

HOUSE FINANCE COMMITTEE
April 8, 2008
2:27 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [2:27:07 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

Representative Paul Seaton; Representative Jay Ramras;
Representative Ralph Samuels; Representative Anna Fairclough;
Representative Max Gruenberg; Senator Bill Wielechowski;
Senator Leslie McGuire; Governor Bill Sheffield; Frank Homan,
Commissioner, Commercial Fisheries Entry Commission, Juneau;
John Hilsinger, Director, Commercial Fisheries Division,
Department of Fish and Game; George Ascott, Staff,
Senator Bill Wielechowski; Bill Scannell; Mathew Kerr;
Kevin Brooks, Deputy Commissioner, Department of Administration;
Anne Carpeneti, Assistant Attorney General, Legal Services
Section-Juneau, Criminal Division, Department of Law;
Lauren Rice, Legislative Liaison, Department of Public Safety;
Richard Svobodny, Deputy Attorney General, Criminal Division,
Department of Law; Doug Wooliver, Administrative Attorney,
Alaska Court System; Dwayne Peeples, Deputy Commissioner,
Department of Corrections

PRESENT VIA TELECONFERENCE

John Brading, Fairbanks; Frank Turney, Fairbanks; David Sapp,
Fairbanks; Larry Smith, North Pole; Paul Nelson, Haines;
Shaeffer Cox, Fairbanks; Whitney Brewster, Director, Division
of Motor Vehicles, Department of Administration;

Krista Stearns, Assistant Attorney General, Department of Law, Anchorage; Kathryn Monfreda, Criminal Records & Identification Bureau, Department of Public Safety, Anchorage; Blair McCune, Criminal Defense Attorney, Anchorage; Lieutenant Rodney Dial, Alaska State Troopers, Department of Public Safety

SUMMARY

HCS SB 202(STA)

An Act relating to expenditures in aid of or to implement the provisions of the federal Real ID Act.

HCS SB 202(STA) was reported out of Committee with a "do pass" recommendation and with zero note 1 by the Department of Administration.

#SB119

CS SB 119(RLS)

An Act relating to grant programs to support libraries.

CS SB 119(RLS) was POSTPONED.

#SB243

CS SB 243(HES)

An Act relating to the duties and powers of the Alaska Commission on Aging and the Department of Health and Social Services.

CS SB 243(HES) was POSTPONED.

#

SB 254

An Act extending the termination date of the Alaska regional economic assistance program; and providing for an effective date.

HCS SB 254 (FIN) was reported out of Committee with a "do pass" recommendation and with new zero note by the Commercial Fisheries Entry Commission and fiscal notes #1 & #2 by the Department of Commerce, Community and Economic Development.

#SB259

SB 259

An Act repealing certain provisions relating to applications for medical assistance coverage; making certain provisions of ch. 96, SLA 2006, retroactive; providing for an effective date by repealing an effective date section in ch. 96, SLA 2006; providing for an effective date for certain sections of ch. 96, SLA 2006; and providing for an effective date.

SB 259 was POSTPONED.

#

CS SB 265(FIN)

An Act relating to the payment of permanent fund dividends to certain individuals required to register as sex offenders or child kidnappers; relating to execution upon permanent fund dividends by civilian process servers using electronic procedures; amending Rule 89, Alaska Rules of Civil Procedure; and providing for an effective date.

HCS CS SB 265(FIN) was reported out of Committee with a "do pass" recommendation and with 2 new zero notes by the Department of Health and Social Services, a new fiscal note by the Department of Public Safety, Department of Corrections and Department of Law, fiscal note #2 by the Department of Public Safety, zero note #5 by the Department of Administration and fiscal note #6 by the Department of Revenue.

2:28:11 PM

#SB254

SENATE BILL NO. 254

An Act extending the termination date of the Alaska regional economic assistance program; and providing for an effective date.

REPRESENTATIVE PAUL SEATON, SPONSOR, explained that the committee substitute for SB 254 contains the entire purpose of HB 16, extension of the vessel base fishing limited entry system.

HOUSE BILL NO. 16

"An Act providing for an effective date by delaying the effective date of repeal of the authority of the Commercial Fisheries Entry Commission to maintain the vessel-based commercial fisheries limited entry systems for the Bering Sea Korean hair crab and weathervane scallop fisheries, and the effective date of conforming amendments related to the repeal of those systems."

HB 16 did not languish in Committee. It was introduced early with extensive hearings last year. Following discussions with the Department of Fish and Game & Commercial Fisheries Entry Commission (CFEC). He hoped to see seamless management tools in place for managing the

coast of Alaska State waters. He wanted to see regulations in place.

Senator Seaton pointed out the inclusion of two fisheries in the work draft. When it was adopted in 2002, there was significant statewide testimony regarding anticipated problems including "super consolidation. The hair crab fishery was closed two years before the temporary limited entry permits were granted. There is no hair crab fishery anticipated for the next three years.

He referenced the scallop fishery permits that had been issued. Currently, there are only three boats that harvest 100% of the scallops in Alaska. There is a tax issue because the fishery has been consolidated too far and information is not available. There are only two Alaskan boats participating in that fishery. Both boats have testified that they would like to see the license period extended to five years. There is a sunset included in the bill. In the current plan, the ownership goes to the vessel owner and is the same system used by the federal government. The program would not terminate the 70% fisheries now occurring in federal waters. The federal water limited entry system will remain in place.

Representative Seaton reviewed the temporary nature of the permits. He addressed how well the program worked for Alaska. He maintained that there needs to be a policy call on that fishery.

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Representative Seaton continued, nothing in the legislation prevents the system from being in place in federal waters. The State recognizes that individual participants gain the rights and that it can be transferred, but no one else can enter the fishery.

He maintained that there is ample time to go back and create a limited entry program based on the proposed deliveries. Historically, the Alaska fishery attempts to have participants, however, at this time, it is in the hands of only three. Those provisions have prevented many fishermen from participating on an economic scale.

Representative Seaton emphasized that the Community Development Quota (CDQ) is an excellent program. The language of the bill would not prevent it but rather proposes monitoring a statewide program, maintaining fishing permits.

Representative Seaton stated that there is no conservation issue attached to the fisheries, which is driven by the economics of participation.

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Representative Thomas asked about the statewide boat displacement. Representative Seaton explained, there is no way to legally indicate that it is an Alaskan boat. The program displaces those boats so they do not have access to the fishery. He reiterated, there are only three fishing vessels in the entire fishery.

Representative Thomas was concerned and asked if limited entry was eliminated, how the fleets would access an open fishery. Representative Seaton explained that the question is not whether the vessels could be excluded from Alaska but rather that they are receiving dollars from Alaska without coming to the State. He maintained that the program should go away.

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Representative Nelson asked if the concern is with shareholders not fishing the vessel, yet receiving benefits from the resource. Representative Seaton indicated his concern with people who do not participate in the fishery, but actually "own" the fishery. He added that the program has constricted jobs available to Alaskans and that jobs in the fishing industry are removed through the program, which means a loss of jobs and opportunities to coastal Alaska.

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Representative Nelson elaborated that the vessels are so large that no one in her village can actually afford to own one. Representative Seaton pointed out that some are only 75 feet and that the fishery does not have to be in a huge vessel. Historically, there have been smaller boats used in coastal towns. The consolidation included a vessel 123 feet long. He recognized that some coastal villages do receive small checks because a larger vessel is distributing those funds. He reiterated that the bill only addresses the scallop fishery, which fishes three miles within the coast.

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Representative Thomas mentioned halibut fishing outside the coast of Alaska. He asked why there are complaints being voiced now, after so many years of being displaced. Representative Seaton explained that the personal limited entry system in Alaska is not consolidated and remains with that person, which does not guarantee that Alaskan people are actually participating in the fishery.

Representative Thomas commented on the medical transfer permit restrictions allowed every three years.

Representative Seaton spoke to the illegal practice of leasing a permit, noting the exceptions for medical emergencies limited to a specific length of time. He worried about one boat harvesting the entire fishery.

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Representative Kelly summarized that the bill outlines two issues. One related to procedure and the other regarding the merits of the issue. He inquired which committee the bill should have been assigned to after the Fisheries Committee.

Vice-Chair Stoltze understood that it should have gone to the House Resources Committee. Representative Kelly thought that forwarding the bill to the House Finance Committee was a "clear violation of the rules". He disagreed with incorporating it into an unrelated bill and the process it had followed.

Co-Chair Meyer acknowledged that was a correct recap of Speaker Harris' position & what happened.

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Representative Kelly asked to take public testimony on the issue. The sunset is being requested to be changed from five to ten years. He reiterated that the issue needs more attention and that he does not support the proposed ten year sunset.

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Representative Gara interjected that consideration should have gone through the public issue and not have been determined in the Majority Caucus. He was uncomfortable with the process, maintaining that anything of merit should always be debated and that the committee process provides an opportunity to hear and deliberate issues.

Representative Gara acknowledged he was confused about the issue. He was sympathetic for a piece of the State, which does not have a vibrant economy, yet has an interest in the fishery. He agreed that the power of the Alaskan fisheries should not be consolidated by huge outside companies. He acknowledged it is not a black and white issue.

If the sunset was not extended, the Commercial Fisheries Entry Commission (CFEC) would have to determine who receives the vessel permits. If the sunset went into effect, the State would then have to determine who gets the permits to protect the resource. He asked if there was a way to determine permits distributed statewide and continue to have an interest in them given a preference.

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Co-Chair Meyer commented that if the issue is important enough, it will surface for a public hearing. Representative Seaton interjected that the bill has been heard and given multiple hearings over the past two years.

Representative Gara questioned the effect of the sunset on the vessel permitting.

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FRANK HOMAN, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION (CFEC), JUNEAU, responded that CFEC would not be able to do anything if that happened. There is no way to take the vessel license program to an individual license program. There is no way to go backward except to go "way back in time" in the last ten to fifteen years. In the last five years, since the vessel license program has been in effect, the fishery has been limited to the vessels participating. To establish a limited entry system, the law clarifies the need to look back to four years experience and then choose from those participants. At the end of 2008, there is no population to draw on, except the vessel participating.

The traditional method determines that those fishermen recently fishing get the most points. Mr. Homan added that in 2002, when the Legislature allowed the system for these two fisheries, it had been studied for five years prior at the Department of Fish and Game, attempting to determine a way to use the individual permitting system that identified the conservation of the fishery. There could be too many fisherman eligible to apply and the resource is fragile. The idea was presented to the Legislature, who debated and studied it. The Legislature allowed the exception to the general rule. He clarified that there is no way at this time to prevent non residents from participating.

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JOHN HILSINGER, DIRECTOR, COMMERCIAL FISHERIES DIVISION, DEPARTMENT OF FISH AND GAME, advised that the Department supports the limited base entry system because it provides for conservation of the resource. If it is determined to return to the entry system, the Department has developed a management plan that will work if there is not much entry into the fishery. It is unknown how many people would come

into that fishery if it was open entry. He reiterated that the Department is attempting to develop a plan, which provides the necessary conservation of the resource.

The Division will need to divide the scallop beds into a State and federal waters portion and manage each section separately. The boats would have to register. The vessels would lose flexibility where they could fish. There are many questions regarding how the system would work in the open entry system.

Mr. Hilsinger noted that fishery is a voluntary cooperative. The economics of the fishery is small, harvesting approximately ½ million pounds of scallops. He noted that there is 100% observer coverage except in the Cook Inlet. He added that most of the scallop beds are in federal waters; there are only three that cross over. There are only three places where a State water boat could fish.

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Mr. Hilsinger commented that if there are regulations that are too restrictive, the fishery could become uneconomic for everyone. That is not the intent of the Division. The intent is not to have different regulations inside and outside the three mile limit because of enforcement difficulties. He offered to answer additional questions of the Committee.

[3:19:39 PM](#)

Vice-Chair Stoltze asked if the Department had initiated the discussion regarding emergency regulations. Mr. Hilsinger replied that the preference was to maintain the vessel base limited entry system.

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Representative Hawker asked if the Limited Entry Commission and Commercial Fisheries Division support the language proposed in the bill. Mr. Homan stated that the Limited Entry Commission does. Mr. Hilsinger added that the Commercial Fisheries Division, Department of Fish and Game, also does.

Representative Hawker inquired about the term position of each agency. Mr. Homan responded that the original

intention for the agency was to make the vessel license permanent for the two fisheries. Mr. Hilsinger echoed comments made by Mr. Homan.

Mr. Homan addressed consolidation issues. He stated that in 2002, the Legislature wrote into law [AS 16.42.450] that CFDC would establish regulations to avoid consolidation; that has been accomplished. The cooperative nature of the fishery is a result of that mandated legislation.

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Representative Kelly interjected previous discussion regarding a way to determine bill management, which the public can understand. He did not intend to change his position on the legislation.

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Representative Hawker MOVED to ADOPT Amendment 2, Page 1, Line 3, after "system", inserting "for the Bering Sea Korean hair crab and weathervane scallop fisheries". Vice-Chair Stoltze OBJECTED.

Representative Hawker explained that the amendment provides "title tightening". Vice-Chair Stoltze WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

[3:27:39 PM](#)

Representative Foster MOVED to REPORT HCS SB 254(FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS SB 254 (FIN) was reported out of Committee with a "do pass" recommendation and with new zero note by the Commercial Fisheries Entry Commission and fiscal notes #1 & #2 by the Department of Commerce, Community and Economic Development.

AT EASE: [3:29:11 PM](#)

RECONVENE: [3:33:46 PM](#)

#SB202

SENATE BILL NO. 202

An Act relating to expenditures in aid of or to implement the provisions of the federal Real ID Act.

SENATOR BILL WIELECHOWSKI, SPONSOR, introduced SB 202, a bill against the federal mandate which creates the first national Identification (ID) Card. He commented that passage of that bill is cause for alarm since the federal government is attempting to interfere with the State's sovereignty and force the State to implement the program through state-issued driver's licenses. SB 202 would prohibit the use of State money to implement the program. Many people are concerned that the technology required by the Real ID Act would convert driver's licenses and identification cards into tracking devices, allowing computers to note and record people's whereabouts. Additionally, there is concern that the Real ID Act would be used as a backdoor attempt to institute a national gun registry. Many from the National Rifle Association (NRA) oppose the Real ID Act. He encouraged passage of SB 202.

In response to Representative Hawker, Senator Wielechowski explained that the intent was not to prevent the Division of Motor Vehicles (DMV) from implementing best practices and hence "solely" was incorporated.

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Representative Hawker asked if the Senator was "comfortable" with that language. Senator Wielechowski said he was okay with the changes made in the House State Affairs Committee.

Representative Gara commented on protecting the other functions of Division of Motor Vehicles (DMV). Without using "solely", it provides a partial prohibition. Senator Wielechowski responded that initially "solely" had not been used, knowing that the DMV would still be able to implement best practices. He agreed he shares concerns with Representative Gara. He added that SB 202 does not support Real ID. There could be dollars spent on the Real ID program with the use of federal funding.

Representative Gara asked if there were other states that did not incorporate "solely". Senator Wielechowski replied that there are seventeen states that have passed some legislation prohibiting Real ID.

[3:42:02 PM](#)

GEORGE ASCOTT, STAFF, SENATOR BILL WIELECHOWSKI, acknowledged that was correct and that Washington, Montana and Maine, each offer different language, indicating that they would not comply with the Real ID Act.

Representative Gara asked that language preference. Senator Wielechowski clarified that the bill was filed not including

"solely"; when the bill moved through the HSA Committee, he agreed to support the bill as changed.

BILL SCANNELL, SELF, ANCHORAGE, spoke in support of the legislation. He did not care for usage of "solely" but would support it if that was the only way to get it to the House Floor.

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MATHEW KERR, SELF, ANCHORAGE, spoke in support of the bill. The provisions of the Real ID increase the size of government without compelling any State benefit.

JOHN BRADING, FAIRBANKS, testified via teleconference, voiced support for SB 202. He claimed that no one wins when freedom fails. He thought that the Real ID Act is an instrument to control human freedom.

FRANK TURNEY, FAIRBANKS, testified via teleconference, spoke in support of the bill. He added support for HB 3 regarding driver's license ID. "Those who give up essential liberties for security deserve neither." (Ben Franklin)

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DAVID SAPP, FAIRBANKS, testified via teleconference, indicated his support of the legislation. He echoed concerns regarding the Real ID Act.

LARRY SMITH, NORTH POLE, testified via teleconference, voiced support for SB 202. He wanted to see legislation passed so that the State never has to address the issue again.

PAUL NELSON, HAINES, testified via teleconference, spoke in support of the bill, pointing out that the Real ID Act violates the Alaska State Constitution. It is an unfunded mandate that adds another layer of bureaucracy to government. The Real ID Act does nothing to protect the citizens of this country.

SHAEFFER COX, FAIRBANKS, testified via teleconference, spoke in support of SB 202. He recommended that the word "solely" be removed. He questioned if the people belong to the government or if the government belongs to the people. He emphasized the amount of statewide opposition to the Real ID Act.

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KEVIN BROOKS, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, referenced inclusion of "solely", which the Department supports. The State of Alaska does not have the

funding to implement the Real ID Act. The federal government did issue the final rules based on the best practices for states and each state was included in determining what their best practices are. He recommended that using a digital photo on the driver's license is a good idea. The original wording of the bill raised questions regarding how effective continuation of the State's best practices could be.

Representative Gara wanted to know that the intention of the Administration was not to implement the Real ID Act. Mr. Brooks understood that was correct.

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Representative Kelly clarified that if the Administration planned on changing the intent, they would need to come back before the Legislature. Mr. Brooks said yes.

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WHITNEY BREWSTER, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION, ANCHORAGE, testified via teleconference, stated that the DMV clearly understands the condition on Real ID and that DMV does not plan on moving forward toward compliance with Real ID. The Division wants to have the ability to use what would be good for Alaska. She indicated support for "solely" remaining in the bill as presented.

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Representative Gara understood that DMV would want to use laminated photos. He asked Ms. Brewster if the interpretation does not intend to use the same database as shared with the national ID portions of the Real ID Act. Ms. Brewster replied that was correct.

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KRISTA STEARNS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, testified via teleconference, offered to answer questions of the Committee. She noted that inclusion of the word "solely" does advance the ability of the DMV to move forward in providing fraudulent document training to employees. It is a broad term and the discussion has been helpful with regard to true concerns.

PUBLIC TESTIMONY CLOSED

[4:07:16 PM](#)

Representative Foster MOVED to REPORT HCS SB 202 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HCS SB 202(STA) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Administration.

AT EASE: [4:08:32 PM](#)
RECONVENE: [4:23:23 PM](#)

[4:23:40 PM](#)
#SB265
CS FOR SENATE BILL NO. 265(FIN)

An Act relating to the payment of permanent fund dividends to certain individuals required to register as sex offenders or child kidnappers; relating to execution upon permanent fund dividends by civilian process servers using electronic procedures; amending Rule 89, Alaska Rules of Civil Procedure; and providing for an effective date.

Representative Foster MOVED to ADOPT work draft 25-LS1449\W, Luckhaupt, 4/6/08, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

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SENATOR LESLIE MCGUIRE, SPONSOR, directed her comments to the original version of SB 265.

*Co-Chair Meyer pointed out that the bill had previously been heard in the House Finance Committee and that public testimony had been closed.

Senator McGuire addressed previous question about identifying those who are not in compliance with the sex offender registry and why they were not being arrested. She explained that the issue is one of resources and that being out of compliance for the sex offender registry is a Class A misdemeanor. She reiterated the concern with resources and that the bill attempts to create one more disincentive for a sex offender to comply.

Senator McGuire requested that Amendment 1, 25-LS1449\W.6, Luckhaupt, 4/7/08, be WITHDRAWN. The amendment would have mandated that the Department of Public Safety distribute a list to all law enforcement, a practice already done. She added that the manner, in which the amendment was drafted, would make it more confusing.

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KATHRYN MONFREDA, CRIMINAL RECORDS & IDENTIFICATION BUREAU, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE, testified via teleconference, advised that the Department of Public Safety currently produces a monthly list of non-compliant sex offenders distributed to specific law enforcement agencies.

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Senator McGuire addressed the next question put forward by the Committee. Two members asked about the issue of court ordered garnishments [child support payments] owed to children of sex offenders. Amendment 3, 25-LS1449\W.4, Cook, 4/7/08, was written to address that concern. Amendment 3 exempts court ordered garnishments from the bill and Child Support Enforcement Agency (CSEA) and other debtors would still be able to get the offenders Permanent Fund Dividend (PFD) if they are out of compliance.

Senator McGuire continued. The final question brought forward by the Committee was in regard to the Permanent Fund Dividends (PFD)'s after they had been withheld for a year. She pointed out that in Amendment 4, 25-1449\W.3, Cook, 4/7/08, the PFD would be withheld up to one year. If the person failed to comply after that year, the PFD would then be rolled into the Crime Victim Compensation Fund.

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Representative Gara noted that SB 265 includes a number of bills and asked if the ones brought forward were the same version as they had been amended in other committees or the same as the original bills.

Senator McGuire offered to provide a sectional analysis, addressing concerns with the bills during other committee processes. She explained that each piece was chosen and incorporated only if there had been no contention. She added, there is a new concept proposed by the House Judicial Committee, which had come before the Finance Committee as an amendment. It addresses the boot-legging provision.

[4:33:35 PM](#)

Senator McGuire:

- Sections 1 & 2 was taken from the House Judiciary Committee (HJC) and provides that a licensee, agent or employee of a licensee is not subject to prosecution for furnishing alcohol to a minor under AS 04.16.051. Rather, licensees and their agents

would be subject to prosecution under AS 04.16.052, which would be a Class A misdemeanor.

- Section 3 provides that a person who sends, transports, or brings alcoholic beverages into a municipality or established village that has prohibited the importation of alcohol, upon the third offense within 10 years is guilty of a Class C felony.

[4:35:38 PM](#)

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, explained Section 4.

- Section 4 provides a minimum sentence of imprisonment and fines for a conviction under AS 04.16.200(e)(1), if the person is not subject to the changes made in Section 3.

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Senator McGuire continued:

- Sections 5 & 6, requires a person who lends money on secondhand articles in a municipality with over 5,000 residents to maintain in an electronic format, the date of the transaction and a description of the property.

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Vice-Chair Stoltze noted the 5,000 population limit for a municipality. Ms. Carpeneti understood that a municipality as included in Sections 5 & 6 refers to a borough.

Representative Gara noted his support for the endeavor. He worried about the single subject rule, referencing Sections 5 & 6, civil aspects of particular crimes on pawn shops and theft. He questioned the position of such issues addressed.

Senator McGuire opined that the single subject rule is "a delicate line" and that there had been a severability clause written into the bill. She believed that including Sections 5 & 6 "makes the cut", but acknowledged that ultimately, it is open to the will of the Committee. Ms. Carpeneti added that it is defensible under the single subject rule because it addresses stolen property.

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Representative Gara inquired where Sections 5 & 6 had been taken from. Senator McGuire responded that Senator French

had proposed that amendment during the Senate Judiciary Committee (SJC) meeting.

[4:42:15 PM](#)

Senator McGuire continued:

- Section 7 allows a peace officer, owner or owner's agent of a commercial establishment to detain a person for a reasonable time if there is a probable cause to believe the person has committed or attempted to commit theft from the property.
- Section 8 clarifies that when a theft offense is enhanced one level because the defendant has two prior thefts within five years of the new crime, a prior conviction occurs on the date that the defendant was sentenced for the theft.
- Section 9 changes the culpable mental state for the crime of Arson in the 2nd Degree.
- Section 10 adopts a new crime - Criminally Negligent Burning in the 1st Degree, which applies to persons, convicted a second time within a 10-year period of arson or criminally negligent burning. The crime is a Class C felony.

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Representative Gara asked if it would reduce the mental state from "intentionally" to "knowingly" for arson in the 2nd degree. Ms. Carpeneti said yes and that recommendation had been made by Representative Gruenberg, resulting from a series of intentionally started home dumpster fires.

Representative Gara inquired if there could be "reckless" cause creating damage. Ms. Carpeneti replied that there is criminal negligence in burning. Current law carries arson in the 1st and 2nd degree & criminally negligent burning. The proposed law divides the criminally negligent burning into 1st and 2nd degree.

Representative Gara proposed that for some adolescences, negligence does not intent to light a house on fire. He asked if that was the correct & fair penalty for a dumb mistake. Senator McGuire interjected that the Committee could amend the bill, however, the current language states: "Knowingly damaging a building". Ms. Carpeneti understood that the risk was known when the fire was started, which would have to be proven.

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Senator McGuire referenced Section 11.

- Section 11 conforms current law, the criminally negligent burning, by making it 2nd degree criminally negligent burning.

*Representative Gara asked the level of crimes that Sections 9 & 10 consider. Ms. Carpeneti explained that arson in the 2nd degree is a Class B felony; the new crime, criminally negligent burning in the 1st degree would be a Class C felony; currently, criminally negligent burning is 2nd degree Class A misdemeanor. Representative Gara inquired about the classification of Class C felonies. Ms. Carpeneti stated that "knowing" is a higher standard than "reckless".

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Senator McGuire continued:

- Section 12 adds three controlled substances under Schedule IVA including Carisprodol-commonly called Soma and listed as a controlled substance in 17 states; Zolpidem-commonly called Ambien and listed as a Schedule IV substance in federal schedules; Zopiclone-commonly called Lunesta and listed as a Schedule IV substance in federal schedules. These prescription drugs have been widely abused and have been found by law enforcement to be present in drivers who are impaired.
- Section 13 clarifies that a court may issue a search warrant for property located outside the State. The issue of the court's authority out of state has arisen in white collar investigations where the state seeks stored electronic information. Companies that store the information are willing to provide it if law enforcement present a search warrant for the information. The change would clarify that a court may issue a warrant to obtain the information.

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Senator McGuire continued:

- Section 14 allows a judicial officer to issue a search warrant over the telephone or other electronic communications in the important affairs of their lives. Law enforcement should not have to drive or fly to a judicial officer for a search warrant when electronic means are available for the court to fairly evaluate the evidence.
- Sections 15, 16, 17, 30 & 31 will help avoid potentially dangerous situations where a person is charged with a crime, but found incompetent to be

tried for it, and then is released back into a community without adequate consideration of the danger the individual may present and without notice of release to the prosecution. It would require a person charged with a felony and found incompetent to be evaluated for commitment and treatment. The bill adopts a rebuttable presumption that a person charged with a felony but found incompetent to proceed is mentally ill and likely to present a danger to themselves or others. It allows the court to consider the conduct with which the person has been charged in making that determination.

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Ms. Carpeneti explained that those sections address a problem that has arisen in how to deal with people that are not competent to be tried. The language requires that the persons charged with the felony to be referred for an evaluation by a mental health professional. It would then adopt the presumption that is rebuttable that the person sent for evaluation presumption that person is mentally ill and is likely to commit serious harm to them self or another individual. Later sections of the bill require that before a release of a person found to be incompetent, a professional must notify the prosecution before the release, allowing time to notify the law enforcement.

[4:56:54 PM](#)

Ms. Carpeneti explained:

- Section 18 allows the court to impose probation on a person who is convicted of a violation under AS 11 and AS 16.

[4:58:50 PM](#)

Representative Kelly questioned the notification of prosecutors for intervention help and asked if the murder in Sitka could have been avoided using that provision. Ms. Carpeneti acknowledged that situation was difficult. Under current statutes, the person could not be held longer than a year because the incompetent person had not been convicted. It would help to require an evaluation of every person charged of a felony, requiring the notice before that person is released.

Representative Kelly wondered if there was any additional language that could be added to address loopholes in the system. Ms. Carpeneti did not think the statutes could be applied to the Sitka case since that young man had not been

found incompetent initially to be tried. He had only been charged with an assault and had then been released on bail.

[5:02:15 PM](#)

Representative Gara voiced concern that in Section 18, a person that had not yet committed a crime could be placed on probation. Ms. Carpeneti stated that there are a few violations in AS 11, such as failure to report a crime.

Representative Gara questioned why a fish and game crime could become a fineable offense. Ms. Carpeneti explained that would be determined by whether it happened intentionally or not. Representative Gara inquired the level at which it becomes only a violation. Ms. Carpeneti acknowledged that a person can not go to jail with only a violation and that there is no probation supervision for those convicted misdemeanors or offenses. Fines can be imposed.

[5:04:48 PM](#)

Ms. Carpeneti addressed Section 19.

- Section 19 defines "aggravated assaultive behavior" as a felony assault under AS 11.41 or a similar provision in another jurisdiction.
- Section 20 provides that the aggravating factor that a defendant convicted of a felony sex offense has engaged in sexual offense against the same or another victim, is a factor that may be proven to the court at sentencing rather than to the jury.

Representative Gara referenced another bill proposed by Representative Holmes regarding the three offense sentencing. He asked if either of the two bills would address the Blakely concerns. Ms. Carpeneti replied they would not.

Senator McGuire continued:

- Section 21 allows the Governor to delegate extradition authority responsibilities either to the Lt. Governor or the head of a principal department in the executive branch. The appointment must be in writing and filed with the Lt. Governor.
- Sections 22-24 address post-conviction relief. In the language Sections 22 and 23, provides that a person has one year to bring an application for the relief after the entry of judgment if no appeal from the conviction is taken and one year to bring an application for the relief after the entry of an order revoking probation. Section 24 requires the

court to first decide whether an application for post-conviction relief is timely and no previous application filed, before considering a substantive claim in an application.

- Section 25 allows a court to order a person convicted of violating any law or regulation under Title 16 for the unlawful taking of game to pay restitution for the unlawful taking.

[5:09:25 PM](#)

Senator McGuire continued:

- Section 26 provides that a court that convicts a person for violation of AS 04.16.050 (Possession, control, or consumption by persons under the age of 21) shall forward a record of the conviction to the Division of Motor Vehicles (DMV) within five working days.
- Section 27 provides that the court may order a person charged under AS 04.16.200(b) or (e) to complete a court-ordered treatment program.
- Sections 28-29 requires that payment of the Permanent Fund Dividend (PFD) for a person, who is required by law to register as a sex offender or child kidnapper, be delayed until that person submits proof that the requirements for sex offender registration have been met by the applicant for the dividend.
- Section 32 dispels a potential misunderstanding in the applicability sectional clause in HB 90, which had been adopted last year.

Ms. Carpeneti explained that Section 32 clarifies the intention for adoption of HB 90 last year, an action, which limited application for post conviction relief to a one year statute of limitation.

[5:14:08 PM](#)

Senator McGuire argued that had not been the intent of HB 90, but rather to "narrow" the language, not reopen claims for post-conviction relief.

- Section 33 repeals AS 12.35.015(f) to conform the amendment in Section 12, which allows a court to issue search warrants by telephone and other electronic means.
- Section 34 repeals AS 11.71.310 and AS 12.20.010 that prohibit prosecution by the State for violations of State law if the federal government has prosecuted the same act for violation of federal

law. Although, the situation does not occur often, it is important that Alaska has the authority to enforce laws and protect interests and the citizens.

- Section 35 changes a Court Rule to allow more time for the return with inventory of a search warrant.
- Section 36 is a Court Rule change reflecting the provisions relating to post-conviction relief contained in Sections 22, 23 and 24.
- Section 37 is an applicability section.
- Section 38 retroactive section for Section 32.
- Section 39 provides the immediate effective date for Sections 32 and 38.
- Section 40 indicates that January 1st 2009 as the effective date for Sections 28 and 29.
- Section 41 is an effective date of July 1st 2008 for all other sections not stipulated in Sections 39 and 40.

[5:20:01 PM](#)

Ms. Carpeneti clarified that Section 38 makes retroactive the section that clarifies the applicability clause in HB 90, retroactive to July 1, 2007.

AT EASE: [5:21:09 PM](#)

RECONVENE: [5:23:04 PM](#)

Representative Gara recommended a severability clause be included. Senator McGuire agreed, advising that one is currently being drafted.

Representative Gara asked about the post-conviction relief section of the bill regarding finding evidence within one year and if that could be used. He worried about new evidence coming forward.

BLAIR MCCUNE, CRIMINAL DEFENSE ATTORNEY, PRIVATE PRACTICE, ANCHORAGE, testified via teleconference, agreed that the provision was unclear. He added that if new evidence was presented that could change the outcome, there should be no time limit attached. A two year limitation was determined in 1995 and he did not believe that it could survive a due process challenge. He stated that it is difficult to file such cases since the 1995 determination. Two years for entry of judgment for conviction, recognizes that most people currently would not be currently represented. The big concern is the filing fee exemption. In order to file the applications, if the filing fee is not available, that person must get a certification from the Department of Corrections regarding their inmate account balance and then

the court can charge 20% of the average six month balance. The process takes a long time.

[5:30:00 PM](#)

In response to Representative Gara, Ms. Carpeneti explained that the action would not be happening after an appeal but after the conviction had been appealed and upheld. Under current law, the Statute of Limitations for post conviction relief is one year if there is an appeal and two years if there isn't. The language would not limit any newly discovered evidence.

Representative Gara did not understand the language on Page 11, regarding submersible evidence not known within one year. Ms. Carpeneti recommended reading the lead-in language on Page 10: "Notwithstanding A(3) & (4), the statute of limitations, the court may hear the claim based on newly discovered evidence". She agreed that the statute directive had been drafted strangely.

Representative Gara asked the result if the evidence was found six months afterward. Ms. Carpeneti responded that due diligence would have to be established. Representative Gara asked the relief after one year. Ms. Carpeneti stated that if due diligence is established after the evidence is discovered, they could bring the application of post conviction forward. If it was not known for one year, under Section 22, those time limitations do not apply.

Representative Gara presented two circumstances. Ms. Carpeneti explained that the person would have to exercise due diligence in filing the claim to bring forward to the courts.

Mr. McCune acknowledged that the statute was confusing. He wondered if it would be easier to say with due diligence, the person could bring forward an application for post conviction relief based on newly discovered evidence at any time. Ms. Carpeneti agreed that was the correct interpretation.

Representative Gara asked about concerns voiced by Mr. McCune regarding State resources and that one year would not be enough time to file a claim. Ms. Carpeneti said that was not of concern; the sentencing occurs after a person has been convicted and the conviction has been upheld. She maintained that due diligence should be used and that one year would be long enough.

[5:37:50 PM](#)

Representative Nelson requested further discussion of Section 4 and the bootlegging provisions. She noted that

she represents twenty-nine [29] dry communities. She questioned if the language only addresses fines and the look-back period.

REPRESENTATIVE RALPH SAMUELS explained that the House Judiciary Committee (HJC) did not change the jail time in Section 4. The first conviction was left at \$1500 dollars and after that, every other conviction was raised to \$10,000 dollars and then up to \$25,000 dollars. It is just a business and that the costs should be increased until the bootleggers can no longer afford to do business. He had spoken with various representatives from the village communities and maintained that fines knock-back bootlegging business.

Senator McGuire pointed out that she was committed to working with the Department of Law with regard to the amount of alcohol across all the statutes and up for reduction.

[5:41:47 PM](#)

REPRESENTATIVE JAY RAMRAS added that the House Judiciary Committee attempted to blend a variety of concerns. A majority of the Committee members shared an intolerance of alcohol being in the dry communities. Included in the work draft is the existing amount of alcohol indicated in Title 4. The look-back period was shifted to 15-years. The intention is to show a distinct intolerance of alcohol coming into dry communities. Representative Nelson reiterated the intolerance of alcohol coming into dry communities; she asked the difference between five and ten jugs if the community is dry.

Ms. Carpeneti advised that currently, it is a Class A misdemeanor to bootleg amounts lower than the felony threshold level into a dry community. Right now, it is a Class C felony to bootleg amounts higher than the amount set forth in statute. The work draft makes it a Class C felony if a person is convicted for the third time for bootlegging small amounts into a dry community. Title 12 uses the same amounts in a variety of areas in Title 4; she however, worried about unintended consequences with the change.

Representative Nelson commented that she had a difficult time imaging the quantities. She asked the difference between a damp community and a dry community. Ms. Carpeneti explained that in a damp community, a person can legally possess certain amounts of alcohol without the intent to sell. If more than those amounts are possessed, there is a legal presumption that person possess with the intent to sell. She pointed out that the fines had been raised in HJC in order to enforce the law. She advised that a \$10,000 mandatory minimum fine for subsequent bootlegging will cause problems.

[5:48:24 PM](#)

Representative Nelson inquired how the monthly volume is determined for a damp community. Representative Ramras replied that the calculations were measured in ounces per gallon; one case of liquor, 2 cases of wine and about 10 cases of beer.

Representative Nelson asked if the Rural Justice Commission had taken a stand on the bill. Representative Ramras responded that there had been an issue that came up in the HJC, in which they relied on testimony taken from Representative Dalhstrom. He recommended that Representative Fairclough address that round-table discussion that occurred in that Committee. The Committee attempted to reflect the broader concerns that had been raised. Senator McGuire interjected that there are a number of bootlegging bills circulating throughout the legislature.

[5:51:31 PM](#)

REPRESENTATIVE ANNA FAIRCLOUGH understood that the Rural Justice Commission was supportive of the consolidated package, but she did not know the specifics. Ms. Carpeneti clarified that the rules have been in statute for many years. She shared the concerns regarding the amounts allowed and encouraged that they are considered within the entire context of Title 4.

Representative Nelson acknowledged they are large amounts. She hoped that individual's attorneys would advise those offenders of the increased offense. Senator McGuire pointed out that the bill has created a "big debate". She agreed that when determining an amount, there should be an attempt to make it consistent. She supported increasing the staggered fines. She pointed out that on Page 3, Line 8 makes the look-back 15-years as opposed to 10-years. She noted that she had not the time to pull together all section of Title 4, which governs alcohol. Ms. Carpeneti interjected that this is the first time there has been mandatory fines for bootlegging.

[5:54:58 PM](#)

Representative Joule directed discussion to the fine structure. He thought that behavior could only be changed through monitoring post offices and airports with well trained dogs. He did not understand what the proposed language could accomplish, pointing out that there are not enough troopers or village Public Safety Officers (VPSO)'s.

[5:58:22 PM](#)

Representative Thomas didn't think that the fine would keep the bootleggers from bringing the alcohol into the communities and that the action will continue.

Ms. Carpeneti did not object to returning the fines to those recommended in the HJC; however, pointed out that prosecutors have voiced concern. Representative Kelly echoed previous comments made by Representative Thomas. He added that if the Rural Justice Commission supports the bill, it should be implemented and done correctly with the stronger approach.

[6:02:16 PM](#)

LIEUTENANT RODNEY DIAL, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE, testified via teleconference, agreed that there is a significant financial incentive for the bootleggers. The Troopers have witnessed returns as high as 15-1. The State Troopers are attempting proactive enforcement by intercepting alcohol. He added that the sentences and fines mentioned in the bill were reasonable.

Representative Joule asked how effective dogs could be in assisting the Troopers. Lt. Dial suggested that they are more effective with illegal drug importation than with alcohol because of the sealed containers.

Representative Joule asked the rate of success with alcohol seizure from the use of dogs. Lt. Dial responded that in 2007, the State Troopers seized 181 gallons of alcohol not dog related. He did not know if dogs could be trained to find and smell alcohol.

[6:05:44 PM](#)

Representative Crawford proposed that in attempting to make it effective, all alcohol sent to dry communities should be marked with a smell and then tracking the point of delivery to each airport or post office for dog-tracking.

Representative Gara asked about the damp communities that can legally possess alcohol for personal consumption but not for selling. He asked if the alcohol limitation applies for personal consumption. Representative Nelson explained that it can be purchased, just not brought into the dry communities.

Ms. Carpeneti emphasized that the penalties contained in the bill apply only to bootlegging in dry communities. For the damp community, the same amounts are the threshold level, and above those amounts, would create a presumption that it is possessed with the intent to sell.

[6:09:02 PM](#)

Senator McGuire encouraged that the House Finance Committee wait to determine the amounts or fine structure. She pointed out that the fine structure can not be more than \$10,000 dollars.

Representative Nelson referenced previous comments regarding volume and hoped to see the Alcohol Beverage Control (ABC) Board adjusting the volume across the statutes, changing the amounts of wine allowed in and decreasing the amount of hard alcohol. She added that there are not a lot of "winos" in rural Alaska. She did not want to see responsible drinkers punished.

[6:12:27 PM](#)

Representative Gara mentioned the previous criminal bills moving throughout the legislature. He asked about the bill addressing high-level animal cruelty. Senator McGuire stated that she would support any amendments proposed by the House Finance Committee (HFC) for a vote.

Vice-Chair Stoltze noted that he was a co-sponsor on animal cruelty legislation, summarized how complicated that bill is.

[6:15:14 PM](#)

Senator McGuire requested to WITHDRAW new Amendment #1, 25-LS1449\W.6, Luckhaupt, 4/7/08. The Department testified that it is already their practice to report sex offenders.

[6:16:16 PM](#)

Vice-Chair Stoltze MOVED to ADOPT Amendment 2, to Page 6, Line 14, after "convicted" inserting "on two separate occasions". Co-Chair Chenault OBJECTED.

Senator McGuire addressed the amendment, which guarantees that a person would not be convicted until there had been two prior convictions.

Representative Hawker clarified that a new Amendment 2 had been moved, not the original version.

[6:18:23 PM](#)

Ms. Carpeneti advised that the Department of Law had requested the amendment. When a misdemeanor offense is enhanced to a felony, it would only occur on the third time, as proposed in new Amendment 2. She added that Representative Gruenberg did not object to the changes made in the HJC.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

[6:20:23 PM](#)

Vice-Chair Stoltze MOVED to ADOPT Amendment 3, 25-LS1449\W.r, Cook, 4/7/08. Co-Chair Chenault OBJECTED.

Senator McGuire advised that the amendment addresses a concern brought forward by the House Finance Committee (HFC), clarifying that if there is a court ordered garnishment for child support, it takes precedence prior to withholding a sex offender's Permanent Fund Dividend (PFD).

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

Vice-Chair Stoltze MOVED to ADOPT Amendment 4, 25-LS1449\W.3, Cook, 4/7/08. Co-Chair Chenault OBJECTED.

Senator McGuire explained that Amendment 4 addresses the HFC questioning regarding what happens with the PFD's after they are withheld for a period of a year, while the sex offender continues to be non compliant. The amendment proposes to sweep the PFD's into the Crime Victim Compensation Fund. Funds can not be dedicated and consequently, the amendment is drafted listing all funds that it could move into.

[6:22:48 PM](#)

Co-Chair Chenault asked if it would apply to the non-compliant sex offenders after a year. Senator McGuire agreed, pointing out that it currently is a crime to fail to register & comply. She added that over 10% of the sex offender population fails to comply. Law enforcement is now over-stretched. The amendment provides a step into help address those that do not comply.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

Vice-Chair Stoltze MOVED to ADOPT Amendment 5 to Page 6, Lines 24-27, deleting all material and renumbering the remaining sections accordingly. He noted the drafting instructions: "Make any conforming changes to the sections, renumbering as a result of adoption of the amendment." Co-Chair Chenault OBJECTED.

[6:26:04 PM](#)

Senator McGuire advised that the amendment addresses concerns voiced by the HFC.

Representative Gara pointed out that included were legal prescriptions drugs; he noted concern with the impact of that section. Ms. Carpeneti explained the substances are commonly used for sleep conditions. Representative Gara asked if they would be included in the "driving while under influence" statute. Ms. Carpeneti explained that if the person was under the influence of the substances identified in Amendment 5, that person could be prosecuted under the influence of a drug. Representative Gara asked what under the influence of one of the compounds means. Ms. Carpeneti responded, it expounds that the person was driving erratically while using too much of the prescription drug. Representative Gara worried about including that language.

Senator McGuire was okay with removing the section.

[6:29:55 PM](#)

Representative Hawker noted that he would not challenge the sponsor to remove it; however, he did not want to go soft on the issue.

Vice-Chair Stoltze told a story of an accident that killed a pedestrian as a result of careless driving. He stated that there is a degree of recklessness associated from taking sleeping pills & then driving.

Representative Gara questioned how the prosecution would work with the substance remaining in the system for a time after taking it.

Vice-Chair Stoltze admitted that he did not know about the drugs and did not know if he wanted to remove or not that section from the bill.

[6:34:26 PM](#)

Co-Chair Chenault asked what currently, could happen if a person is charged with a "Driving under the Influence" (DUI) while using one of the listed drugs. He asked how it would be measured. Ms. Carpeneti listed three ways to commit drunk driving:

- Driving with alcohol in the blood stream of .08 and above;
- Driving under the influence of alcohol; or
- Driving under controlled substances.

Ms. Carpeneti added that a person could be charged under AS 28.35.030, the drunk-driving statute and that without them listed on the schedule, they would not be considered "controlled substances" in Alaska.

Co-Chair Chenault asked if the determination of the amount in the system would be a "judgment call" made by the arresting officer. Ms. Carpeneti acknowledged that it would be a judgment call by fact finding the jury and the evidence would be the driving, the behavior after stopped, the sobriety test and some sort of blood test.

Representative Kelly asked if the referenced drugs were sold over the counter. Ms. Carpeneti replied that they are all prescription drugs.

Representative Crawford described his experience with a prescription sleep drug and indicated that he did not know how much resides in the system the next morning. He wanted to know more about how the drug works before they were included in the legislation.

[6:37:57 PM](#)

Vice-Chair Stoltze asked the wish of the sponsor. Senator McGuire asked to remove it at this time in order to get more information. She did not want to see the bill include controversial matters.

Co-Chair Chenault WITHDREW his OBJECTION. Vice-Chair Stoltze MOVED to WITHDRAW Amendment 5. Following discussion on what the amendment actually accomplishes, Vice-Chair Stoltze MOVED to ADOPT Amendment #5. There being NO OBJECTION, it was adopted.

AT EASE: [6:40:03 PM](#)

RECONVENED: [6:43:33 PM](#)

[6:43:40 PM](#)

Vice-Chair Stoltze MOVED to ADOPT Amendment 6. Co-Chair Chenault OBJECTED for discussion purposes.

Senator McGuire pointed out that if the amendment does pass, the Committee will need to move a conforming title amendment.

Representative Fairclough stated that the amendment adds to existing code, strengthened language mandating reports for child pornography. It has been determined that pornography is a precursor to an escalated behavior with crimes against children. The language of the amendment was brought forward by community members that have serviced computers while finding disturbing images.

Representative Hawker asked clarification regarding the language of the amendment and if it could clearly address

the legal realm of child pornography. He mentioned the 1st amendment rights for adults, the fine line versus illegal participation against children. Ms. Carpeneti stated that Alaska Statute 11.41.455 is specific and would be cross referenced in a number of other statutes in Title 11. The amendment would replace a section in current law that is not quite as broad.

[6:47:04 PM](#)

Representative Crawford asked about updating personal computers and what could occur in a case where a person's teenagers had been using it inappropriately. Representative Fairclough understood that the computer technician would have to report it to a law enforcement agency if they had found multiple images of child pornography and then an investigation would be started.

Representative Thomas questioned neighborhood children using one's computer for inappropriate purposes. Representative Fairclough reiterated that viewing something on the computer is different than downloading multiple images, which is generally associated with storing. Ms. Carpeneti added that the acts that are described and required to be reported do not include words but rather images of indecent acts.

Representative Thomas was worried. Ms. Carpeneti explained that the law does not prohibit inadvertent opening of email images. She guaranteed that no one can be held liable for something that someone else has done. Senator McGuire added that the duty is on the person observing the image & once the report is made, the investigation of the report begins. Representative Fairclough acknowledged for the record that existing federal law passed in 1999, already provides internet service providers (ISP) report suspected child pornography through the cyber-tip line.

[6:54:47 PM](#)

Representative Gara inquired how a person would prove that they had not been the party that attempted downloading child pornography. Senator McGuire advised that the bill only requires those who witness the image, to report it. Regarding what is prosecutable is a different section & she did not know those specifics. Ms. Carpeneti explained that the Department does not prosecute cases unless they can prove without a reasonable doubt that the person is guilty; inadvertent mistakes are not crimes.

Representative Gara wanted to understand how the statute works. Ms. Carpeneti advised that the cases that the Department charges, involve hundreds & hundreds of images. Representative Fairclough recounted for the record a specific case in which the arrested person had downloaded

15,000 child pornography images on their computer. These are heavily loaded computers that draw the attention and that most of these people are dual offenders, with escalating behavior.

[6:59:00 PM](#)

Representative Gara worried about house-sitters using a home computer inappropriately and the responsibility to the owner of that computer. Vice-Chair Stoltze acknowledged the complication with the prosecution; however, pointed out that the amendment is only about the recording & reporting.

Co-Chair Chenault inquired if Amendment 6 would require an additional fiscal note. Senator McGuire did not think so.

Co-Chair Chenault WITHDREW his OBJECTION. Representative Gara OBJECTED.

Representative Gara referenced Lines 11 & 12, language regarding "report the observation to the nearest law enforcement agency". He recommended replacing that with "a local, state or federal enforcement agency". Representative Fairclough did not oppose that change, however, mentioned there could be an issue for rural Alaska.

Representative Gara MOVED to AMEND Amendment 6 with the language stated above. Ms. Carpeneti indicated concern; she thought that it should be reported to a State law enforcement officer, not only the federal government if it is a local concern.

Representative Nelson recommended using "to a law enforcement agency". Representative Fairclough responded that the proposed language had been specifically prepared. When choices are offered, it can provide areas of confusion. She hoped it to see more mandatory reporting. The proposed language had been presented by Legislative Legal Services.

[7:04:32 PM](#)

Representative Thomas pointed out that there are not troopers in every community. He asked if the amendment had been presented on the Senate side. Representative Fairclough responded that it was not addressed and the bill had been set aside.

Representative Hawker pointed out that the legal drafters proposed the language and he deferred to their recommendation. Representative Fairclough interjected that one issue was in regard to jurisdiction. There is a federal law existing for the software for internet providers.

Representative Gara maintained his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara
OPPOSED: Hawker, Joule, Nelson, Stoltze, Thomas,
Foster, Chenault

Representative Kelly, Representative Crawford and Co-Chair Meyer were not present for the vote.

The MOTION FAILED (1-7).

[7:08:58 PM](#)

Co-Chair Chenault WITHDREW his OBJECTION to unamended Amendment 6. There being NO further OBJECTION, it was adopted.

[7:09:10 PM](#)

Representative Gara MOVED to ADOPT Amendment 7, 25-LS1449\W.5, Luckhaupt, 4/7/08. Co-Chair Chenault OBJECTED for discussion purposes.

Representative Gara explained that the amendment clarifies that if any part of the bill is determined invalid, the remainder remains valid.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

[7:09:51 PM](#)

Representative Gara MOVED to ADOPT Amendment 8, which replaces "one year" with "eighteen months" on Page 10, Lines 15 and 19-20; Page 11, Lines 11 & 13. Co-Chair Chenault OBJECTED.

Representative Gara explained the amendment. Ms. Carpeneti noted that she had spoken with Representative Samuels and that he had agreed it would be a reasonable compromise.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, it was adopted.

[7:11:38 PM](#)

Senator McGuire requested that Amendment 9, 25-LS1449\W.7, Luckhaupt, 4/8/08, be WITHDRAWN.

Vice-Chair Stoltze MOVED to ADOPT the necessary conforming title changes to accommodate amendments passed by the Committee.

Senator McGuire requested that Amendment 10 be adopted. Amendment 10 would change the look-back period, deleting "10" and inserting "15" years on Page 3, Line 8, & Page 4, Lines 25 & 29.

Representative Nelson MOVED to ADOPT the conceptually proposed Amendment 10 as indicated by Senator McGuire. There being NO OBJECTION, it was adopted.

[7:13:54 PM](#)

Representative Nelson asked if she could entertain a conceptual Amendment #11, increasing fines to match what the crime bill accomplished in the House Judiciary Committee (HJC) on Page 3, Line 16, changing \$3,000 to \$10,000.

AT EASE: [7:14:37 PM](#)

RECONVENE: [7:21:34 PM](#)

Representative Nelson WITHDREW the conceptual Amendment 11 as proposed. She noted that consensus was met to see how the fines would affect mandatory minimum sentences.

Vice-Chair Stoltze MOVED to ADOPT a conceptual amendment to make the necessary conforming title changes to comply with the adopted amendments. There being NO OBJECTION, it was adopted.

[7:22:43 PM](#)

Co-Chair Chenault referenced the fiscal notes.

Co-Chair Meyer understood that the notes would be changing with the addition of the new amendments. He pointed out a new note from Department of Public Safety in the amount of \$420 thousand dollars and a new note by the Department of Revenue for \$60 thousand dollars.

[7:24:23 PM](#)

Senator McGuire recalled a presentation provided by Flint Waters regarding internet child pornography and the volume of cases which exist in the State of Alaska. She emphasized the need within the Department of Public Safety to address those cases, indicating support for the additional funding request.

[7:26:00 PM](#)

LAUREN RICE, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, explained that the Department does have available software to track the IP addresses of people downloading

pornography. She maintained that pornography and violence is increasing and the age is getting younger. The ability for people to download, view, share and distribute is increasing. The Department needs additional funding to expand and to deal with those crimes.

Co-Chair Chenault questioned the two temporary positions listed on the front. He pointed out that the final paragraph lists position funding for one criminal justice technician, one Alaska State Trooper investigator and the services of one Department of Law attorney; however, he did not think the request matched the analysis. He maintained that those guilty should be prosecuted and the price requested was small compared to the safety of children. He requested that the Department of Public Safety speak with him.

[7:30:28 PM](#)

Ms. Rice believed that the specific concern should be addressed by the Department of Law.

Senator McGuire interjected that it is not just the viewing of child pornography, but that the most disturbing situation is that they are actually able to view children being sexually abused in real time.

RICHARD SVOBODNY, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, commented that he had drafted the analysis contained on the fiscal note. He acknowledged that child pornography is a great concern for the Department of Law. The model across the country is a team effort between investigators and prosecutors. A different type of investigation has to be accomplished with specialized and complicated knowledge about computers and computer forensics.

[7:34:12 PM](#)

Co-Chair Chenault reiterated his concern with the differences between the front and backside of the fiscal note. Mr. Svobodny recommended that the Department of Public Safety address the concern, which totals approximately \$200 thousand dollars.

Representative Hawker asked if it would be more appropriate for a Department of Law's attorney to be indicated in that Department's fiscal note. Mr. Svobodny replied it would however, the fiscal note resulted from a request by Senator McGuire.

Ms. Rice stated that the fiscal note was assembled in a short period of time. The Department of Law indicated that

they would also need increased resources. She acknowledged that there should be a fiscal note from both departments.

Senator McGuire clarified that the concerns voiced by Flint Waters should be reflected. She had not spoken with the Department of Law.

[7:37:13 PM](#)

Representative Hawker understood that the Department of Law costs would be around \$200 thousand dollars and that Department of Public Safety would need additional dollars also. He wanted specific numbers.

Ms. Rice stated that it was not decided during the discussions who would submit the fiscal note. At that time, it was not going to come from Department of Public Safety but rather from the House Finance Committee.

Senator McGuire requested that Department of Public Safety address the fiscal concern.

[7:38:41 PM](#)

LIEUTENANT RODNEY DIAL, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE, testified via teleconference, addressed the fiscal note. He thought that the Department could use two retired investigators to get started. There currently, are about fifteen backlogged cases. The Department wants to implement something soon so they can begin addressing these situations.

Co-Chair Meyer requested notes be submitted from each department, representing their associated costs.

Representative Joule asked if with the addition of the bootlegging sections, the Alaska Court's should also submit a note.

Senator McGuire apologized about the manner in which the fiscal notes came forward. She explained the rush.

DOUG WOOLIVER, ADMINISTRATIVE ATTORNEY, ALASKA COURT SYSTEM, addressed bootlegging provisions, which he did not foresee warranting an additional note.

[7:43:20 PM](#)

DWAYNE PEEPLES, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, stated that he did not anticipate a lot of impact from bootlegging and that some of the other sections were more difficult to make a determination. He commented that the Department would be submitting a revised indeterminate note.

Representative Gara did not want to see an indeterminate fiscal note but rather real numbers. The Committee needs to know what costs to expect. Co-Chair Chenault added that he too had requested "hard numbers". He trusted an analysis of the issues but added that it would be okay if initially the note was indeterminate.

Representative Foster MOVED to REPORT HCS CSSB 265(FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 265(FIN) was reported out of Committee with a "do pass" recommendation and with 2 new zero notes by the Department of Health and Social Services, a new fiscal note by the Department of Public Safety & the Department of Law, a new indeterminate note by the Department of Corrections, fiscal note #2 by the Department of Public Safety, zero note #5 by the Department of Administration and fiscal note #6 by the Department of Revenue.

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[7:47:07 PM](#)

ADJOURNMENT

The meeting was adjourned at 7:46 P.M.