

HOUSE FINANCE COMMITTEE  
March 18, 2008  
2:50 p.m.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at [2:50:47 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair  
Representative Kevin Meyer, Co-Chair  
Representative Bill Stoltze, Vice-Chair  
Representative Harry Crawford  
Representative Richard Foster  
Representative Les Gara  
Representative Mike Hawker  
Representative Reggie Joule  
Representative Mike Kelly  
Representative Mary Nelson  
Representative Bill Thomas Jr.

MEMBERS ABSENT

None

ALSO PRESENT

Anthony Newman, Division of Juvenile Justice, Department of Health and Social Services; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Roger Painter, President, Alaska Shellfish Association; John Bitney, Staff, Representative John Harris

PRESENT VIA TELECONFERENCE

Chris Provost, Office of Public Advocacy, Anchorage; Franci Havemeister, Director, Division of Agriculture

SUMMARY

HB 255 "An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

CSHB 255 (FIN) was REPORTED out of Committee with a "do pass" recommendation and new fiscal notes by the Department of Corrections, Department of Administration, Alaska Court System, the

Department of Health and Social Services and previously published fiscal note from the Department of Law.

HB 257 "An Act transferring duties relating to aquatic farming and hatchery operations from the Department of Fish and Game to the Department of Natural Resources, eliminating certain permit requirements applicable to aquatic farming and hatchery operations, and directing the Department of Natural Resources to administer and supervise promotional and marketing work for aquatic farm products; and providing for an effective date."

CSHB 257 (FIN) was REPORTED out of Committee with a "do pass" recommendation and new fiscal notes by the Department of Natural Resources and House Finance committee and a previously published fiscal note by the Department of Fish & Game.

HB 332 "An Act relating to elementary and pre-elementary schools."

CSHB 332 (FIN) was REPORTED out of Committee with a "do pass" recommendation and a previously published fiscal note by the Department of Education and Early Development.

HB 418 "An Act providing notice of and authorization for the Department of Administration to enter into a lease-purchase agreement for the construction, the purchase of equipment, and the financing of a fish hatchery in Anchorage to be operated by the Department of Fish and Game; relating to the issuance of certificates of participation for the fish hatchery; authorizing payments for the lease-purchase agreement from sport fishing facility license surcharge fees; relating to capital lease financing of sport fishing facilities; and providing for an effective date."

HB 418 was SCHEDULED but not HEARD.

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HOUSE BILL NO. 255

"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

[2:52:48 PM](#)

Representative Craig Johnson presented an overview of HB 255 that would allow a judge to simultaneously sentence a juvenile to both a juvenile and an adult sentence. Representative Johnson explained that if a juvenile successfully completes the juvenile program they will be finished, but if the juvenile fails to satisfactorily complete the program or to reoffend, the juvenile can be subjected to an adult sentence. He related that this bill began as a commitment to his constituents to address gang violence. Representative Johnson believed a juvenile should be aware that the consequences of not complying could mean adult prison time.

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Representative Joule remarked that some juveniles, who have committed egregious acts, have been tried as adults. He wondered why this bill was necessary if that is an option. Representative Johnson replied that a juvenile, tried as adult, is still an available option of the court, but this bill would cover crimes that may not automatically rise to that higher level of sentencing. This bill would give the prosecutor an opportunity to ask for the dual sentence for those cases where the juvenile would start in the juvenile system but, if the rehabilitation failed, the juvenile would end up in the adult prison.

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Co-Chair Chenault asked if fifteen was the correct number of states currently practicing dual sentencing and requested any statistics from those states. Representative Johnson concurred that fifteen states have this program and referred the statistic question to juvenile experts who were available to testify.

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Representative Gara voiced his concern on the felony classes subject to the dual sentencing. Representative Johnson replied Class B and Class C felonies. Representative Gara questioned if that was all Class B and C felonies.

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ANTHONY NEWMAN, DIVISION OF JUVENILE JUSTICE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, replied that this bill would extend dual sentencing to Class B felonies against persons, as well as, misconduct involving weapons in the first and second degree, and arson in the second degree. Representative Gara requested clarification on the sentencing process if a minor commits a violation. He wondered if the state would have the discretion to request the court to sentence the juvenile as an adult. Mr. Newman

clarified that the Department of Health & Social Services would request the court impose the adult sentence that had previously been pronounced. Representative Gara reasoned that sometimes personality differences occur between the juveniles and their counselors and wondered what would prevent a counselor from imposing an adult sentence on a juvenile they did not like. He wondered if Representative Johnson would be comfortable with a Letter of Intent accompanying the bill declaring that it is not the intent for insubstantial violations would result in request for adult sentencing.

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Representative Johnson answered that he would have not problem with a Letter of Intent but stressed that the department would prefer keeping the juvenile in the juvenile system rather than moving them into the adult prison. Representative Johnson informed the committee that, before any final decision was made, there would be a hearing with a third party judge, avoiding personality conflict problems.

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Representative Gara questioned if a juvenile commits a probation violation would that be grounds for imposing the adult sentence, if the judge and hearing officer agreed. Mr. Newman replied that an earlier version of the bill included probation violation as a condition to be transferred to the adult system, but it is not included in this version of the bill. Representative Gara wondered what would trigger the transfer. Mr. Newman replied that for a transfer to occur the juvenile would have to commit a felony or misdemeanor crime, fail to obey the terms of a restitution order, escape from a juvenile correctional facility, or fail to engage in the rehabilitation program. Representative Gara wondered if it was substantial and unsubstantial to be late in a restitution payment or to violate a minor infraction in rehabilitation. He questioned if the judge had standards to follow or was anything written in the bill declaring that the adult sentence can not be imposed for an insubstantial sentence.

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Mr. Newman maintained that conditions must indicate the juvenile is no longer amenable to treatment in the juvenile system. Representative Gara inquired if the juvenile commits one of those infractions would the juvenile be considered no longer amenable to treatment. He requested clarification on the findings the judge has to make before imposing the adult sentence. Mr. Newman responded that the judge has to find a preponderance of evidence. This would include the occurrence of a felony, a misdemeanor involving an injury, the use of

deadly weapon, the juveniles failure to engage in or satisfactorily complete a juvenile rehabilitation program, or the juveniles failure to complete the terms of a restitution order.

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Representative Gara questioned the judge's guidance in determining if a late restitution payment should result in imposing the adult sentence. Mr. Newman responded that it would have to be a preponderance of evidence.

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, referenced current law, AS 4712 170E that states if a youth is charged with the commission of a felony against a person or arson, and the court makes that finding by a preponderance of evidence then the adult sentence is automatically imposed. She elaborated that if a juvenile failed in any of the other ways and the department pursued the adult sentence, the juvenile still has the opportunity to prove that they are amenable to treatment and should continue under the juvenile system. Representative Gara questioned if that becomes the standard for the other violations. Ms. Carpeneti agreed with the exception of a felony against a person or arson.

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Co-Chair Chenault asked Representative Johnson earlier about any results from the states already using this blended system and asked again if anyone could answer that question. Mr. Newman indicated that the department has consulted with national experts on dual sentencing, but being a new system, it has not been thoroughly studied. He remarked that fifteen states have dual or blended structuring in place, but the programs vary according to the statutes in each state. He revealed that Alaska has narrow and rigid criteria under which dual sentencing is currently being applied. This bill would relax the criteria to put it more in line with the process in the other fifteen states.

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Co-Chair Chenault questioned if this bill would make it easier or harder for the court system in Alaska to use a blended system. Ms. Carpeneti replied that historically it has been difficult to get juveniles waived on a discretionary basis. She revealed that in the late 90s the Legislature adopted a mandatory waiver for very serious offences involving sixteen or seventeen year olds. The purpose of the dual system is to apply stiffer penalties

such as the possible enforcement of an adult sentence on a sixteen or seventeen year old who commit serious crimes. Ms. Carpeneti believed this presents the juvenile with a good reason to cooperate. Ms. Carpeneti signified that the juvenile has to be aware that there can be consequences for not accepting what the juvenile system has to offer.

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CHRIS PROVOST, OFFICE OF PUBLIC ADVOCACY, ANCHORAGE (Testified via teleconference), remarked that he has been authorized by the Anchorage Office of Public Advocacy to comment. He thanked the bill's sponsor for the improvements made from the original proposal. He voiced the Office of Public Advocacy concern about incarcerating a minor in an adult facility before the final decision was made. The Office of Public Advocacy believed it would be better for the juvenile to remain in the juvenile correctional system.

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Mr. Provost responded to the previous question regarding result studies from other states. He mentioned that Florida is the only state to have completed a thorough study and the program has not worked out well for public safety or for the juveniles. He added that Florida's bill is harsher than the one before the committee.

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Representative Kelly questioned how this bill targets gang behavior. Representative Johnson recalled that his original concept was to put gang members, no matter their age, in jail but this approach was changed. He explained that if a young gang member commits a serious offense, they would automatically be released when they became an adult. This bill shows the juvenile that any serious offense can now translate into real jail time. Representative Johnson believed this would take the "hero status" from a young gang member and give them the opportunity to make a life decision of getting with the program or doing hard time.

[3:20:07 PM](#)

Co-Chair Meyer MOVED to ADOPT Amendment 1:

Page 3, lines 28-31:

Delete all material and insert:

"(4) if

(A) petition has been filed under AS 47.12.160(d) to impose an adult sentence;

(B) a court, at a hearing held within 48 hours of the filing of the petition, finds that there is probable cause to support the allegations in the petition; and

(C) the department transfers custody of the minor to the Department of Corrections pending the resolution of the petition."

Co-Chair Chenault OBJECTED for discussion purposes.

Representative Johnson pointed out that this amendment provides for a hearing, within forty eight hours, before the juvenile enters an adult prison. It would also provide for the transfer of custody to the Department of Corrections. Representative Johnson maintained that leaving someone in the juvenile facility can result in a disruptive "hero status." Representative Kelly asked if the amendment addressed into which facility the juvenile would be moved.

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Representative Johnson replied it would be the "big house." He illustrated the three levels at the Department of Corrections facility for placing juveniles: total isolation; placed with other juveniles; or an area out of the general population.

Co-Chair Chenault WITHDREW his OBJECTION.

There being NO Objection, Amendment 1 was adopted.

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Co-Chair Chenault commented that all the fiscal notes reflected a zero cost. He questioned if this bill increased or decreased the number of juveniles. Representative Johnson replied there were some indeterminate numbers reflected in the fiscal notes. He expected an impact, but was unable to determine exactly how much at this time.

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Mr. Newman remarked that the Divisions of Juvenile Justice estimated that approximately ten to twenty juveniles a year would be recommended for dual sentences. He expressed the hope that most juveniles would not refuse to participate in the rehabilitation or commit further offences. Co-Chair Chenault remarked that one of the fiscal notes states, "Under dual sentencing if the minor unsuccessfully completes their sentence in the juvenile system they will be placed on adult felony probation under DOC supervision." Representative Johnson replied this addressed the older version of the bill which states they will remain under juvenile probation. He stated that the fiscal note is not accurate. (Department of Corrections, 3/3/08)

[3:27:28 PM](#)

Co-Chair Chenault MOVED TO REPORT CSHB 255 (FIN) out of committee with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 255 (FIN) was REPORTED out of Committee with a "do pass" recommendation and new fiscal notes by the Department of Corrections, the Department of Administration, the Alaska Court System, the Department of Health and Social Services and a previously published fiscal note from the Department of Law.

[3:29:08 PM](#)

CS for HOUSE BILL NO. 257

"An Act transferring duties relating to aquatic farming and hatchery operations from the Department of Fish and Game to the Department of Natural Resources, eliminating certain permit requirements applicable to aquatic farming and hatchery operations, and directing the Department of Natural Resources to administer and supervise promotional and marketing work for aquatic farm products; and providing for an effective date."

JOHN BITNEY, STAFF, REPRESENTATIVE JOHN HARRIS, presented the bill overview stating that an earlier version of the bill planned for the management transfer of aquatic farming from the Department of Fish and Game to the Department of Natural Resources. He reported that this transfer was not supported by the Administration or the bill's sponsors. When the bill left the House Fisheries Committee it was changed into the present bill. The bill now allows aquatic farming products to qualify, within the Department of Natural Resources, for the "Alaska Grown" promotional and marketing program. Mr. Bitney referred to the attached Amendment where he would like the Committee to consider removing the word "hatchery." He also mentioned one fiscal note attached to the bill.

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ROGER PAINTER, PRESIDENT, ALASKA SHELLFISH ASSOCIATION, remarked of the bill's necessity because earlier legislation inadvertently changed the definitions in the Statutes and has prevented aquatic farm products from qualifying for the Alaska Grown label. He mentioned that there were currently thirteen grandfathered farms using this label when the definition problem was discovered. The rest of the farmers would also like to use the label. Vice-Chair Stoltze wanted reassurance that costs were not being transferred from the fish industry to the Department of Agriculture for inspections or other required work.

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Mr. Painter responded that aquatic farms do qualify for agriculture assistance and a number of aquatic farms have received loans from the Farms Service Agency. He remarked that aquatic farmers are subject to regulations under the Food and Drug Administration and the Department of Environmental Conservation. Vice-Chair Stoltze asked for assurance that the aquatic farmers would not impose any additional costs or services on other departments.

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Mr. Painter responded that no additional costs would be incurred as farmers who currently use the "Alaska Grown" label only use the label and require no special promotion from the department.

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Representative Thomas MOVED to ADOPT Amendment 1:

Page 2, line 2  
After "farm"  
Delete "and hatchery"

Page 2, line 31  
After "farms"  
Delete "and hatcheries"

Co-Chair Meyer OBJECTED for discussion.

[3:39:48 PM](#)

Co-Chair Meyer WITHDREW his OBJECTION. There being NO OBJECTION, it was so ordered.

Vice-Chair Stoltze remarked that the Department of Natural Resources fiscal note contradicts Mr. Painter's comments that the aquatic farmers do not expect to receive other benefits.

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Mr. Bitney discussed the fiscal note for \$11,500. He said \$5000 was for travel to visit aquatic sites and the \$6,500 was for marketing or promotional items.

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FRANCI HAVEMEISTER, DIRECTOR, DIVISION OF AGRICULTURE (Testified via teleconference), indicated that the division is willing to cooperate with the Division of Land, Mining and Water, the Department of Environmental Conservation and

Department of Fish and Game to get this program under the marketing division.

[3:45:19 PM](#)

Representative Kelly MOVED TO REPORT CSHB 257 (FIN) out of committee with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 257 (FIN) was REPORTED out of Committee with a "do pass" recommendation and new fiscal notes by the Department of Natural Resources and House Finance committee and a previously published fiscal note by the Department of Fish & Game.

[3:46:37 PM](#)

HOUSE BILL NO. 332

"An Act relating to elementary and pre-elementary schools."

Representative Bryce Edgmon remarked that HB 332 would modify Title 14 so that pre-elementary or Head Start facilities would be eligible for E-rate discount funds available through the Alaska Universal Services Fund. This bill provides a more explicit definition allowing Head Start facilities to be available for money to help with bandwidth costs. Last year this federal program brought in \$18 million to the State of Alaska. He noted the attached bill amendment would not disqualify or impact special needs children.

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Representative Gara MOVED to ADOPT Amendment 1:

Page 1, Lines 11-12:

Delete "Pre-elementary"

Insert "Except for a child with a disability who is receiving special education or related services under AS 14.30.180 - 14.30.350, pre-elementary"

Representative Joule OBJECTED for discussion.

[3:50:29 PM](#)

Representative Edgmon explained that the amendment provided clearer language on not impacting the regulations that count special education students in the Average Daily Membership (ADM).

Representative Joule WITHDREW his OBJECTION.

[3:51:28 PM](#)

Representative Gara MOVED TO REPORT CSHB 332 (FIN) out of committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 332 (FIN) was REPORTED out of Committee with a "do pass" recommendation and a previously published fiscal note by the Department of Education and Early Development.

HOUSE BILL NO. 418

"An Act providing notice of and authorization for the Department of Administration to enter into a lease-purchase agreement for the construction, the purchase of equipment, and the financing of a fish hatchery in Anchorage to be operated by the Department of Fish and Game; relating to the issuance of certificates of participation for the fish hatchery; authorizing payments for the lease-purchase agreement from sport fishing facility license surcharge fees; relating to capital lease financing of sport fishing facilities; and providing for an effective date."

ADJOURNMENT

The meeting was adjourned at 3:52 PM