

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 3, 2005

2:20 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Tom Anderson

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Commission on Judicial Conduct

Jerry Story - Wasilla

- CONFIRMATION(S) ADVANCED

CS FOR SENATE BILL NO. 101(JUD)

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

- MOVED HCS CSSB 101(JUD) OUT OF COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 12(JUD)

Requesting the United States Senate to move quickly to a majority floor vote of the United States Senate on all nominations by President George W. Bush to the United States Supreme Court.

- MOVED HCS CSSJR 12(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 154(JUD)

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15,

16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

- MOVED HCS CSSB 154(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 193

"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 101

SHORT TITLE: REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/14/05	(S)	READ THE FIRST TIME - REFERRALS
02/14/05	(S)	STA, JUD
02/24/05	(S)	STA AT 3:30 PM BELTZ 211
02/24/05	(S)	Heard & Held
02/24/05	(S)	MINUTE(STA)
03/01/05	(S)	STA AT 3:30 PM BELTZ 211
03/01/05	(S)	Moved CSSB 101(STA) Out of Committee
03/01/05	(S)	MINUTE(STA)
03/03/05	(S)	STA RPT CS 3DP 1NR SAME TITLE
03/03/05	(S)	DP: THERRIAULT, WAGONER, HUGGINS
03/03/05	(S)	NR: ELTON
04/25/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/25/05	(S)	Moved CSSB 101(JUD) Out of Committee
04/25/05	(S)	MINUTE(JUD)
04/25/05	(S)	JUD RPT CS 3DP 1NR SAME TITLE
04/25/05	(S)	DP: SEEKINS, THERRIAULT, HUGGINS
04/25/05	(S)	NR: FRENCH
04/27/05	(S)	TRANSMITTED TO (H)
04/27/05	(S)	VERSION: CSSB 101(JUD)

04/28/05 (H) READ THE FIRST TIME - REFERRALS
 04/28/05 (H) JUD
 05/02/05 (H) JUD AT 12:00 AM CAPITOL 120
 05/02/05 (H) Heard & Held
 05/02/05 (H) MINUTE(JUD)
 05/03/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SJR 12

SHORT TITLE: URGE VOTE ON US SUPREME COURT NOMINEES

SPONSOR(S): SENATOR(S) THERRIAULT

03/03/05 (S) READ THE FIRST TIME - REFERRALS
 03/03/05 (S) JUD
 03/24/05 (S) JUD AT 8:30 AM BUTROVICH 205
 03/24/05 (S) Moved CSSJR 12(JUD) Out of Committee
 03/24/05 (S) MINUTE(JUD)
 03/24/05 (S) JUD RPT CS FORTHCOMING 3DP 2NR
 03/24/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS
 03/24/05 (S) NR: FRENCH, GUESS
 03/29/05 (S) JUD CS RECEIVED NEW TITLE
 04/08/05 (S) TRANSMITTED TO (H)
 04/08/05 (S) VERSION: CSSJR 12(JUD)
 04/11/05 (H) READ THE FIRST TIME - REFERRALS
 04/11/05 (H) JUD
 04/27/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/27/05 (H) Scheduled But Not Heard
 05/02/05 (H) JUD AT 12:00 AM CAPITOL 120
 05/02/05 (H) Scheduled But Not Heard
 05/03/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 154

SHORT TITLE: JUVENILE DELINQUENCY PROCEEDINGS

SPONSOR(S): SENATOR(S) THERRIAULT

03/29/05 (S) READ THE FIRST TIME - REFERRALS
 03/29/05 (S) STA, JUD
 04/07/05 (S) STA AT 3:30 PM BELTZ 211
 04/07/05 (S) Moved CSSB 154(STA) Out of Committee
 04/07/05 (S) MINUTE(STA)
 04/08/05 (S) STA RPT CS 2DP 1NR SAME TITLE
 04/08/05 (S) DP: THERRIAULT, DAVIS
 04/08/05 (S) NR: WAGONER
 04/18/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/18/05 (S) Moved CSSB 154(JUD) Out of Committee
 04/18/05 (S) MINUTE(JUD)
 04/18/05 (S) JUD RPT CS 3DP 2NR SAME TITLE
 04/18/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS

04/18/05 (S) NR: FRENCH, GUESS
04/20/05 (S) TRANSMITTED TO (H)
04/20/05 (S) VERSION: CSSB 154(JUD)
04/21/05 (H) READ THE FIRST TIME - REFERRALS
04/21/05 (H) JUD, FIN
05/03/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JERRY STORY, Appointee
to the Commission on Judicial Conduct (CJC)
Wasilla, Alaska
POSITION STATEMENT: Testified as appointee to the Commission on
Judicial Conduct (CJC).

JAMES CRAWFORD, Assistant Revisor
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska
POSITION STATEMENT: During discussion of SB 101, offered
comments, suggested an amendment, and responded to questions on
behalf of the Senate Rules Standing Committee, sponsor of the
bill by request of Legislative Council.

DAVID STANCLIFF, Staff
to Senator Gene Therriault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SJR 12 on behalf of the sponsor,
Senator Therriault, and responded to questions and comments
during discussion of proposed amendments.

HEATHER BRAKES, Staff
to Senator Gene Therriault
Senate State Affairs Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 154 on behalf of the sponsor,
Senator Therriault, and responded to a question.

PATTY WARE, Director
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: During discussion of SB 154, responded to
questions and provided comments.

JOSHUA FINK, Public Advocate
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns during discussion of SB 154.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of SB 154.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [2:20:17 PM](#). Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representative Kott arrived as the meeting was in progress. Representative Anderson was excused.

CONFIRMATION HEARING(S)

Commission on Judicial Conduct

[2:21:18 PM](#)

CHAIR McGUIRE announced that the committee would first consider the appointment of Jerry Story to the Commission on Judicial Conduct (CJC).

JERRY STORY, Appointee to the Commission on Judicial Conduct (CJC), in response to the question of why he wished to serve on the CJC, relayed that one of his responsibilities as an assistant superintendent of a school district was to ensure that due process was followed in cases involving the school district. He said he feels very committed to due process rights and this is one of the reasons that he is interested in serving on the CJC. He relayed that he recognizes that the CJC's mission is a fairly dynamic process, but feels confident that he is up to the task. In conclusion, he mentioned that he is retired, and that he had a desire to serve the state in some capacity and so applied for a position on the CJC.

2:23:34 PM

REPRESENTATIVE DAHLSTROM made a motion to advance from committee the nomination of Jerry Story to the Commission on Judicial Conduct. She then reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CHAIR McGUIRE asked whether there were any objections to the motion. There being none, the confirmation was advanced from the House Judiciary Standing Committee.

SB 101 - REVISOR'S BILL

2:24:38 PM

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 101(JUD), "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

REPRESENTATIVE GRUENBERG relayed that he has received an answer to the question he'd posed at the bill's last hearing.

REPRESENTATIVE GARA asked the bill's presenter to provide comments on a question he'd asked of him.

JAMES CRAWFORD, Assistant Revisor, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), on behalf of the Senate Rules Standing Committee, sponsor of the bill by request of Legislative Council, recounted that Representative Gara's question was whether the proposed removal of references to the U.S. Bureau of Indian Affairs (BIA) from some sections of Title 14 would hinder the ability of the Department of Education and Early Development (DEED) to contract with the BIA with respect to costs relating to boarding schools. He relayed that he has not yet heard back from the DEED on this issue.

MR. CRAWFORD suggested, therefore, that the committee adopt a conceptual amendment to delete from the bill those sections proposing to remove references to the BIA. Then, if he subsequently learns from the DEED that it still feels it is appropriate to remove the BIA references from statute, that

change can be incorporated into next year's revisor's bill. He characterized such a conceptual amendment as appropriately conservative for a revisor's bill, adding that there isn't any particular "time pressure" to remove the aforementioned references.

[2:27:12 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, to delete from SB 101 the provisions that address removing references to the BIA.

MR. CRAWFORD, in response to comments, relayed that those provisions are located in Sections 25, 26, 28, and 91. In response to a question, he said he doesn't know when he will hear back from the DEED.

REPRESENTATIVE GRUENBERG suggested that if Mr. Crawford gets a response from the DEED before SB 101 is heard on the House floor, then those provisions could be added back in on the House floor if the DEED still advocates for their inclusion.

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

[2:28:38 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 101(JUD), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS CSSB 101(JUD) was reported from the House Judiciary Standing Committee.

SJR 12 - URGE VOTE ON US SUPREME COURT NOMINEES

[2:29:00 PM](#)

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE JOINT RESOLUTION NO. 12(JUD), Requesting the United States Senate to move quickly to a majority floor vote of the United States Senate on all nominations by President George W. Bush to the United States Supreme Court.

[2:29:06 PM](#)

DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, relayed on behalf of Senator Therriault that the original form of the resolution sought an expeditious confirmation of judges to the U.S. Supreme Court but seemed a bit "too politically flavored." Therefore, CSSJR 12(JUD) now simply asks the U.S. Senate for an expeditious vote, up or down, on judicial nominees. He explained that although there might still be a difference of opinion regarding some of the language used in CSSJR 12(JUD), such as "dilatory tactics", that language in particular was intended to avoid use of the term "filibuster". He remarked:

It's an open policy call as to whether or not people feel that those typical procedures that have been used are constitutional, what the history is, and so forth. I think the resolution, overall, before you, just seeks to get some final ... action, up or down, from the [U.S.] Senate on these judicial nominees. And we realize and want to put on the record that our folks back in Washington [D.C.] are going to look at this in various ways and use their best judgment on what's best for the state of Alaska in the political process, and this in no way, shape, or form is to supersede their judgment whatsoever. ... It's just a statement ... that people want to see the process move forward.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, close public testimony on SJR 12.

[2:31:35 PM](#)

REPRESENTATIVE GRUENBERG said he takes great offense - personally, as a member of the democratic party, and as a former staffer to U.S. Senator Ted Stevens - to terming what the U.S. Senators have done with regard to judicial nominees as a dilatory tactic. He pointed out that what has recently occurred is not the same thing as using a filibuster to block civil rights or similar issues. Instead it is merely an attempt to make certain that the people who are going to have lifetime appointments to the federal judicial bench are the best people in the sense that they are not adopting a political agenda but rather a judicial approach that is fair and balanced. He offered his understanding that a filibuster is similar to the three-quarters vote required to access Alaska's Constitutional Budget Reserve Fund (CBRF) in that it serves as a check and a balance for the minority.

REPRESENTATIVE GRUENBERG said he cannot support the resolution, but added that it would become more palatable to him if the "Whereas" clause on page 2, lines 2-4, were deleted. He remarked:

I don't have a problem with working with the language, here, but I do think that language is political and it does inflame the situation, and I would call [members'] ... attention to [Mason's Manual of Legislative Procedure], Section ... 760, which says that we are not to comment on what is done in the other house because the opinion of each house should be independent and not influenced by the proceeding of the other. Now, the U.S. Senate is not "the other house," but the principle is the same, that the Senate of the United States and the Senate of New York and the Assembly of California ... all conduct their business independent of the Alaska State House [of Representatives]. So I think that we should not be commenting on their rules of procedure there.

REPRESENTATIVE GRUENBERG, therefore, made a motion to adopt Amendment 1, to delete the language on page 2, lines 2-4.

REPRESENTATIVE COGHILL objected, adding that he agrees with the statement that the tactics being taken are meant to delay the confirmations. He said he would like to send language saying that "those tactics being what they are," the Alaska State Legislature would still like the confirmation process to go forward. Opining that it is self evident that there is a partisan debate occurring in the U.S. Senate, he said he would be willing to entertain a motion to simply strike the word "dilatatory" from page 2, line 2.

[2:36:22 PM](#)

REPRESENTATIVE GRUENBERG said he would not oppose that concept, but is wondering, then, whether the aforementioned "Whereas" clause could also be rephrased.

REPRESENTATIVE COGHILL indicated a preference for including language that acknowledges that members of the U.S. Senate are engaged in a tactical battle.

REPRESENTATIVE GRUENBERG remarked on the tactic of not allowing a filibuster. He suggested that what is now occurring in the U.S. Senate could serve as an object lesson to the Alaska State

Legislature - "it's what happens [when] ... the parliamentary war escalates out of control." He said he won't hold the resolution up but thinks he won't support it, adding that he would like it if they would at least not go down the road of a "mini nuclear war" on this resolution by keeping it as "nice" as possible.

CHAIR McGUIRE referred to that as a fair goal, adding that she would agree to the concept of either removing the word "dilatory" or changing it to "delay", characterizing that term as objective. She opined that the "Whereas" clause itself should be left in, though.

[2:40:09 PM](#)

CHAIR McGUIRE noted that the motion of whether to Adopt Amendment 1 was still pending.

REPRESENTATIVE GRUENBERG asked whether there would be a way to rephrase the aforementioned clause in a positive way, to send a message that there is a desire to see a resolution to the current state of affairs regarding judicial nominees.

REPRESENTATIVE COGHILL acknowledged that both sides are using certain tactics, and offered his understanding that CSSJR 12(JUD) is simply charging that the filibuster is a tactic, though the adjective "dilatory" is also being used.

REPRESENTATIVE GRUENBERG suggested replacing "dilatory tactics" with "the rules of the Senate".

REPRESENTATIVE COGHILL said he does not know that such a change would result in a true statement.

REPRESENTATIVE GRUENBERG opined that a filibuster is part of the rules of the Senate.

REPRESENTATIVE COGHILL mentioned that that is part of the current debate in the U.S. Senate, and he is not sure that they should enter into it.

[2:41:51 PM](#)

MR. STANCLIFF indicated that the sponsor would be comfortable with removing the word "dilatory".

REPRESENTATIVE GRUENBERG withdrew Amendment 1.

REPRESENTATIVE GARA sought confirmation that the sponsor simply does not like the actions being taken in the U.S. Senate regardless of [which political party] is doing it.

MR. STANCLIFF said: "The process is not working as it should with regard to final decisions by the full body of the [U.S. Senate]; the sponsor wants to urge that to happen regardless of who's controlling the [U.S. Senate or] who's in front of the [U.S. Senate]."

[2:43:37 PM](#)

REPRESENTATIVE GARA made a motion to adopt [Amendment 2], to replace "George W. Bush" with "any President" in the resolution's title.

REPRESENTATIVE COGHILL objected. He pointed out that CSSJR 12(JUD) is being sent to the current President and that just happens to be George W. Bush. He expressed a preference for keeping the name of the current President in the resolution.

CHAIR McGUIRE noted that should similar problems occur for a future President, members of this legislature would be free to draft another resolution on the same issue. She remarked that one of the points of CSSJR 12(JUD) is to get it to the current President, George W. Bush.

REPRESENTATIVE GARA pointed out that an advantage of changing the language in CSSJR 12(JUD) to "any President" is that another resolution on this issue wouldn't have to be sent.

REPRESENTATIVE GRUENBERG suggested simply adding to the title, after the name, "George W. Bush", the words, "and any other President".

REPRESENTATIVE GARA said he would accept such a change as a friendly amendment to Amendment 2. [Amendment 2 was treated as amended.]

REPRESENTATIVE COGHILL indicated that he would be maintaining his objection.

[2:46:27 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 2, as amended. Representatives

McGuire, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 2, as amended, failed by a vote of 2-4.

REPRESENTATIVE GARA made motion to adopt Amendment 3, to delete from page 2, line 7, "President George W. Bush" and insert the words, "any President". He offered his understanding that the testimony has indicated that they do not want the resolution to be either political-party- or President-specific. Amendment 3 would then result in a resolution that said in part: "the Alaska State Legislature requests the United States Senate to move quickly to a majority floor vote of the United States Senate on all nominations by any President to the United States Supreme Court".

REPRESENTATIVE COGHILL and CHAIR MCGUIRE objected.

REPRESENTATIVE COGHILL indicated that because the current situation regarding judicial nominees is specific to the current President, the current U.S. Senate, and the current nominees, it would not be worthwhile to send a generic resolution.

REPRESENTATIVE GARA characterized that as a fair point. He also went on to say:

I think it's a fair point to say, "This is a resolution: nobody's going to read it, it's not going to have a hoot of impact in Congress, and all we're doing with this resolution is offending a certain number of members of the legislature, perhaps just for a sound bite." And if we're going to go through this process of offending a certain number of legislators, then I think I, on behalf of those legislators, have every obligation to try and make this [resolution] as neutral as possible so [that] we can sort of avoid the acrimony ... that we could otherwise have this last week and a half for something that's just not that important.

REPRESENTATIVE COGHILL opined that the resolution is not meant to give offense; rather it is meant to speak to a topic that is being hotly debated in Congress at this time, a topic that many legislators feel strongly about. So although the language in the resolution will fall along party lines, it is not meant with disrespect, he added.

[2:49:24 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 3. Representatives McGuire, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 3 failed by a vote of 2-4.

[2:49:44 PM](#)

REPRESENTATIVE GARA made motion to adopt Amendment 4, to delete the language beginning on page 1, line 15, through page 2, line 1. He said:

I certainly understand those who believe that President [George W. Bush] has expressed a commitment, as it says here, to appoint federal judges who will strictly interpret the United States Constitution, and people are free to express their opinion in that regard. My belief is that this President is trying to appoint federal judges who will support his political agenda, and so I guess I disagree with this statement - I'd like it taken out of the resolution.

REPRESENTATIVE COGHILL objected. He remarked:

There has been a political litmus test put on judges so long, that when somebody is called upon to ... follow the [U.S.] Constitution in a strict constructionist manner, that it's not even accepted in our society today. So I strongly object.

REPRESENTATIVE GARA said that if one looks at judges' opinions, those with extreme politics all are activists, actively trying to push their own agendas, and therefore he is not willing to pass a resolution that appears to sort of cast his favor upon judicial nominees whom he doesn't know, whose records he hasn't reviewed.

REPRESENTATIVE COGHILL acknowledged that he and Representative Gara were probably not going to agree on this issue.

[2:51:34 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 4. Representatives McGuire, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 4 failed by a vote of 2-4.

[2:51:57 PM](#)

REPRESENTATIVE GRUENBERG remarked that recent news articles written by U.S. Senator Lisa Murkowski indicate that she feels that certain groups are attempting to put pressure on her to vote a certain way with regard to the issues surrounding President George W. Bush's judicial nominees and that she feels that this is inappropriate. He said he agrees that political pressure should not be put on any U.S. Senator in this manner. Therefore, he opined, they should not send CSSJR 12(JUD) to U.S. Senator Lisa Murkowski because it could be viewed as an attempt to put just that kind of pressure on her.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, to delete U.S. Senator Lisa Murkowski from the list of those who would be receiving copies of the resolution.

REPRESENTATIVE COGHILL objected.

MR. STANCLIFF relayed that the sponsor has contacted U.S. Senator Lisa Murkowski and is of the belief that she, too, desires that a full, expeditious process occur though is reserving the right to make up her own mind on the issues placed before her.

[2:54:19 PM](#)

REPRESENTATIVE GRUENBERG inquired whether U.S. Senator Lisa Murkowski was specifically asked whether she would view [CSSJR 12(JUD)] as undue pressure.

MR. STANCLIFF said she was and offered his understanding that her response was that she did not view it as undue pressure.

REPRESENTATIVE GRUENBERG withdrew Amendment 5.

CHAIR McGUIRE indicated a desire to include a "Whereas" clause that expresses the Alaska State Legislature's respect for Alaska's delegates' decisions regarding how they support judicial nominees coming to a vote.

MR. STANCLIFF opined that inserting such a clause would constitute an appropriate conceptual amendment.

CHAIR McGUIRE said she would not want someone to use CSSJR 12(JUD) as a means of embarrassing U.S. Senator Lisa Murkowski.

[2:56:30 PM](#)[2:56:31 PM](#)

CHAIR McGUIRE made a motion to adopt a [new] Conceptual Amendment 5, to add a "Whereas" clause that says the Alaska State Legislature respects Alaska's delegation's "individual decisions about how it is that they will encourage an up or down vote on these judicial nominations."

REPRESENTATIVE COGHILL objected. He opined that those that receive resolutions such as CSSJR 12(JUD) will probably really just be looking at the "Be it resolved" clause, which currently requests the U.S. Senate to move quickly to a majority floor vote. Therefore, he does not think anyone would be using CSSJR 12(JUD) as a tool to embarrass one of Alaska's delegation members. He offered his belief that such a clause will make the Alaska State Legislature look less resolved, and that such language is not needed.

CHAIR McGUIRE made mention of recent political advertisements, and opined that a simple clause saying that the Alaska State Legislature supports and respects the state's congressional delegation is in order.

REPRESENTATIVE COGHILL removed his objection.

CHAIR McGUIRE asked whether there were any further objections to new Conceptual Amendment 5. There being none, new Conceptual Amendment 5 was adopted.

REPRESENTATIVE GARA made a motion to adopt Amendment 6, to delete the words "move quickly" from the two places in the bill where it occurs and insert the words "move thoughtfully". He added, "I don't think that ... it's the [U.S.] Senate's constitutional role to rubberstamp a President's nominees; I think it's their role to advise and consent and I think that involves thoughtful deliberation, not just quick deliberation."

REPRESENTATIVE COGHILL objected. He said, "We want them to move quickly, and to assume that they wouldn't move thoughtfully, I think, is disrespectful."

CHAIR McGUIRE suggested changing the language in the bill to read, "move quickly and deliberately".

REPRESENTATIVE GARA said he didn't think that language would address his concern.

CHAIR McGUIRE said she would echo Representative Coghill's comments, adding her belief that adequate time has passed for U.S. Senate members to consider the nominees in question. She expressed her hope that in acting quickly, U.S. Senate members would also be deliberate and thoughtful.

[3:01:33 PM](#)

MR. STANCLIFF remarked:

I think that there is a sense of urgency that's been created because of the holdups that have gone on. It's a procedure that has been used very effectively to create that push back, and so there is a sense of urgency. And "quickly" isn't perhaps a very artful term; if there were to be some compromise, it might be "responsibly" or something like that.

REPRESENTATIVE GRUENBERG asked whether Representative Gara would be amenable to changing the words being inserted via Amendment 6 to, "responsibly".

REPRESENTATIVE GARA offered his belief that the U.S. Senate should move "thoughtfully".

REPRESENTATIVE GRUENBERG, noting that the sponsor's representative has indicated that the sponsor would be amenable to changing the word "quickly" to the word "responsibly", relayed that changing the language in that fashion would go a long way towards garnering his support for the resolution.

[3:03:02 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 6. Representatives McGuire, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 6 failed by a vote of 2-4.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 7, to replace on page 1, line 1, and on page 2, line 6, the word "quickly" with the word "responsibly".

REPRESENTATIVE COGHILL opined that asking the U.S. Senate to move quickly is not asking that they not be deliberate. The delay has been significant, and the word "quick" conveys the message he wishes to send, he concluded.

REPRESENTATIVE GRUENBERG opined that "responsibly" is a dignified term, and reiterated his understanding that such a change would be supported by the sponsor.

REPRESENTATIVE COGHILL said he still objects to Amendment 7.

REPRESENTATIVE DAHLSTROM said she tends to agree with Representative Coghill's comments.

[3:05:13 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 7. Representatives McGuire, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 7 failed by a vote of 2-4.

REPRESENTATIVE DAHLSTROM moved to report CSSJR 12(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal note.

REPRESENTATIVE GARA objected. He said:

I suppose all of us, at some point, are guilty of being partisan, [but] I find the resolution [to be] over the top. I don't think that it's going to have any benefit of any sort and it's only going to cause damage. And if we're going to go down this road, soon we're going to have resolutions ... asking the President to reverse his decision to cut certain veterans' benefits, and things like that - also resolutions that will have no impact whatsoever. It just invites more resolutions like this and I just don't think it's a good road to go down. And I would just finally note that if we're really going to be fair about this, we would spend a lot of time in this resolution talking about how the [U.S.] Senate republicans stood in the way of so many of President Clinton's nominees, not through the use of the filibuster but through, still, a very unprecedented use of their advise and consent power, also to block judicial nominees. And, frankly, sort of what's good for the goose is good for the gander, and what's bad for the goose is bad for the gander.

REPRESENTATIVE GARA then withdrew his objection to the motion.

CHAIR McGUIRE announced that HCS CSSJR 12(JUD) was reported from the House Judiciary Standing Committee.

SB 154 - JUVENILE DELINQUENCY PROCEEDINGS

[3:07:34 PM](#)

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 154(JUD), "An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

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HEATHER BRAKES, Staff to Senator Gene Therriault, Senate State Affairs Standing Committee, Alaska State Legislature, sponsor, relayed on behalf of Senator Therriault that SB 154 addresses two concerns of the juvenile justice system (JJS) in Alaska. First, it improves the state's ability to hold juvenile offenders accountable for their conduct, and, second, it increases the efficiency of the JJS by allowing telephonic hearings in certain court proceedings. Specifically, SB 154 addresses the loophole in Alaska statutes that allows young offenders to avoid prosecution if their role in a crime is not discovered, or charges have not been brought, until after the offender becomes 18 years of age.

MS. BRAKES relayed that currently, when a person under the age of 18 commits a delinquent act, the JJS is responsible for the matter, but when a person [18 years of age or older] commits a crime, the adult criminal system is responsible for prosecution. Recent court decisions have highlighted the following loophole in the law: when a youth commits a delinquent act while under the age of 18 but this fact is not discovered or the proceedings aren't filed until the person reaches the age of 18, then neither the adult justice system nor the juvenile justice system has clear jurisdiction. She mentioned that members' packets contain copies of recent Alaska Superior Court cases which illustrate the aforementioned problem.

MS. BRAKES said that SB 154 proposes to address this loophole, and thereby allow offenders to be held accountable for their actions, by providing that the delinquent minor statutes apply to persons who commit a crime while under the age of 18 if the

[statute] of limitation for the crime has not expired. Without this change, she concluded, the State has no ability to hold perpetrators accountable for their behavior, because a clear legal jurisdiction would not have been established.

MS. BRAKES offered that the second aspect of SB 154 will allow the State to more cost-effectively manage juvenile offenders while continuing to ensure that their rights to fair hearings and due process are maintained, reiterating that this will be accomplished via allowing for telephonic participation in certain court proceedings.

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REPRESENTATIVE COGHILL, with regard to the telephonic participation provisions, asked what protections are in place to ensure that juveniles are not being intimidated during the aforementioned proceedings.

MS. BRAKES suggested that the director of the Division of Juvenile Justice (DJJ) could better address that question, but offered her understanding that it will be up to the court to decide if/when it is in the best interest of the juvenile to appear telephonically.

REPRESENTATIVE COGHILL noted that intimidation can go both ways, and that one can't see what is actually going on at the juvenile's location. He asked how the court would view things it can hear but not see.

[3:12:24 PM](#)

PATTY WARE, Director, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), concurred that the decision of if/when a juvenile can participate in a proceeding telephonically will be made by the judge, and offered her understanding that there will probably be very few instances in which telephonic participation will be utilized. She went on to note that Section 9 specifies that a juvenile has the right to be physically present for arraignment, adjudication, disposition, probation revocation, extension of jurisdiction, and waiver of jurisdiction hearings. Under SB 154, telephonic participation would be allowed in instances where the juvenile's personal appearance is not essential to the fair disposition of the matter, such as status review hearings or detention review hearings; in such hearings, both parties have agreed ahead of time as to what will occur. The DJJ is currently spending a few

hundred thousand dollars a year transporting juveniles to such hearings. Again, she assured the committee, the proposed change will leave it to the judge's discretion whether telephonic participation would be an option in a particular instance.

REPRESENTATIVE COGHILL surmised, then, that juveniles participating telephonically will either be in custody or with counsel.

MS. WARE concurred.

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REPRESENTATIVE GRUENBERG referred to page 6, line 23 - specifically the language, "not essential to the fair disposition of the matter" - and said he would feel more comfortable if the words, "or unfair to the juvenile" were added after the word "matter".

MS. WARE said she would not have a problem with such a change.

REPRESENTATIVE GRUENBERG noted that Dean Guaneli, Department of Law (DOL), was nodding.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to add to page 6, line 23, the words "or unfair to the juvenile" after the words "of the matter".

REPRESENTATIVE COGHILL objected for the purpose of discussion. He surmised that the rights of the juvenile will still be preserved even without the additional language.

REPRESENTATIVE GRUENBERG opined that there may be situations in which it is essential for the juvenile to have face-to-face communication.

[3:19:10 PM](#)

REPRESENTATIVE COGHILL pointed out, though, that in such cases, that very argument will be made by the juvenile's counsel. He opined that inclusion of the word "or" will tend to diminish [the judge's] flexibility, and, again, that the original language already provides for fairness.

REPRESENTATIVE GRUENBERG asked whether Representative Coghill would be amenable to having the language instead say, "not essential to the fair disposition of the matter and unfair to

the juvenile". [Although no formal motion was made, Conceptual Amendment 1 was later treated as amended.]

CHAIR MCGUIRE surmised that by definition the juvenile will be taken into consideration, since the disposition of the matter will directly affect the juvenile.

[3:21:23 PM](#)

REPRESENTATIVE GRUENBERG pointed out, however, that there might still be instances in which it is in the juvenile's best interest to participate in the proceedings "face to face."

REPRESENTATIVE COGHILL clarified that his concern is that the word "or" could create complications. He indicated that use of the word "and" would alleviate his concern, though he does consider the language being added to be extra language. He then removed his objection to the motion.

REPRESENTATIVE GRUENBERG clarified that Conceptual Amendment 1 [as amended] will add, "and unfair to the juvenile", after the words, "not essential to the fair disposition of the matter".

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1 [as amended]. There being none, Conceptual Amendment 1, as amended, was adopted.

[3:23:57 PM](#)

REPRESENTATIVE DAHLSTROM characterized the bill as good, surmising that it takes into consideration both the best interest of the juvenile and the uniqueness of the state, and will allow the JJS to achieve more.

REPRESENTATIVE COGHILL asked what the procedure will be when a perpetrator who has reached the age of majority is charged with a crime he/she committed as a minor.

MS. WARE said that depending on the seriousness of the crime - for example, if the crime committed was one for which the juvenile could have been waived into the adult justice system - the rules governing the adult justice system would apply.

REPRESENTATIVE COGHILL surmised, then, that the person would have all the rights of an adult.

MS. WARE concurred, adding that the case would be handled as an adult case.

REPRESENTATIVE GRUENBERG asked whether either of the two aforementioned cases provided in members' packets were appealed, and, if so, what the results were.

MS. WARE offered to research that issue.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 154.

REPRESENTATIVE GARA asked whether the Office of Public Advocacy (OPA) has any concerns with the bill.

[3:29:34 PM](#)

JOSHUA FINK, Public Advocate, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), said that the OPA does not have an official position on SB 154, but offered his understanding that under the bill, in situations involving detention reviews, even if the juvenile asked to participate in person, the court could still disallow it, and this is of concern to the OPA. He also suggested that Section 1 of the bill could open the door to what he called "recovered memory" prosecutions.

MS. WARE acknowledged the latter point, but surmised that such cases would be "extreme outliers." The intent of the bill is to improve public safety in the state, particularly with regard to sexual abuse of a minor cases wherein the state currently has no ability to hold perpetrators accountable under either justice system. This inability is simply unacceptable, she remarked.

MS. WARE, in response to questions, said that although a whole range of issues was thoroughly considered in drafting the bill, neither the Public Defender Agency (PDA) nor the OPA were specifically asked for input.

[3:34:11 PM](#)

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), noted that a number of years ago, the statute of limitations regarding serious sex offenses was essentially removed, and the bill makes the statutes regarding juvenile offenders of such crimes consistent with the statutes regarding

similar adult offenders. Whether the JJS is going to be able to effectively deal with such offenders remains to be seen; nevertheless, he opined, there ought to be some way of addressing such situations, and the rules should be consistent with those pertaining to adults. With regard to the issue of detention reviews, he noted that in most detention reviews the juvenile offender never gets on the stand and isn't likely to provide any additional information pertinent to the proceeding, that such proceedings are not something that the juvenile needs to be present for. And if that is not the case in a particular situation, he predicted, the judge will allow the juvenile to be present in person.

CHAIR McGUIRE opined that Conceptual Amendment 1, as amended, will clarify the court's duty to ensure fairness for the juvenile offender.

[3:37:49 PM](#)

MS. WARE, notwithstanding her earlier remark, offered her understanding that after hearing concerns from the PDA, the Senate Judiciary Standing Committee changed the bill with regard to [certain types of] hearings.

REPRESENTATIVE GARA asked why he should not be concerned that the bill will increase costs for [the OPA and the PDA].

MS. WARE offered her understanding that that issue was also discussed in Senate Judiciary Standing Committee and the answer from the PDA was that the PDA would not be spending money to send a public defender to be physically present with the juvenile offender in situations where the juvenile is participating telephonically. She attempted to assure the committee that it is not the DHSS's intent to transfer costs to another entity such as the PDA or the OPA, and that the DJJ would not be requesting a telephonic hearing if there is any contested issue. The intent of the telephonic participation provisions is to instead provide a mechanism whereby the judge can make a determination regarding whether a particular circumstance warrants participation in person.

REPRESENTATIVE GARA asked whether the provision would apply to "trial call" as well.

[3:40:27 PM](#)

MR. GUANELI offered his understanding that a "trial call" would be precisely the type of proceeding in which the juvenile would not necessarily need to be present. He again predicted that in the rare case of a juvenile's presence being necessary, the judge will order it.

REPRESENTATIVE GARA said his concern is that the telephonic participation provisions will result in public advocates and public defenders not getting adequate time to meet with their clients without spending scarce resources.

MR. GUANELI opined that it is not the DJJ's responsibility to transport clients to court simply to ensure that the OPA and the PDA get adequate time with their clients. Rather, such responsibility falls to the OPA and the PDA, and, yes, he acknowledged, that might involve the public advocate or public defender having to travel to where the client is in cases where the client isn't being transported to court by the DJJ.

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MR. GUANELI, in response to a question regarding delayed trials, opined that regardless of the reason for the delay, there will be cases where an adult offender of a delinquent offense is not immediately brought to trial, and so the department will have to decide whether it really wants to pursue the matter or whether, in some situations, adequate legal recourse is already being pursued elsewhere. The flexibility to pursue such matters should be given to the [department], he concluded, regardless of the age of the adult offender of a delinquent offense.

MS. WARE concurred that according to Section 7, the department would not be limited to dealing only with juvenile-offense perpetrators of a certain age. She pointed out that it is not the DJJ's intention to be using juvenile probation officers or juvenile correctional facilities to handle the aforementioned adults.

REPRESENTATIVE GRUENBERG asked, then, whether conforming changes to the adult offender statutes would be necessary to allow Department of Corrections (DOC) personnel to handle those adults.

MS. WARE said no.

[3:49:38 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment [2], a handwritten amendment which, with handwritten corrections, read [original punctuation provided]:

Insert@ p. 6

line 23 after "matter" as follows

"and personal contact between counsel and the juvenile are not needed for case presentation."

CHAIR McGUIRE objected for the purpose of discussion. She asked whether the DJJ objected to [Amendment 2].

MS. WARE, noting that it will still be up to the judge to decide whether to allow telephonic participation, said that [Amendment 2] is acceptable.

CHAIR McGUIRE, noting that Conceptual Amendment 1, as amended, has already been adopted, made a motion to amend Amendment 2, to add the words, "and personal contact between counsel and the juvenile are not needed for case presentation", after the newly added words, "and unfair to the juvenile".

REPRESENTATIVE GARA indicated a willingness to allow the drafter leeway to insert the wording from both amendments as appropriate. [Amendment 2 was treated as amended with regard to location of insertion.]

REPRESENTATIVE GRUENBERG pointed out that in the language being added via Amendment 2 [as amended], the phrase should be "is not needed".

REPRESENTATIVE GARA indicated a willingness to amend Amendment 2, as amended, with regard to the word, "is". [Amendment 2, as amended, was again treated as amended.]

CHAIR McGUIRE removed her objection to Amendment 2 [as amended twice], and asked whether there were any further objections. There being no objection, Amendment 2, as amended, was adopted.

[3:51:59 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSSB 154(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS

CSSB 154(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 3:52 p.m. to a call of the chair. [The meeting was never reconvened.]