

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

January 22, 2007

1:10 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Berta Gardner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 69

"An Act relating to executive clemency."

- HEARD AND HELD

HOUSE BILL NO. 76

"An Act relating to the creation of a civil legal services fund."

- HEARD AND HELD

HOUSE BILL NO. 7

"An Act relating to false caller identification."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 69

SHORT TITLE: NOTIFY CRIME VICTIM OF EXECUTIVE CLEMENCY

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

01/16/07 (H) PREFILE RELEASED 1/5/07  
01/16/07 (H) READ THE FIRST TIME - REFERRALS  
01/16/07 (H) JUD  
01/22/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 76

SHORT TITLE: CIVIL LEGAL SERVICES FUND  
SPONSOR(S): REPRESENTATIVE(S) RAMRAS, LEDOUX

01/16/07 (H) PREFILE RELEASED 1/5/07  
01/16/07 (H) READ THE FIRST TIME - REFERRALS  
01/16/07 (H) JUD, FIN  
01/22/07 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

LAWRENCE JONES, Executive Director  
State Board of Parole  
Department of Corrections (DOC)  
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 69 and responded to questions.

MARY ANNE HENRY, Deputy Attorney General  
Criminal Division  
Office of the Attorney General  
Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 69.

KATHERINE HANSEN, Interim Director  
Associate Victims' Rights Advocate  
Office of Victims' Rights (OVR)  
Alaska State Legislature  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 69 and responded to questions.

SUSAN SULLIVAN, Executive Director  
Victims for Justice (VFJ)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 69 and asked questions of the sponsor.

MERCEDES ANGERMAN  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 69, provided comments and urged the committee to support the bill.

EMILY STANCLIFF, Staff  
to Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 76 on behalf of Representative Ramras, one of the bill's prime sponsors.

ANDY HARRINGTON, Executive Director  
Alaska Legal Services Corporation (ALSC)  
(No address provided)

POSITION STATEMENT: Testified in support of HB 76, and responded to questions.

KARA NYQUIST, Executive Director  
Alaska Pro Bono Program, Inc (APBP)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 76.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:10:35 PM](#). Representatives Dahlstrom, Coghill, Samuels, Lynn, Holmes, Gruenberg, and Ramras were present at the call to order. Representative Gardner was also in attendance.

#### HB 69 - NOTIFY CRIME VICTIM OF EXECUTIVE CLEMENCY

[1:12:00 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 69, "An Act relating to executive clemency."

[1:12:39 PM](#)

REPRESENTATIVE SAMUELS, sponsor of HB 69, explained that the bill will ensure that a victim is notified when a perpetrator is granted a pardon by [the governor], and offered his belief that the bill will not interfere with Article III, Section 21, of the Alaska State Constitution which states in part:

Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and

may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

REPRESENTATIVE SAMUELS also noted that Article I, Section 24, of the Alaska State Constitution says in part:

Crime victims, as defined by law, shall have the following rights as provided by law: ... the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; ... the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; ...

REPRESENTATIVE SAMUELS suggested that honoring the constitutional rights of crime victims mitigates any potential conflict caused by "tightening down" the governor's constitutional right to grant a pardon.

[1:15:43 PM](#)

LAWRENCE JONES, Executive Director, State Board of Parole, Department of Corrections (DOC), relayed that there is very little statutory language, and no regulatory language, pertaining to the governor's broad constitutional authority to grant a pardon. He offered his understanding that HB 69, primarily by changing "may" to "shall", will require victims to be notified of applications for executive clemency. He noted that a person can access the State Board of Parole web site and obtain information about clemency as outlined in what he referred to as the "clemency handbook"; touched on portions of the process that a potential applicant must go through; and made reference to the Executive Clemency Advisory Committee (ECAC), which has historically consisted of three members - the lieutenant governor, a representative from the DOL, and a member of the public.

MR. JONES remarked, however, that although the ECAC prepares a summary and recommendation to the governor regarding each application, the governor is under no obligation to abide by that recommendation. Mr. Jones also mentioned that although the duty of the State Board of Parole and the ECAC is to consider

applications for clemency, pardons have been granted as part of a totally internal function of the Office of the Governor; when such has occurred, he has been unaware of it until he reads about it in the newspaper.

MR. JONES characterized HB 69 as a bill that is perhaps mostly of interest to the governor's office. He also relayed that the vast majority of people calling his office requesting information about pardons are instead really interested in finding out how to expunge their criminal records - primarily for purposes of employment; however, Alaska currently doesn't have a mechanism in place for expunging records, and even with a pardon, one's record of a criminal offense remains in place. He went on to explain that the term "executive clemency" is actually an umbrella term that can refer to a pardon, the commutation of a sentence, the remission of a fine or forfeiture, or the granting of amnesty.

MR. JONES, in response to a question, offered his understanding that in the situation which occurred recently, the governor's pardon did result in the defendant not having to pay restitution to the victim, and noted that generally the remission of a fine or forfeiture is narrowly focused and does not result in the person being pardoned from the offense.

REPRESENTATIVE SAMUELS asked whether a victim who receives restitution would have to give that money back to a defendant if the defendant is subsequently pardoned.

[1:30:21 PM](#)

MARY ANNE HENRY, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), explained that when someone is pardoned, although he/she no longer has to pay any fines or restitution, the victim doesn't have to return any restitution thus far received. In response to a further question, she confirmed that the bill could be amended so as to prohibit the governor from negating a defendant's duty to pay restitution to the victim.

MR. JONES offered that paying restitution to the victim and victims' rights are relatively new concepts and so perhaps were not considered at all when the original [executive clemency] statute was enacted.

REPRESENTATIVE GRUENBERG, noting that Article III, Section 21, also uses the term "reprieve", asked what that term means.

MR. JONES suggested that "reprieve" and "pardon" mean the same thing and are thus interchangeable terms.

MS. HENRY offered her understanding that the term "reprieve" is only mentioned in the Alaska State Constitution and not in statute.

REPRESENTATIVE GRUENBERG pointed out, however, that AS 33.20.070 uses both the terms "pardons" and "reprieves", so presumably they originally meant something different given that those two terms were also used together in the territorial statutes [Section 5-1-2 ACLA 1949].

MR. JONES said he would research that issue further.

MS. HENRY said she would also research that issue further.

REPRESENTATIVE GRUENBERG raised the issue of possibly providing a mechanism that would allow one to have his/her record expunged.

MR. JONES said there could potentially be a good reason to explore that issue further, and noted that 43 states do have a process by which one can get his/her record expunged, though in those states that process is undertaken by the court system rather than the executive branch.

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MS. HENRY turned attention to some proposed amendments in members' packets, and asked Mr. Jones whether it would be practical to [require the board to investigate an application] within 60 days.

MR. JONES said it would not be practical, adding that even the clemency handbook warns potential applicants that it can take up to one year to complete the investigation process. He suggested that a minimum timeframe of 180 days [for investigating an application] would be much more viable.

REPRESENTATIVE SAMUELS surmised that currently under the bill, the governor could not pardon someone within 60 days of the end of his/her term of office because the language on page 1, lines 5-6, says that 60 days must elapse from the time notice is provided before the governor can act on an application [requesting a pardon].

MS. HENRY posited that even if that timeframe were changed to 180 days, it shouldn't cause a constitutional problem because the Alaska State Constitution says that the governor shall follow procedure as set forth in statute.

MR. JONES suggested that proposed AS 33.20.080(a) be changed to say that the governor "may not act to grant a pardon unless 60 days have elapsed". Under such a change, the governor could still act sooner to deny an application requesting a pardon.

REPRESENTATIVE SAMUELS indicated that there is a proposed amendment to that effect.

MR. JONES remarked that such a change would be positive from his perspective.

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MS. HENRY referred to language on page 1, lines 13-15, which says in part, "If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice", and said that this language puts the onus of notification on the victim. She suggested that instead the onus should be on the [State Board of Parole] to notify the victim.

REPRESENTATIVE SAMUELS asked how much time would be spent by the State Board of Parole looking for the victim in order to notify him/her, and whether a victim who wanted only to put his/her experience behind him/her would be notified.

MS. HENRY explained that if a victim doesn't wish to be notified, he/she can make that known, and offered her belief that the State Board of Parole should make a "reasonable effort" to contact a victim. She further suggested that even if a victim moves out of state or gets married and changes names, it could still be possible to locate that person within a day.

REPRESENTATIVE SAMUELS asked whether the phrase, "reasonable effort" ought to be included in statute.

MS. HENRY suggested that it would simply be common sense [for the State Board of Parole to make "a reasonable effort" to notify the victim]. In response to a question, she explained that under the Victim Information and Notification Everyday (VINE) program, a victim can sign up and get notified when the

perpetrator is being released from jail. From her own experience, she recounted that under the VINE program, the [Victim Service Unit (VSU)] will call the victim and will keep calling until he/she calls back and acknowledges that he/she has received the message. However, the VINE program would not have been helpful in any of the situations wherein Governor Murkowski granted a pardon because none of those defendants were actually in jail, she observed.

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REPRESENTATIVE GRUENBERG, with regard to Ms. Henry's comment that the onus for notification should fall on the State Board of Parole, suggested that that could be accomplished by replacing - on page 1, lines 13-15 - the words, "If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree" with the words, "Unless the victim [asks not to be notified]".

MS. HENRY surmised, then, that the bill would then apply to the victim of [any crime] if the perpetrator submits an application for executive clemency.

REPRESENTATIVE GRUENBERG concurred. He also suggested adding language to page 2 which would stipulate that notification shall be sent to the victim's last known address, remarking that he would prefer that the amount of effort being taken to notify a victim should be outlined in statute so as to provide guidance to the State Board of Parole.

MS. HENRY opined that [such a limited effort] probably wouldn't be effective because people move around quite a bit, particularly if many years have passed since the crime originally occurred. In response to a question, she explained that deleting the aforementioned language would not result in the victim not being notified at all; furthermore, since the DOL and the Office of Victim' Rights (OVR) will be notified, both of those entities might also make an effort to notify the victim. The suggestion to delete the words, "If requested by the victim of a crime against a person, a crime involving domestic violence, or arson in the first degree" will simply put the onus on the board to notify the victim. With regard to the DOL and the OVR possibly notifying the victim, however, she acknowledged that those entities might not keep the appropriate file on hand once the case is resolved and so wouldn't necessarily have access to the victim's address.

REPRESENTATIVE COGHILL expressed concern regarding the possible unintended consequences of relying on the DOL to notify the victim.

REPRESENTATIVE SAMUELS suggested changing page 1, lines 13-15, such that it would read in part: "office of victims' rights, and the victim if the victim has been a victim of a crime against a person, a crime involving domestic violence, or arson in the first degree, the board shall send notice of an application". Such a change would ensure that the State Board of Parole would notify the victim; then, internally, the State Board of Parole can institute an internal procedure for those that don't wish to be notified. He said he would trust the [State Board of Parole] to use its best judgment with regard to doing as much as it can to contact the victim, and pointed out that there are just not that many cases that result in a pardon, and thus there won't be a big onus on the [State Board of Parole]. He opined, however, that the bill should be limited to those victims currently listed in the bill - victims of a crime against a person, a crime involving domestic violence, or arson in the first degree - and not victims of just any crime.

MS. HENRY mentioned, also, that there is a chance that the OVR won't have had a particular victim as one of its clients and thus couldn't take any action to notify the victim.

REPRESENTATIVE SAMUELS expressed an interest in offering a conceptual amendment that would [satisfy members' concerns].

REPRESENTATIVE GRUENBERG referred to [Article I, Section 24, of the Alaska State Constitution], and offered his belief that victims also have the right to request a hearing prior to the governor making a determination regarding whether to grant executive clemency.

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KATHERINE HANSEN, Interim Director, Associate Victims' Rights Advocate, Office of Victims' Rights (OVR), Alaska State Legislature, relayed that she would be testifying in support of HB 69. The bill, she remarked, does three things: it gives victims advance notice of proposed clemency; it creates uniform procedures for clemency applications; and it ensures that the [governor] has the information needed to make an informed clemency decision. She relayed that in her experience, as both a prosecutor and a victims' rights advocate, she has often witnessed the devastating emotional, financial, and even

physical consequences that crime victims face. Often the only closure or peace that victims are able to receive comes from the finality of judgment. In victim impact statements, victims have recounted that although necessary for a successful sentencing procedure, it is very difficult for them to have to relive and rethink about the crime and relay the experience to others - often strangers, and often in a public forum.

MS. HANSEN said that when the process is interrupted - either by an appeal, a discretionary parole application, or any type of post conviction relief requested by the defendant - it can often have devastating effects on the victim involved because it reopens emotional wounds and can create a situation in which a victim is at risk of losing hope that the criminal justice system is fair and functioning. House Bill 69, she remarked, would set forth the procedures which would allow the constitutional right of victims to be treated with dignity, respect, and fairness - throughout the process - to be fulfilled. She said she supports the bill, and has reviewed the original bill and proposed amendments, adding that she would support amendments that would provide notice directly to the victim; that would state a time limit - within receipt of the application - that notification go to the victim; that would remove the requirement that the victim affirmatively request notice; and that would provide victims of all crimes notice of any clemency applications.

MS. HANSEN asked that the two references to the OVR be removed from the [bill] and be replaced with the term, "the victim"; such a change would mean that there would be one less layer that the notification would have to go through. The OVR has the authority to represent crime victims, but only if the victim affirmatively contacts the OVR and requests assistance in writing. In response to a question, she pointed out that by keeping references to the OVR in the bill, the OVR would be receiving notice of clemency applications regardless of whether the victim was actually a client, and the OVR might then be put in the position of soliciting business. She also noted that various provisions of statute already stipulate that victims shall maintain a current, valid mailing address on file with the [State Board of Parole], adding that she supports "reasonable requirements to notify the victim - something that would go to the victim's last known address" - but requiring a victim to affirmatively request to be notified could effectively thwart the notification process.

MS. HANSEN, in response to an earlier point of discussion, noted that according to Black's Law Dictionary, the term "reprieve" is different from other types of clemency in that it is a temporary relief from or postponement of execution of criminal punishment or sentence.

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SUSAN SULLIVAN, Executive Director, Victims for Justice (VFJ), relayed that the VFJ supports HB 69. She then pointed out that although proposed AS 33.20.080(a) uses the phrase, "notice required under (b) of this section has been provided", proposed AS 33.20.080(b) actually references two different types of notice. She suggested that it be clarified which type of notice is being referenced in subsection (a) - which type of notice will actually trigger the requirement in subsection (a). On the issue of notifying victims, she asked which statutory definition of "victim" the bill is referencing and whether the bill itself should contain a definition of "victim". She also expressed concern with the phrase "If requested by the victim", and urged that all reasonable efforts be made to find a victim in order to give him/her notice, adding that the VINE network could be helpful in that regard and so perhaps the bill or accompanying regulations could specifically reference the VINE program.

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MERCEDES ANGERMAN said she wishes that this type of dialog could have occurred when the pardon was being considered [by Governor Murkowski], adding that the pardons, particularly that which pertained to Gary Stone, made her feel like a victim because her brother, too, was killed in an accident involving Whitewater Engineering Corporation, though in that situation there was not a criminal conviction and so even had the proposed bill been in place, she would not have been notified of the pardon. Nevertheless, she remarked, the death of her brother was just as hard on her family as was the death of Mr. Stone on his family, and the conviction of Whitewater Engineering Corporation felt like justice had been done for her family as well as for Mr. Stone's family.

MS. ANGERMAN went on to say:

When I heard of what Governor Murkowski did with the stroke of a pen, it was devastating, and I'm sure devastating to the family of Gary Stone as well as the Angerman family in Wrangell. I totally support having

the victims be notified and having the [State Board of Parole] try to locate the victims. With the small number of these pardons that occur I think that it's reasonable to find somebody, [particularly] with the Internet and all the technology we have today. ... I also just want to add that this type of dialog exposes a lot of other things that go beyond the first victim ... of a crime, and it exposes all of the other people and communities that were really touched and involved in this, such as my family, the Angermans in Wrangell, and that entire community - they'd lost a member of their community and an Alaskan.

And I want to move on and I want to stop being angry, and we can't change what Governor Murkowski did, ... and I want to thank ... Representative Samuels and the other co-sponsors of House Bill 69 for moving [in] a positive direction to make positive change so that no other families have to have their only justice stripped from them by a stroke of a pen for whatever reason the governor felt that that was needed. ... We were really blindsided by this, and if there was a notification system in place, at least people wouldn't be blindsided and devastated by a newspaper article without having an opportunity to speak on behalf of victims and victims' families.

MS. ANGERMAN sought clarification that HB 69 would ensure that a deceased victim's family be notified. In conclusion, she urged [members'] support of HB 69.

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REPRESENTATIVE SAMUELS offered his understanding that in situations involving murder, one member of the victim's family is designated by the court system or by the VINE program to be the main contact for the family. He then paraphrased from the definition of "victim" [as outlined in AS 12.55.185]:

(19) "victim" means

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:

(i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or

(ii) a parent, adult child, guardian, or custodian of the person;

(C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:

(i) a person living in a spousal relationship with the deceased before the deceased died;

(ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or

(iii) any other interested person, as may be designated by a person having authority in law to do so.

MS. HENRY, in response to questions, said that there is not a rule in the Alaska Rules of Appellate procedure that pertains to executive clemency, and that although the Alaska State Constitution doesn't give a victim the right to request or participate in a hearing involving a potential pardon, the bill [and current law] does provide that the victim may comment in writing to the State Board of Parole regarding an application for executive clemency. She added her belief that that provision as well as the notification provision proposed by the bill ought to address any concerns regarding the victim's rights.

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REPRESENTATIVE SAMUELS, in response to a question, said that he'd not done any research into what other states do with regard to victim notification because he was basing the bill on the provisions currently in the Alaska State Constitution.

MS. HANSEN said that the OVR had not done any research with regard to what other states do either. She mentioned that one might argue the point that a victim does have a constitutional right to be heard in matters pertaining to executive clemency, though not if the defendant is not going to be present, because a victim may only be present in situations where the defendant is also present.

CHAIR RAMRAS relayed that the committee would set HB 69 aside and address proposed amendments to it [at the bill's next hearing].

HB 76 - CIVIL LEGAL SERVICES FUND

2:18:45 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 76, "An Act relating to the creation of a civil legal services fund."

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 76, Version 25-LS0349\C, Bailey, 1/17/07, as the work draft. There being no objection, Version C was before the committee.

CHAIR RAMRAS noted that similar legislation had been considered by the previous legislature but had not made it completely through the process.

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EMILY STANCLIFF, Staff to Representative Jay Ramras, Alaska State Legislature, on behalf of Representative Ramras, one of the bill's prime sponsors, explained that HB 76 would establish a civil legal services fund into which the Legislature can appropriate the state's share of punitive damage awards - current statute stipulates that 50 percent of punitive damage awards are to be deposited into the state's general fund (GF); would allow the legislature to appropriate money from the civil legal services fund and give it to organizations that provide civil legal services for low-income Alaskans; and would define low income as equal to or less than 125 percent of the most recent federal poverty guidelines for Alaska set by the U.S. Department of Health and Human Services (DHHS).

MS. STANCLIFF offered that HB 76 will give low-income Alaskans greater access to legal services; will address the current inadequate funding of organizations that provide legal services; will provide funding for those legal services using punitive damage awards for egregious offenses rather than draining other sources of funding; and will aid in making the Alaska Court System (ACS) more efficient. She elaborated on the latter point by noting that when individuals resort to representing themselves in court it can have the effect of slowing down the judicial process because judges then have to take more time explaining procedure and assisting such individuals with the technical aspects of a court case. She concluded by indicating that it is [the sponsors'] hope that HB 76 will help provide

legal services to low-income Alaskans by providing funding for those services.

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ANDY HARRINGTON, Executive Director, Alaska Legal Services Corporation (ALSC), offered examples of the types of people who might be seeking assistance from the ALSC, adding that they are all people who will not have been charged with a crime and thus won't be appointed an attorney by the courts. Remarking that the ALSC is still inadequately staffed, he characterized those who do work for the ALSC as dedicated, skilled, and woefully underpaid, adding that ALSC staff speak to potential clients, analyze whether what has happened to them is legally justifiable, and, if it isn't, take the necessary steps to try to get the wrong rectified. Also among his staff, he relayed, is a pro bono coordinator who specializes in convincing private attorneys to represent indigent clients once a year on a volunteer basis.

MR. HARRINGTON expressed a desire to do something about the fact that his staff is underpaid, and recounted that about 25 years ago the state was appropriating approximately \$1.2 million for the ALSC - allowing the ALSC to have about twice as many staff as it now has, and to maintain additional offices in other parts of the state than are maintained now - but the ALSC hasn't received an appropriation from the legislature since 2004 because Governor Murkowski line-item vetoed the fiscal year 2005 (FY 05) proposed legislative appropriation. Furthermore, certain funding previously received from the Legal Services Corporation (LSC) has been eliminated; funding from the Alaska Bar Foundation's Interest on Lawyer Trust Accounts ("IOLTA funds") has decreased; and statutory changes now prohibit ALSC attorneys from receiving attorney fees.

MR. HARRINGTON said that when the ALSC is able to represent someone who would otherwise be unrepresented, the ACS is able to do its job more efficiently because judges won't have to spend time explaining procedure and points of law to unrepresented litigants. And although the vast majority of cases the ALSC undertakes involve representing people in state court, federal funding for the ALSC far outweighs state funding. He went on to say:

This bill uses high-stakes civil cases to help ... low-income Alaskans who have what may seem like low-stakes case. Although when it's your own paycheck, or

when it's you own family shelter, or when it's your own child who's been taken, or when it's your own right to be free from domestic violence and abuse, the stakes don't seem that low. ... This bill is needed because some things that are happening to constituents in your districts and other districts are illegal, things that ... have a legal remedy that they could use to rectify if they knew what that was, and if you give us the tools, we can help with that. Needless to say, I'm in support of the bill, and I appreciate the committee's time and consideration.

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REPRESENTATIVE GRUENBERG, commenting on similar legislation offered during the previous legislature, asked why the words, ", less the costs of collection, if any, incurred by the state" have been removed in Version C of HB 76.

MR. HARRINGTON offered that although during the previous legislature then-Acting Attorney General Nordstrand had said - with regard to that similar legislation - that he didn't want the DOL to lose money because of its efforts to track punitive damage awards, Legislative Legal and Research Services has since outlined in a memorandum dated 12/28/06 why such language might not be needed.

REPRESENTATIVE GRUENBERG noted that AS 09.17.020(j) - which is referenced in Section 2 of Version C - says: "(j) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages." He said he is concerned with the language in that provision which says that the State has no right to intervene in the punitive damage phase of a case; that prohibition seems unfair given that the State will be getting 50 percent of any punitive damage award - the State should have a right to intervene on that point. He pondered whether AS 09.17.020(j) ought to be amended to allow the State to intervene, or, if the money is to go to the ALSC, be amended to allow the ALSC to intervene.

MR. HARRINGTON surmised that the prohibition outlined in AS 09.17.020(j) was meant to ensure that intervening in the punitive damage phase of a case does not become a profit-making venture for the State. He offered his belief that under current

practice, once a punitive damage award has been entered, the State does take a role in ensuring that the State's share of that award "gets recognized." He mentioned that because AS 09.17.020(j) does not specifically preclude the ALSC from intervening in the punitive damage phase of a case, the ALSC might to be able follow up on Representative Gruenberg's suggestion without there being a change in statute.

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REPRESENTATIVE SAMUELS noted that HB 76 merely creates an account in the GF - an account which may or may not be funded - and has nothing to do with tort reform.

CHAIR RAMRAS agreed, and pointed out that any funds which might be appropriated to the proposed civil legal services fund can't be dedicated and thus there is no actual nexus between those funds and the ALSC.

MR. HARRINGTON concurred.

REPRESENTATIVE DAHLSTROM sought assurance that any monies which might be appropriated from the proposed civil legal services fund won't be used to defend [alleged] guilty parties, and asked whether the establishment of the fund and the making of appropriations from it will raise questions of entitlement should the legislature either stop making, or decrease the amount of, such appropriations. She also asked whether the ALSC would continue operating even if no monies from the fund were forthcoming.

MR. HARRINGTON reiterated that the ALSC doesn't represent people who've been charged with a crime, people who are incarcerated, or people whose cases have no merit. With regard to the question of the state's obligation once the civil legal services fund is established, he said that the ALSC "is not an entitlement program," and explained that the ALSC receives most of its funding from the LSC, and that the ALSC has an ethical responsibility to follow through on all of its ongoing cases.

MR. HARRINGTON mentioned that he and the ALSC board of directors understand that the amount of possible appropriations from the proposed fund is apt to fluctuate, and so will not be counting on punitive damages in any given year being a certain amount, particularly given that future legislatures cannot be bound with regard to what appropriation decisions to make. Should there ever be a punitive damage award that results in the State

receiving millions of dollars, he would be surprised, he remarked, if the legislature were to give the ALSC all of it; although HB 76 is a vehicle that could be used to provide the ALSC with funding, it is one that the legislature has discretion over from year to year.

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MR. HARRINGTON, in response to questions, reiterated his understanding that HB 67 won't create an entitlement; said that although the ALSC is allowed to give legal advice to someone who is incarcerated, it is not allowed to actually represent or file a lawsuit for such a person; and explained that the ALSC is a 501(c)(3) nonprofit corporation, and receives funds from the federal government, from some local municipality grants, from some local regional Native nonprofit organizations, and from a private fund raising campaign called the [Robert Hickerson Partners in Justice Campaign].

REPRESENTATIVE COGHILL expressed concern with the language on page 1, lines 8-9, that says, "may appropriate to the fund the amount deposited into the general fund of the state under AS 09.17.020(j)" because that language could be interpreted to mean all of that amount.

MR. HARRINGTON concurred with that interpretation, but again pointed out that the legislature has the discretion to appropriate less than that amount should it so choose.

REPRESENTATIVE COGHILL suggested altering the aforementioned language to say something along the lines of, "may appropriate to the fund from the amount deposited into the general fund of the state under AS 09.17.020(j)". Such a change would clarify that the legislature does not have to appropriate to the proposed civil legal services fund all of the amount that the State receives from punitive damage awards, particularly given that there might be other entities aside from the ALSC that feel they should receive such funds as well.

MR. HARRINGTON, in response to a question, relayed that the ALSC currently has offices in Anchorage, Fairbanks, Juneau, Bethel, Dillingham, Ketchikan, Nome, and Kotzebue.

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KARA NYQUIST, Executive Director, Alaska Pro Bono Program, Inc (APBP), noted that there are only a few organizations in the

state that provide legal services to low-income Alaskans, that there are federal restrictions regarding how LSC monies can be spent, and that the APBP was started in 2000 and was able to serve just under 100 individuals last year on a budget of only \$50,000; thus there should be no question of how effective monies from the proposed civil legal services fund could be - regardless of how much or how little that funding turned out to be. Last year the APBP served "some of the overflow" from the ALSC as well as some individuals whom the ALSC could not represent; the APBP locates attorneys who are willing to donate their time to handle cases, and money that [the APBP receives] is used to pay for filing fees, court reporter fees, and other such costs.

MS. NYQUIST relayed that the pro bono attorneys in the APBP "place" and monitor the cases, and that the APBP, filing jointly with the ALSC, seeks IOLTA funds. The first year the APBP received over \$200,000 of IOLTA funds but that amount is now down to approximately \$26,000; additional funds have sometimes also come from attorneys and attorney fees awards. The judicial system is not patient, she remarked, particularly with non-English speaking individuals, and went on to recount some of the situations that have arisen for such individuals and how attorneys in the APBP have aided them. Such individuals, she added, can end up costing "the system" more money if they are not given the legal assistance they need.

MR. HARRINGTON, in response to a question, relayed that the Alaska Bar Association (ABA) set up the Alaska Bar Foundation (ABF) which in turn administers the IOLTA.

MS. NYQUIST, in response to a question, indicated that the APBP has handled some immigration cases in the past, though now the APBP simply assists immigrants with their civil legal issues such as landlord-tenant issues or family law issues or protective order issues.

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MR. HARRINGTON offered his understanding that although there are other programs that offer legal aid, most of them don't set income limits on eligibility; HB 76 is designed to focus on just those organizations that set "income and asset ceilings" beneath which people have to fall in order to qualify for representation.

CHAIR RAMRAS, in response to questions and comments regarding the definition of "low-income individual", said that as one of the prime sponsors of HB 76, he would prefer to use the definition currently in Version C, that definition being: "an individual with an income equal to or less than 125 percent of the most recent federal poverty guidelines for Alaska set by the United States Department of Health and Human Services".

MR. HARRINGTON, in response to a question, relayed that the ALSC handles between 1,700 and 2,000 cases per year, and that those cases are likely to involve domestic violence situations; landlord-tenant disputes; consumer protection issues; federal benefit and Native allotment disputes; issues involving wills, probates, and estates; and bankruptcy and debt collection issues. He added that in each of the aforementioned cases, there could be several people in each household, and thus the ALSC has probably helped between 5,000 and 10,000 people in years when it has undertaken 2,000 cases, for example. If the ALSC were better staffed, he concluded, it could help even more people.

CHAIR RAMRAS, in response to a question, opined that the language which has been deleted from Version C - ", less the costs of collection, if any, incurred by the state" - is no longer relevant because "it's very discretionary, what the legislature is going to allocate, if anything, out of punitive damage awards."

REPRESENTATIVE GRUENBERG asked whether the [deleted] phrase, "costs of collection" applied only to what he termed "post-judgment collection."

MR. HARRINGTON offered his belief that the [deleted phrase] referred to the costs of collection incurred by the State in following up on the State's claim, not the costs incurred by the plaintiff's attorney in either obtaining the award in the first place or in taking collection actions on that award.

CHAIR RAMRAS indicated that HB 76 [Version C] would be held over.

#### **ADJOURNMENT**

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There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.