

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 16, 2005

1:26 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

OVERVIEW(S): DEPARTMENT OF CORRECTIONS - CONTAINMENT MODEL

- HEARD

HOUSE BILL NO. 103

"An Act requiring an actionable claim against the state to be tried without a jury."

- MOVED HB 103 OUT OF COMMITTEE

HOUSE BILL NO. 187

"An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 188

"An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 103

SHORT TITLE: CLAIMS AGAINST THE STATE

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	STA, JUD, FIN
03/03/05	(H)	STA AT 8:00 AM CAPITOL 106
03/03/05	(H)	Moved Out of Committee
03/03/05	(H)	MINUTE(STA)
03/04/05	(H)	STA RPT 1DNP 5NR
03/04/05	(H)	DNP: GRUENBERG;
03/04/05	(H)	NR: GARDNER, GATTO, RAMRAS, ELKINS, SEATON
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/09/05	(H)	Heard & Held
03/09/05	(H)	MINUTE(JUD)
03/16/05	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

Kim English, MA, Research Director
Division of Criminal Justice
Colorado Department of Public Safety
Denver, Colorado

POSITION STATEMENT: Presented the [sex offender] containment model on behalf of Department of Corrections (DOC).

REPRESENTATIVE BERTA GARDNER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Asked questions during the containment model presentation.

PORTIA PARKER, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during the containment model presentation.

Jeffrey Jenks, Owner and President
Amich & Jenks, Inc.
Wheat Ridge, Colorado

POSITION STATEMENT: Assisted with the presentation of the [sex offender] containment model on behalf of Department of Corrections (DOC).

Peggy Heil, MSW, LCSW, Consultant
Responding to Sexual Violence Proactively (RSVP)
Canon City, Colorado

POSITION STATEMENT: Assisted with the presentation of the [sex offender] containment model on behalf of Department of Corrections (DOC).

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide
Section Supervisor
Torts and Worker's Compensation Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 103.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:26:30 PM](#). Representatives McGuire, Kott, Gruenberg, and Gara were present at the call to order. Representatives Anderson, Coghill, and Dahlstrom arrived as the meeting was in progress. Representative Berta Gardner was also in attendance.

OVERVIEW(S)

DEPARTMENT OF CORRECTIONS - CONTAINMENT MODEL

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CHAIR MCGUIRE announced that the first order of business would be the overview by Department of Corrections regarding the [sex offender] containment model.

[1:27:39 PM](#)

KIM ENGLISH, MA, Research Director, Division of Criminal Justice, Colorado Department of Public Safety, presented the [sex offender] containment model on behalf of Alaska Department of Corrections (DOC). She described a study conducted by the U.S. Department of Justice, Bureau of Justice Statistics which determined that almost half of the inmates in state prisons had

actually been under correctional supervision, on probation or parole, at the time of the offence for which they are currently doing time. She said:

In fact, 24 percent of the prisoners who were serving time for rape were under correctional supervision, probation, or parole, when they were arrested for the rape.... And 19 percent of prisoners serving time for sexual assault had been under correctional supervision at the time of the [assault]. ... We want to talk about the need for specialized sex offender management practices; why this is not a typical criminal justice population. ... One of the challenges that we face with sex offenders is that rape victims don't report this crime. We actually don't have very much information about these crimes. The containment approach is about obtaining information and then trying to translate what we learn into treatment approaches that will be useful for the offender and contain the offender in the community.

MS. ENGLISH pointed out that Alaska ranks first in the United States in rapes per capita, and the reported rape rate is twice the national average. She noted that no one knows if there is a large difference between the actual incidence of sexual assault and those reported to authorities. In 2003, the Alaska Department of Public Safety calculated that there is one forcible rape [in Alaska] every 15 hours, and rapes have increased between 2000 and 2003 by 21.7 percent. She said:

More than half of rape victims have been raped more than once. That's either because [during] the ... single episode during which they were raped they had multiple assaults perpetrated on them, or you have a single victim who is raped over a duration of many years.

REPRESENTATIVE GRUENBERG asked Ms. English if she could break that data out to determine how many of those victims had been victims of totally separate rapes.

MS. ENGLISH stated that she did not have that information. She stated that there is evidence that once a person is victimized, he/she is more likely to be victimized again, and that the trauma from subsequent assaults may be greater than the first time.

CHAIR MCGUIRE told Ms. English that any follow up data that she could get for the committee would be helpful.

MS. ENGLISH pointed out that victims of sexual assault are six times more likely to develop a Post Traumatic Stress Disorder (PTSD), three times more likely to develop major depression, and 13 times more likely to attempt suicide. She continued:

At an estimated cost of \$86,000 per victim, this would be their lifetime cost, times \$521 victims a year, the State of Alaska is probably losing \$45 million a year per year for the lifetime costs of those who've been assaulted that year. But only 16 percent of rape victims report the crime, and only half of those tend to report it within the first five years. So when they do get reported, ... it usually doesn't result in arrest. ... Perpetrators choose victims whom they think will not report the crime.

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MS. ENGLISH explained that 60-65 percent of the victims of sexual assault are under the age of 18, and 30 percent are under 11. She stated, "Studies of victims of sexual assault have been pretty clear that those who are younger and who know the perpetrator tend to delay disclosure." In one study, children ages 3-12 explained that they delayed disclosure because they feared being disbelieved, punished, or unprotected.

MS. ENGLISH continued:

If you ask adult victims why they did not report the crime, 71 percent said they were concerned about their family knowing...., 68 percent were concerned about others knowing, generally, 69 percent were concerned about being blamed by others.... As a society we still [blame the victim], and the result is that very few victims report the crime. ... So a goal of containment, given the fact that most victims never report the crime, is to obtain information about the offender. In a nutshell, the containment approach is grounded in ... this multidisciplinary triangle, where you have the polygraph examiner, the treatment provider, and the criminal justice system - which in this case is the Department of Corrections - working together to manage individual offenders. On top of that, what these ... additional policies are on the

side are ways of shoring up the original containment so that you've got kind of a web of different things going on to keep this person very structured ... in their lifestyle in the community, and highly restricted. So what needs to happen, and what the Department of Corrections is doing, is developing policies around revocation procedures, employment restrictions, [and] leisure time monitoring.

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MS. ENGLISH continued:

The jurisdiction of the offender and the responsibility for the offender falls on the criminal justice system. ... The criminal justice system makes sure that treatment and polygraph [are] integrated. They're in charge of the case, basically, ... and they're making sure that everything is happening.

CHAIR MCGUIRE asked if offenders could be in this program while still in a correctional facility.

MS. ENGLISH responded affirmatively.

CHAIR MCGUIRE asked, if the offender was on parole or probation, if he/she would have to come in for a scheduled polygraph.

MS. ENGLISH responded that this was correct. She explained that this program could be used in the prisons as well as in the community for those on probation. She emphasized the importance of parole, "You don't want people going out without any kind of supervision afterwards." In Colorado, she said, the parole board won't release a convicted sex offender unless he/she agrees to treatment, polygraph, and supervision.

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MS. ENGLISH continued:

Hopefully during the course of treatment you're finding out exactly what their high-risk behavior is. ... Once they're out in the community, ... one of the things you're asking them is, "What have you been doing in the last six months?" ... and if they commit a new crime, and they admit to you that they've committed a new crime during that period, then they're

going to get prosecuted. If it's before that and we find out something that's very dangerous, ... then you crank down on them even more and you might increase home visits, you might put them on GPS monitoring, you might have urinalysis testing much more frequently. So there are many ways of trying to get in and structure their lives and make them uncomfortable with making decisions that will put themselves and others at risk.

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MS. ENGLISH described a Canadian study focusing on 400 sex offenders who had been released from prison and were on parole. She pointed out that the 200 who failed parole supervision saw themselves as no risk, had diverse victim types, tended to fail early in the process, had access to victims, had attitudes of sexual entitlement, and had poor social influences. She commented that one can learn a lot from asking offenders about their deviant sexual behavior in the past.

MS. ENGLISH recalled past studies that she and her colleagues had conducted in which they compared what was known about particular offenders before sentencing to what was known after treatment. During treatment offenders were required to write out their sex history, and then they would have polygraph tests. She explained that the average number of victims of the offenders in the study was two, and the average number of [offenses] in their sex history was 83, but after the first polygraph test that number was doubled to 165, and after the second polygraph test that number rose to 184. She noted that this demonstrates how much more information [corrections officers] are getting from the offenders through this program.

REPRESENTATIVE BERTA GARDNER, Alaska State Legislature, asked Ms. English to explain the difference between the number of victims and the number of offenses.

MS. ENGLISH replied that sometimes an offender will assault the same victim multiple times.

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MS. ENGLISH referred to a study of 223 sex offenders which showed that at the time of the offenders' court hearings, it was known that 7 percent of them had assaulted both adults and children. After the polygraph test it was found that the number

was actually 70 percent. Offenders often access their victims through patterned activities, and she opined that these patterns can be discovered via a treatment that includes polygraph testing. She presented several additional examples of information gathered by using the polygraph testing on offenders.

CHAIR McGUIRE asked if the containment model had been used on juvenile offenders.

MS. ENGLISH replied affirmatively. She commented that juveniles have a lot to hide but still have the potential to be treated and repatterned.

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PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), in response to Chair McGuire, stated that the DOC has invited the juvenile justice system to participate in the containment model as well.

MS. ENGLISH noted that the word "paraphiliac" is applied to a person having deviant sexual behaviors. She continued:

As a summary, the reason that we're trying to put so much responsibility on the offender for giving us information is because they're responsible and we're trying to hold them accountable. And we're trying to take the responsibility off of the victim to educate us. We need the offender to educate us and tell us everything he knows rather than what he wants us to know.

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JEFFREY JENKS, Owner and President, Amich & Jenks, Inc., assisting with the presentation of the [sex offender] containment model on behalf of Department of Corrections (DOC), relayed that his company is a polygraph investigative firm which has conducted over 34,000 exams, most of which have been with sex offenders. Prior to 1989, he was testing accused sex offenders only prior to conviction and was focusing only on the investigation [of a particular crime]. He commented, "At that time, I was under the mistaken notion that a rapist was just a rapist.... I had no clue what I was going to be getting in when we got into the post-conviction testing in 1989. And since that

time I've learned that the crossover behavior of these individuals is just unbelievable."

MR. JENKS noted that sex offenders are good polygraph subjects because their acts are so secretive and their fear of being caught is so great. However, offenders are also experienced at blaming others for their behavior and therefore, he said, the polygraph examiner has to be very careful in question formulation. He stated that polygraph use allows agencies to hold perpetrators accountable. If an offender is afraid of detection, he continued, when "they come in for a polygraph, their fight or flight response takes over, which affects their autonomic nervous system, what we're measuring: blood pressure, pulse rate, blood volume, galvanic skin response, and their respiratory patterns."

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MR. JENKS pointed out that a polygraph is very portable. He gave a brief explanation of how modern polygraphs work and how they are being used for the purpose of gathering information. In 2003 the National Academy of Sciences set the median accuracy of polygraph tests at 89 percent, with a range for 70-99 percent. He stated that in Colorado polygraph examiners limit the number of pertinent questions to three or four to maintain accuracy and reliability.

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MR. JENKS reviewed the process of the polygraph pre-test, in-test, and post test. In the pre-test, the examiner explains the purpose of the exam, tells the offender the questions that will be asked, and defines terminology. During the in-test phase, the polygraph charts are run and there are two to four very specific, relevant questions with two or three comparison questions. The post test interview is very important, he said, because "a vast majority of individuals that we test that fail their test make admissions to us after the test that verify those results." He noted, "[The offenders] very rarely admit everything; that's the role then [for the] therapist and the [parole officer] to work with them the next several months, getting more admissions from them and then they come back in for another clarification polygraph."

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MR. JENKS pointed out that there are three main types of tests. The first is a sex history test to obtain information about past victims, past methods used, the age of onset, frequency, and the extent of crossover behavior. The second test is regarding the specific crime, which is often run on the offender's first day in treatment "because the quicker you get them out of denial, the more they're going to get out of treatment and the quicker they're going to get use out of treatment."

REPRESENTATIVE GARA asked, "If they don't come out of denial, then ... they're not entitled to the probation time? They go back to jail?"

MR. JENKS replied: "There is a time bar set that they have to come out of denial, and usually that time bar, I believe, is six months in the State of Colorado. ... Almost all of them do."

REPRESENTATIVE GARA asked if the offenders are on probation during those six months.

MR. JENKS replied that the offenders are on probation and parole, and are in the community for those six months. He opined that through [group therapy], often another offender can bring a person out of denial better than a polygraph would.

MR. JENKS explained that the third test is the maintenance exam, in which the [therapist] checks out assault patterns and behaviors regarding supervision conditions in order to look for precursor behaviors.

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MR. JENKS reviewed the three types of tests and presented additional examples.

CHAIR McGUIRE asked if other types of evidence are used during the polygraph test.

MR. JENKS responded that the polygraph test is more accurate if the examiner is able to collect as much information as possible during the pre-test interview. He continued reviewing the test types and pointed out that the monitoring polygraph is conducted every three to six months. In Colorado, the state pays for the polygraphs at first, but if lies are detected the offender must pay for the tests. He commented that this "has brought the deception rate way down." He continued:

The monitoring test provides information on whether the offender is changing their lifestyle and applying what they're learning in treatment; it provides information on whether they're continuing to engage in high-risk behaviors. ... The specific-issue tests are used to clarify various risk concerns. It should be scheduled when concerns persist, even after increasing surveillance. ...

MR. JENKS referred to a 1986 study in which the deterrent effect of polygraph testing on offenders on probation was shown to be considerable.

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MR. JENKS opined that the State of Alaska is doing an excellent job on recruitment and training of polygraph examiners. He said, "These tests are not easy to run; you would not want to run one of these just coming out of polygraph school." He characterized it as an art.

REPRESENTATIVE GARA asked if there are polygraph schools that are part of accredited universities.

MR. JENKS replied that they are usually separate from universities. He speculated that there are probably 15-20 such schools in the United States. After completing the schooling, there are another 6-8 months of training, he said.

CHAIR MCGUIRE asked if the polygraph examiner is usually employed by the state.

MR. JENKS responded that the examiner is generally a private contractor.

REPRESENTATIVE COGHILL expressed concern regarding the use of the term "art." He asked, "I like the idea of asking hard questions that you just can't duck, but is there any room for that subjective, leading [questioning]?"

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MR. JENKS answered that examiners can use leading questions. He noted that it is important to have all of the tests videotaped to allow for strict scrutiny.

REPRESENTATIVE COGHILL commented, "It seems to me like somebody that is in several interviews in a month ... would be affected by the series of events that a polygraph interview would affect." He asked if there is a professional code to determine when [the offender] needs a break from polygraph tests.

MR. JENKS replied that there is such a procedure. He noted that when an offender is being tested frequently, it can create inconclusive tests. In Colorado the number of tests that are administered are regulated very closely. The first year the offenders have three tests: sex history test, specific issue test, and the maintenance or monitoring test. He noted that if the offender doesn't need a specific issue test, he/she will have two maintenance tests within the year.

REPRESENTATIVE COGHILL asked if the offender has the same interviewer throughout the treatment.

MR. JENKS replied, "No, we switch them off."

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REPRESENTATIVE GARA asked what kind of background education the polygraph examiners need to have.

MR. JENKS answered that the examiners come from all different backgrounds. In Colorado, he said, the examiners are not required to have any particular educational background before starting polygraph school, but "a psychology background of some sort ... can be very helpful."

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MR. JENKS listed implementation considerations: develop procedures, educate therapists, develop sex history questionnaires, set examiner qualifications and requirements, videotape the exams, develop a system to track and use the results, educate stakeholders, and develop consequences. In summary, he stated that the value of polygraph testing in risk assessment includes: increased information on past offenses, evaluation of treatment effectiveness/compliance, and evaluation of the risk of child contact.

REPRESENTATIVE KOTT asked if the offender is present while the polygraph is assessed.

MR. JENKS replied, "If the interrogation is going nowhere and they're not giving us any new information, sometimes ... I'll just show them the chart and ... the computerized scoring. ... That's sometimes all they need to see to push them over to start giving us information." But usually the offender is not present when the assessment is completed, he noted. He detailed the issue of countermeasures and the consequences.

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PEGGY HEIL, MSW, LCSW, Consultant, Responding to Sexual Violence Proactively (RSVP), assisting with the presentation of the [sex offender] containment model on behalf of Department of Corrections (DOC), spoke about the role of treatment in the containment approach. She explained that what has been found is that neither treatment nor polygraph alone is as effective as both used together; treatment and supervision can be more effective when used in conjunction with a polygraph test. She remarked that when using the polygraph test, it is important for the treatment team to figure out what they will do with the information about previous crimes that is obtained through the process. Some jurisdictions have opted to grant immunity on past crimes.

REPRESENTATIVE GARDNER asked if there is a problem with defense attorneys objecting to people participating in a polygraph test.

MS. HEIL replied that that is not a problem because the testing is post conviction. She said, "One of the advantages of the immunity situation is that you can collect the names of the victims, and if you have children that have been victimized that were unknown, you can then offer them treatment." She remarked that she is not really working to cure sex offenders, but is giving them tools to be able to manage their problem. She noted that [researchers] obtain a lot of information from offenders, which is shared with supervising officers so that the officers can understand the patterns and can intervene before the offender reoffends. If the offender does reoffend, the information obtained through treatment and polygraph testing can help catch the offender sooner. She then presented information on a study that showed the importance of combining treatment with polygraph testing.

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REPRESENTATIVE GARA asked what is being done with the information about past crimes if it is not used to prosecute the offender.

MS. HEIL replied that [in Colorado], because of the self-incrimination aspect, offenders are not asked for the names of the victims. However, if the name is determinable, then it is reported to social services. When the name of the victim is not known, the details surrounding the offense are used to set parameters for prevention goals and for parole conditions.

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REPRESENTATIVE GARA asked if parole is withdrawn if a person is determined to be a repeat sex offender.

MS. HEIL replied, "No, that has not been one of the responses." She detailed some of the things that occur in Colorado in such situations.

REPRESENTATIVE GARA asked if it is true that repeat offenders are less likely to succeed at treatment than single-time offenders.

MS. HEIL remarked that in all of her years working with sex offenders, there were only two with a single-time offense. She commented, "The unfortunately thing is [that] people who commit sex offenses can get away with this for years, so by the time we're dealing with them in the criminal justice system, it's a very entrenched problem."

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MS. HEIL continued:

Sex offender treatment is very different than traditional treatment. It's treatment with accountability.... In sex offender treatment, you're very focused on [relaying the message], "It's not okay to hurt people; you need to be changing your lifestyle." There are consequences for the choices that you make and you want to build those consequences in, so if they choose not to participate in treatment, choose not to follow their conditions of parole, there should be consequences that immediately kick in at that point. You want to focus on the present and you want to see that they're changing their behavior and

you check to verify it. You don't just accept their word for it. And that is very different than what we traditionally do in treatment. The client is the community as much as it is sex offenders; we're working towards public safety.

MS. HEIL turned attention to a study regarding the impacts of different types of treatments on recidivism rates. She noted that there is an increase in recidivism rates for those treated with psychotherapy, "so the wrong kind of treatment can be very damaging." She pointed out the cognitive-behavioral treatment that she uses for sex offenders reduces recidivism by about half.

MS. HEIL, in response to Chair McGuire, commented that psychotherapy may give the offender insight but doesn't necessarily change the behaviors.

REPRESENTATIVE GARDNER opined that the recidivism rates in presentation are low, and asked whether they were accurate.

MS. HEIL offered her belief that the presented rates are very low and inaccurate. She referred to charts and explained that of offenders who were released without treatment, 52 percent were successful on parole. Of offenders who were released after two phases of treatment, 84 percent were successful; she characterized this as a cost savings. She turned to another chart which shows that offenders who had parole supervision as they were transitioning out of parole had the lowest violent arrest rate within one year, while the offenders who had no parole or treatment had the highest rate.

MS. HEIL described another study regarding where sex offenders live after release from prison. The conclusion was that the offenders who had the highest number of violations were those living with family members. She remarked that family members are caring, but many times they are also enabling. The offenders with the best outcome were those who were living in arrangements with other sex offenders where they were frequently monitored and in treatment. She emphasized the importance of preparing an offender's support system.

CHAIR MCGUIRE asked about Colorado's sex offender registry.

MS. HEIL replied that there have not been any problems with the Colorado registry. She then turned to the cost benefits of the treatment program. She stated that each taxpayer dollar spent

on a cognitive-behavioral treatment program with adult sex offenders returns between \$1.19 and \$5.27 in victim and taxpayer benefits.

REPRESENTATIVE COGHILL asked about other transition measures.

MS. HEIL stated that some programs focus on treating the individuals in the location that they're going to be returning to in order to set up a concrete plan for how they should manage their risk. She noted that this takes effort and resources, but if the individual is not under supervision and not under treatment, it will be very easy to drift back into the old behavior.

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MS. HEIL relayed that in Colorado, family meetings were offered around the state so that as many people as possible can attend. She mentioned that another option would be to have the offender make a video taped message for his/her family.

CHAIR McGUIRE noted that lawmakers have discussed that perhaps offenders should just be incarcerated for life because the recidivism rates are so high. She asked if the studies will be helpful to lawmakers when they consider the issues of sentencing and deterrence methods.

MS. HEIL pointed out that it is very expensive to keep a person locked up for life, but there are offenders that will never be safe in the community. Colorado has instituted lifetime supervision, and the offender can earn their way off of lifetime supervision with 10-20 years of compliance with probation. She opined that this is a more cost-effective program because offenders can be contained and continually tested.

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REPRESENTATIVE COGHILL likened the problem to alcoholism issues.

CHAIR McGUIRE noted that Alaska ranks high in the categories of rape, sexual assault, and alcoholism. She stated that evidence shows that perpetrators seek to reoffend.

REPRESENTATIVE GARA asked if offenders are less likely to reoffend if they are under treatment and supervision.

MS. ENGLISH replied affirmatively.

REPRESENTATIVE GARA commented that it would be worth it to consider the lifetime parole idea, but it might be difficult in certain parts of the Alaska.

CHAIR McGUIRE agreed that the lifetime parole idea was a possibility.

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REPRESENTATIVE COGHILL opined that polygraph accountability is a "better leash than many things."

REPRESENTATIVE KOTT asked [what the State of Colorado would do] if, during the course of an evaluation when an immunity arrangement has been worked out, it is discovered that the individual committed an offense in another state.

MS. HEIL replied that there are no immunity arrangements in Colorado, and she stated that the location of the crime is what determines whether the crime will be prosecuted.

REPRESENTATIVE GRUENBERG asked if there are other states with similar programs.

MS. ENGLISH replied that locations in Illinois, Oregon, Texas, Utah, Arizona, California, Vermont, New York, and Massachusetts use similar programs.

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MR. JENKS showed the committee a computer printout of a test taken recently by a sex offender in order to demonstrate how the polygraph works.

REPRESENTATIVE GRUENBERG asked whether there has been any change in the trend which holds that results from polygraphs are inadmissible in court.

MR. JENKS answered that there has not been any change, indicating that he prefers it that way. He listed what he views would be the pitfalls of having the results of polygraphs be admissible in court.

REPRESENTATIVE GRUENBERG asked if there are situations whereby stipulation polygraph tests are admissible.

MR. JENKS replied affirmatively.

HB 103 - CLAIMS AGAINST THE STATE

3:31:53 PM

CHAIR MCGUIRE announced that the final order of business would be HOUSE BILL NO. 103, "An Act requiring an actionable claim against the state to be tried without a jury."

CHAIR MCGUIRE noted that HB 103 also has a House Finance Committee referral.

REPRESENTATIVE ANDERSON moved to report HB 103 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for the purpose of discussion. He asked Ms. Voigtlander, Department of Law, for a rough estimate, encompassing the last few of years, of the state's payments for the type of tort cases that are being addressed by HB 103.

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide Section Supervisor, Torts and Worker's Compensation Section, Civil Division (Anchorage), Department of Law (DOL), said she didn't have that such information available, but indicated that she would research what those amounts were for the last couple of years. She added, "This bill would also implicate some other types of cases, and so I will try to make a cut as to cases that fall within [AS] 09.50.250, what that universe is in terms of state payouts for the last two to three years."

REPRESENTATIVE GARA opined that the bill cuts both ways with regard to cases involving the state in that sometimes the state will do better in front of a jury and sometimes the state will do better in front of a judge. He asked Ms. Voigtlander whether she thinks that the state might actually do better in front of jury when the case involves a claim brought by a prisoner.

MS. VOIGTLANDER said she is not comfortable venturing an opinion on that issue, though she is prepared to answer factual cases about the bill.

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REPRESENTATIVE GRUENBERG offered his understanding that AS 09.50.250 generally pertains to "non-contractual claims."

MS. VOIGTLANDER concurred with his understanding, but noted that some other types of cases would be affected by AS 09.50.250, such as certain employment actions filed against the state - like wrongful discharge actions - and some counterclaims pertaining to certain types of condemnation actions.

REPRESENTATIVE GRUENBERG asked whether, if the bill passes, one would be able to bring a contractual claim against the state and have it be heard by a jury, and whether such can be done now.

MS. VOIGTLANDER, characterizing her area of practice as isolated, declined to venture a response.

REPRESENTATIVE GRUENBERG asked Ms. Voigtlander to provide information regarding "who has requested jury trials - have they been the state or the other party."

MS. VOIGTLANDER explained that such information would not be available short of pulling up everyone's case, file by file, because such information is not collected into a database. However, based on her experience, just in seeing the paperwork flow in, she said that it is the exception for a plaintiff to not ask for a jury.

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REPRESENTATIVE KOTT asked whether there is any factual or statistical information which shows that a trial-by-jury decision is rendered faster than a decision made by a judge.

MS. VOIGTLANDER relayed that she is struggling with an answer to that question because the work in her section almost exclusively involves jury trials, since plaintiffs generally ask for a jury trial, and therefore she doesn't have experience with court trials.

CHAIR McGUIRE pointed out that the Alaska Court System's fiscal note indicates a potential savings to the state because of a reduction in yearly jury costs.

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REPRESENTATIVE GARA offered the following reasons that a trial by jury is better than a trial by a judge: having 12 - or, in some instances, 6 people - together is more likely to result in a just decision, since an individual judge is no better than

individual jurors are at remembering facts; regardless of whether the case is against a private party or the state, "a victim" has the right to a trial by his/her peers; the right to a jury trial is an important right, one that is democratic, wise, and works better than having a decision rendered by one person. He added:

It's six of one and a half dozen of the other when you talk about which one results in a bigger verdict, and I think there are some plaintiffs who'd rather have a trial in front of a judge. I think if you're a prisoner or somebody with a background that's not very sympathetic, you'd rather have a trial in front of judge, not a jury, and in those cases I think the state would request a jury trial, but ... won't be able to under this bill anymore.

REPRESENTATIVE GARA said that his experience has shown him that as a judge gets more and more cases, a judge's decision can be delayed for a long time - sometimes for months - whereas a jury must make a decision right at the end of trial, generally within one to three days. He again expressed a preference for the jury trial process.

CHAIR MCGUIRE noted that the procedure that HB 103 proposes to institute had been in place in Alaska prior to 1975, and offered her understanding that such a procedure has been characterized as more efficient. And although there are times when a jury trial is more appropriate, she remarked, it is also a more expensive procedure. She also offered her understanding that the procedure was changed for the benefit of the University of Alaska, which, in University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121, 128-29 (Alaska 1975), had asked for a jury trial and been denied. She remarked that a lot of other states have a similar procedure in place, and suggested that Representative Gara's argument regarding "six of one half a dozen of another" actually speaks for the bill. In conclusion, she said she doesn't think that the rights of Alaskan's are going to be impaired greatly by the passage of HB 103, and expressed confidence that Alaska's judges will make the right decisions [in cases against the state].

REPRESENTATIVE GRUENBERG noted that when the Magna Charta was signed, one of the most important rights that was granted to the English people was the right of a jury trial. That is a fundamental right, he opined, and a fundamental tenet of "our" system of government. One of the only areas in which the right

of a jury trial was denied, and which he characterized as a legal antiquity, was the right to sue "the Crown" because the king can do no wrong. But that's not the way it should be, he argued, because "the king" can obviously do wrong and is found to do wrong every time there's a judgment against the king - or the queen, or the state, or the country.

REPRESENTATIVE GRUENBERG offered his understanding that the Eleventh Amendment to the U.S. Constitution has been interpreted as prohibiting the U.S. Government from being sued without its consent, adding that Congress has largely granted that consent, and opined that this is why the Alaska State Constitution says that the state can be sued if the legislature consents, which it has done. He offered his belief that no one has sited any instance where the right of a jury trial has been granted by waiving sovereign immunity and then subsequently taken away from the people. "This is a very serious step; I am unaware of any circumstance, anywhere, where the right of a jury trial has been given and then subsequently denied, ... particularly here, without any showing at all that [the right] has been abused," he added.

CHAIR McGUIRE said that Representative Gruenberg's points are well taken, but suggested that he is straying a bit beyond the topic of the bill and into the area of sovereign immunity. She pointed out that when the state is sued, it is the people themselves who are being sued. She opined that HB 103 does not restrict the right to sue the state, rather it merely proposes that when one does sue the state, the decision will be made by a judge, not a jury; the bill addresses the question of what is the more efficient method of exacting justice in a way that can be met by the state's resources.

REPRESENTATIVE GRUENBERG offered his belief, however, that taking away the right to a jury trial does restrict one's right [to sue the state].

CHAIR McGUIRE countered, "It doesn't restrict your right to sue, and that's the area you were treading into in terms of suing 'the Crown.'"

[3:49:26 PM](#)

A roll call vote was taken. Representatives McGuire, Anderson, Kott, and Dahlstrom voted in favor of reporting HB 103 from committee. Representatives Gruenberg and Gara voted against it.

Therefore, HB 103 was reported from the House Judiciary Standing Committee by a vote of 4-2.

CHAIR McGUIRE asked Ms. Voigtlander to forward to the entire committee any additional information she obtains regarding the issues discussed.

[HB 103 was reported from committee.]

ADJOURNMENT

3:50:00 PM

The House Judiciary Standing Committee was recessed at 3:50 p.m. to a call of the Chair. [The meeting was never reconvened.]