the Federal Trade Commission (FTC) further on that issue.

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), opined that others have summed up "the great merits" of HB 131, and relayed that the AkPIRG has been trying to get more identity theft protections instituted in the wake of the [recent] ChoicePoint Inc. security breach, which resulted in nearly 150,000 consumers having their personal information stolen. He mentioned that ChoicePoint had its security breached several years ago as well, but never notified those who became victims of identity theft because of it. He raised the issue of possible amendments, for either this bill or another, that would require mandatory notification when security breaches occur and that would allow consumers to place a security freeze on their account information. He mentioned that the AkPIRG is hopeful that such changes to current law will be made, and opined that HB 131 is a good first step in the direction [of consumer protection].

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LINDA WILSON, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said she agrees with some of the prior comments regarding the importance of and concerns over identity theft. She said that when she considers identity theft, she is thinking of what she called "true identity and credit card theft," wherein a stranger comes along and takes on another's identity. She mentioned a concern regarding familial situations wherein a family member is using or taking another family member's credit card or check, noting

that even if such were not used, just the taking of either item could result in a felony charge.

MS. WILSON then raised the issue of fake IDs. She referred to Section 4, which makes obtaining an access devise or identification document by fraudulent means a class C felony, and noted that AS 11.81.900(b)(30) defines an identification document as:

"identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license

MS. WILSON noted that under the aforementioned definition and Section 4 of the bill, minors who acquire fake IDs will be exposed to felony prosecution because they have used fraudulent means to obtain an ID.

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REPRESENTATIVE COGHILL remarked that Ms. Wilson raised a good point. He mentioned that sometimes in domestic situations, people might be fighting over a checkbook, and questioned whether a check would be considered an identification document.

MS. WILSON offered her belief that a check is an identification document.

REPRESENTATIVE COGHILL posited, then, that an unintended consequence in domestic dispute situations involving arguments over a checkbook could be that one of the parties gets charged with a felony. He suggested that the committee might want to eliminate that potential.

RANDY RUARO, Assistant Attorney General, Legislation & Regulations Section, Office of the Attorney General, Department of Law (DOL), pointed out, however, that in domestic dispute situations involving joint bank accounts, both parties have a right to have the checks. Additionally, if a domestic dispute didn't involve a joint bank account, before one of the parties can be charged with identification theft, local law enforcement would have to agree to investigate and to make the arrest. At that point, the prosecutor could exercise his/her discretion to charge the person at the felony level or at some "lesser

included" level. He acknowledged that Representative Coghill has a valid concern, but surmised that the prosecutor's discretion would provide a filter before a party in a domestic dispute situation actually gets charged with a felony; also, a jury would have to convict at the felony level, and the judge would still retain the discretion to fashion an appropriate sentence.

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REPRESENTATIVE GARA said he didn't think that the legislature should pass laws and at the same time be hoping that the prosecution won't enforce those laws. He also said he is not sure that if the law specifies that certain behavior constitutes a felony, that prosecutors have the discretion to charge the person with a misdemeanor.

MR. RUARO offered his understanding that other statutes could be used when the prosecutor doesn't want to charge someone with a felony; for example, a person could be charged with "a simple theft" or with some other type of lesser offense. Acknowledging Representative Gara's concern, he suggested that John Skidmore, Department of Law (DOL), could better address this issue.

REPRESENTATIVE GARA offered his understanding that when "a plea deal" is proposed to the judge, he/she has to determine whether the deal makes sense in light of the known facts, and so if the law specifies that a situation involving a check, for example, constitutes a felony, then it would be hard for the judge to ignore the fact that the situation did involve a check and allow a person to be charged differently.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), mentioned that when she was a prosecutor, there were domestic dispute cases wherein people wanted "the prosecution to deal, in a criminal manner, with issues that were really domestic issues," and prosecutors did have the authority not to prosecute, and so did exercise that authority in such cases. She also offered her belief that a check would not be considered an identification document under the aforementioned definition; although a check has commercial value, it is not a document that one can use to establish identification.

CHAIR McGUIRE noted that Section 3 refers to an access device, which is defined in AS 11.81.900(b)(1) as:

"access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property

CHAIR McGUIRE noted that Section 4 refers to both access devices and identification documents, and read from AS 11.81.900(B)(30) [text provided previously] which defines an identification document.

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REPRESENTATIVE GARA said he still has a concern that the prosecution won't be able to charge situations involving fraud by credit card, for example, differently than is being proposed in the bill.

MS. CARPENETI pointed out, however, that "most of these" cases are "plead out," and that the DOL has not, to date, experienced any problems negotiating pleas on property crimes of "this" nature. She said that because there are so many creative ways for the judge and prosecutor to reach a just result, she is not worried about problems arising. She, too, suggested that Mr. Skidmore could better address this issue.

REPRESENTATIVE COGHILL asked how would one go about determining whether someone has obtained an access device; he indicated that he wants to know how "obtaining" becomes a felony.

MS. CARPENETI offered a personal example wherein her purse was stolen, calling such [trespassory] taking, and also referred to an example wherein the perpetrator gets someone's personal information by going through his/her garbage.

REPRESENTATIVE COGHILL said that although he understands [how the law would apply in cases involving] "regular thievery," he is not sure he understands [how it would apply in cases involving] what he called "high-tech thievery," such as when people are talked into willingly providing personal information.

Could there be some argument that such information, if given willingly, wasn't obtained through deception?

MS. CARPENETI said it would depend on what the people seeking the information told the person they were getting the information from, and again suggested that Mr. Skidmore could better address this issue.

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CHAIR McGUIRE, using hypothetical examples, recapped members' concerns for Mr. Skidmore.

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JOHN B. SKIDMORE, Assistant District Attorney, Third Judicial District (Anchorage), Department of Law (DOL), after mentioning that his duties include supervising the "property unit" and relaying that his past experience includes prosecuting for the DOL in other areas of the state, he said that the easiest way to resolve a case at a lower level - to reduce a felony to a misdemeanor - is to charge someone for an attempted crime; for purposes of HB 131, doing so would allow the prosecution to reduce the charge to a class A misdemeanor. There are also varying levels of theft, he noted, and so it would be easy - even in cases involving amounts over \$500 - to simply charge someone with theft in the third degree or with theft in the fourth degree, instead of with theft in the second degree as proposed in the bill; he noted that every day he resolves cases involving theft of amounts over \$500 as misdemeanors. Such is the real world discretion that prosecutors have.

MR. SKIDMORE noted, with regard to the issue of prosecuting a family member for taking a check, that a check is not included in the statutory definition of an identification document, and said that he cannot imagine a situation in which one would use a check as a form of identification. Instead, a check is statutorily defined as an access device; additionally, if someone improperly uses a check, the bill won't apply because such situations are already addressed by the laws pertaining to forgery. He pointed out that children steal their parents' checks all the time, and the prosecution has the discretion, and often uses it, to determine whether it is appropriate to prosecute someone in such cases under the existing [forgery and theft] statutes. He offered his understanding that in order for proposed AS 11.46.290(b) to apply, the person obtaining the access device or identification document must do so with the

intent to defraud, and so elements other than merely taking an access device or identification document must be taken into consideration.

MR. SKIDMORE said he would echo prior testimony by the DOL representative regarding discretion, which he opined, is built into the criminal justice system in multiple layers. There must first be enough evidence for the police to want to move forward with a case and refer it to the prosecutor's office; the prosecutor then uses discretion in determining whether it is appropriate to charge a particular case and thus use up state resources in seeking a criminal sanction against someone; and the checks and balances on the police and prosecutor come from juries and judges. In the occasional instances where familial context cases are prosecuted, it is because they are just as serious as all other theft cases or because the parents really think there is a need for a child to be prosecuted; for example, if the child has a drug addiction and can't be caught with the drugs but can be charged with another felony offense, then the child could be sentenced to probation only, with mandatory drug treatment as a condition of probation.

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REPRESENTATIVE COGHILL indicated that Mr. Skidmore's comments alleviate his concerns, and said he agrees with the intent of bill. However, the bill proposes to make it a class C felony if the value obtained from the use of the access device is \$50 or more. This would seem to make it easier to become a felon, which has many repercussions. He asked whether using an access device for several purchases under \$50 would result in separate criminal charges or whether the purchases combined would result in a single criminal charge.

MR. SKIDMORE noted that existing AS 11.46.980(c) says, "In determining the degree or classification of a crime under this chapter, amounts involved in criminal acts committed under one course of conduct, whether from the same person or several persons, shall be aggregated." He opined that this means that it would have to be shown that the multiple acts were all in one course of conduct as opposed to several courses of conduct. He characterized this as a fact-driven question, adding, "We do often aggregate those types of cases, but you have to have the appropriate facts that [show] it was all in one course of conduct."

REPRESENTATIVE COGHILL opined that \$50 seems too low, and asked why they should lower the threshold for this particular felony crime to that amount.

MR. SKIDMORE opined that identity theft is much more insidious than "a straight" theft. For example, with a theft occurs wherein a person steals an item or items from a store, the offense ends when the perpetrator is caught - there are no more repercussions to the victim from that theft. In contrast, when an identity theft occurs, the consequences for the victim are ongoing. He relayed that he'd recently heard someone on the radio say that if one becomes the victim of identity theft, he/she can be told: "Congratulations, you've just gotten a new part time job; you will now spend countless hours trying to fix your credit history and protect yourself," For some folks, dealing with creditors and other people results in a tremendous amount of trauma. He relayed an example from three years ago wherein a woman living in Los Vegas had her identity stolen by people who came to Alaska and started buying things; the woman lost promotion opportunities and ultimately her job because she missed days at work trying to deal with her creditors, and had to undergo psychological counseling. And although such repercussions may not occur when someone is only defrauded of \$50-\$75, the insidious nature of identity theft warrants lowering the threshold to \$50, he opined.

REPRESENTATIVE COGHILL said that a \$50 threshold for a felony is "pretty low for me."

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 131.

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REPRESENTATIVE DAHLSTROM moved to report HB 131 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for the purpose of discussion. He said that he too is struggling with the proposed \$50 threshold, and noted that although the hope is that the increased penalty will act as a deterrent, those that commit crimes don't read statutes.

CHAIR McGUIRE asked whether he had a different threshold in mind.

REPRESENTATIVE GARA indicated that he did not, at this time.

CHAIR McGUIRE mentioned that the bill has a House Finance Committee referral.

REPRESENTATIVE GARA asked whether there are any other felonies with a \$50 threshold.

CHAIR McGUIRE said she did not think that there were, and surmised that Mr. Skidmore's testimony indicated that one is being proposed in the bill because of the insidious nature of identity theft.

REPRESENTATIVE COGHILL mentioned that he is working on a bill that will be addressing all felonies.

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REPRESENTATIVE KOTT said he shares some of the same concerns that Representatives Gara and Coghill have expressed. Referring to the argument that the crime the bill addresses is insidious, he noted that the same argument could be made even if the threshold were being lowered to \$10, but people would still face the same consequences associated with a felony that has a \$50 threshold. He indicated that he would go along with an amendment to raise the proposed threshold above \$50.

CHAIR McGUIRE noted that the current threshold for [the felony level crime of fraudulent use of access device] is \$500.

REPRESENTATIVE COGHILL said that the "aggregated amount" was what he was looking for. He offered his understanding that most fraudulent uses of access devices probably involve amounts much more significant than \$50. He mentioned that he himself has had to deal with this issue and, thus, he is sympathetic. However, he relayed, he is also very cautious about creating a situation whereby somebody becomes a felon over a \$75 charge, since that will result in repercussions for that person. He mentioned that he is getting some comfort from the fact that fraudulent use must be proven before a person can be convicted of a felony, but that's the only comfort he is getting.

CHAIR McGUIRE relayed to Mr. Mulligan that members appear to be struggling with the proposed threshold amount.

MR. MULLIGAN noted that even though a person stealing a credit card might only charge \$50 worth of merchandise or services,

there is the potential for that person to charge the maximum the credit card will allow. With regard to the issue of altering the proposed threshold, he surmised that the sponsor would like some time to research the issue to determine an appropriate amount.

REPRESENTATIVE DAHLSTROM withdrew her motion to move bill.

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REPRESENTATIVE DAHLSTROM said she shares the concerns raised regarding the proposed threshold. She noted, however, that there are consequences to having one's access devices and identity documents stolen, some of which could include not being able to close on a house or to lose a job. She mentioned that she has had someone else's credit information show up on her credit report, and that it took her two years to clear up the situation.

CHAIR McGUIRE relayed her personal experience regarding someone's fraudulent use of her debit card. She indicated that although there is a policy call to make on this issue, there are concerns with the bill that still need to be addressed. She suggested that perhaps the sponsor could research what other states do, and perhaps consider proposing a different threshold amount.

REPRESENTATIVE GARA surmised that the insidiousness of stealing someone's access device stems from the potential to keep using it, so perhaps members' concerns regarding the \$50 threshold could be addressed via aggregating the amounts of repeat usage.

REPRESENTATIVE GRUENBERG relayed his personal experiences regarding the fraudulent use of his credit card by an unknown person and the attempted misuse of his credit card by a family member. He said he is wondering what else is being done to protect the consumer and address identity theft more thoroughly. He asked where the crime is committed if a citizen of Alaska has his/her credit card used fraudulently in California; he indicated his assumption that such a crime would have been considered as having been committed in California.

[Following was a brief discussion about which other bills, currently and in the past, have pertained to credit card companies and to fraud.]

[HB 131 was held over.]

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:08 p.m.