ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 10, 2007
1:02 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 196
"An Act relating to the handling of matters after a person's death."

- MOVED CSHB 196(JUD) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 5
Supporting the 2007 National Crime Victims' Rights Week.

- MOVED HCR 5 OUT OF COMMITTEE

HOUSE BILL NO. 90
"An Act relating to bail."

- HEARD AND HELD

HOUSE BILL NO. 159
"An Act relating to the issuance of a certificate of birth resulting in a stillbirth."

- MOVED CSHB 159(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 196
SHORT TITLE: HANDLING MATTERS AFTER A PERSON'S DEATH
SPONSOR(S): JUDICIARY

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	JUD
04/04/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/04/07	(H)	Heard & Held
04/04/07	(H)	MINUTE(JUD)
04/10/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HCR 5
SHORT TITLE: 2007 NATIONAL CRIME VICTIMS' RIGHTS WEEK
SPONSOR(S): REPRESENTATIVE(S) STOLTZE

03/27/07	(H)	READ THE FIRST TIME - REFERRALS
03/27/07	(H)	JUD
04/10/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 90
SHORT TITLE: BAIL
SPONSOR(S): REPRESENTATIVE(S) SAMUELS, STOLTZE

01/16/07	(H)	PREFILE RELEASED 1/12/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	JUD
02/05/07	(H)	JUD AT 1:00 PM CAPITOL 120
02/05/07	(H)	<Bill Hearing Rescheduled to 02/08/07>
02/08/07	(H)	JUD AT 1:00 PM CAPITOL 120
02/08/07	(H)	<Bill Hearing Canceled>
02/12/07	(H)	JUD AT 1:00 PM CAPITOL 120
02/12/07	(H)	<Bill Hearing Canceled>
03/28/07	(H)	JUD AT 1:00 PM CAPITOL 120
03/28/07	(H)	Scheduled But Not Heard
03/30/07	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/07	(H)	-- MEETING CANCELED --
04/10/07	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 159
SHORT TITLE: STILLBIRTH CERTIFICATE
SPONSOR(S): REPRESENTATIVE(S) GATTO

02/28/07	(H)	READ THE FIRST TIME - REFERRALS
02/28/07	(H)	HES, JUD
03/06/07	(H)	HES AT 3:00 PM CAPITOL 106
03/06/07	(H)	Heard & Held
03/06/07	(H)	MINUTE(HES)
03/15/07	(H)	HES AT 3:00 PM CAPITOL 106
03/15/07	(H)	Moved CSHB 159(HES) Out of Committee
03/15/07	(H)	MINUTE(HES)

03/16/07	(H)	HES RPT CS(HES) 3DP 3NR
03/16/07	(H)	DP: FAIRCLOUGH, ROSES, WILSON
03/16/07	(H)	NR: NEUMAN, GARDNER, SEATON
03/16/07	(H)	FIN REFERRAL ADDED AFTER JUD
03/30/07	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/07	(H)	-- MEETING CANCELED --
04/10/07	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

STEPHEN E. GREER, Attorney at Law
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 196.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HCR 5.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Presented the provisions of HB 90, Version K, on behalf of the joint prime sponsors.

TAMARA LIENHART
(No address provided)
POSITION STATEMENT: Testified in support of HB 90.

KATHERINE J. HANSEN, Interim Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska
POSITION STATEMENT: Provided comments on Section 5 of HB 90, Version K.

PATRICIA HAAG
(No address provided)
POSITION STATEMENT: Provided comments during discussion of HB 90.

MARTI GREESON, Alaska Monitoring Services, LLC;
Executive Director
Anchorage Chapter

Mothers Against Drunk Driving (MADD)
Anchorage, Alaska
POSITION STATEMENT: Provided comments on Section 6 of HB 90, Version K.

STEVE CHRISTOPHER, Chief Operations Manager
Alaska Monitoring Services, LLC
Anchorage, Alaska
POSITION STATEMENT: Provided comments on Section 6 of HB 90, Version K.

DWAYNE PEEPLES, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 90, Version K.

QUINLAN G. STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Expressed concerns during discussion of HB 90, Version K.

JOSHUA FINK, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 90, Version K.

SANDRA WILSON, Intern
to Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 159 on behalf of the sponsor, Representative Gatto.

RICHARD OLSEN
Phoenix, Arizona
POSITION STATEMENT: Provided comments during discussion of HB 159.

PHILLIP MITCHELL, Chief

Vital Statistics
Division of Public Health (DPH)
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Responded to questions and provided comments during discussion of HB 159.

REPRESENTATIVE CARL GATTO
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 159.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:02:57 PM. Representatives Gruenberg, Coghill, Samuels, Lynn, and Ramras were present at the call to order. Representative Holmes arrived as the meeting was in progress.

HB 196 - HANDLING MATTERS AFTER A PERSON'S DEATH

1:03:39 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 196, "An Act relating to the handling of matters after a person's death."

REPRESENTATIVE GRUENBERG referred to Amendment 1, which read:

> Page 3, line 5, following "estate":
> Insert ", except that if the decedent owes money for child support arrearages, for spousal support arrearages, or under AS 47.07.055, the provisions of (d) of this section do not apply"
>
> Page 3, line 7, following "will":
> Insert ", except that if the decedent owes money for child support arrearages, for spousal support arrearages, or under AS 47.07.055, the provisions of (d) of this section do not apply"

REPRESENTATIVE GRUENBERG offered his understanding that Amendment 1 will preclude people from using this legislation to avoid paying child support arrearages, paying spousal support arrearages, or - under AS 47.07.055 - repaying Medicaid overpayments.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

1:05:19 PM

REPRESENTATIVE SAMUELS began a motion to move the bill, as amended, from committee.

REPRESENTATIVE GRUENBERG interjected. He referred to the term "value" as used on page 2, line 4, and characterized it as ambiguous because it is not clear whether it refers to fair market value or ownership equity and thus might be used by someone to avoid probate.

1:07:18 PM

STEPHEN E. GREER, Attorney at Law, indicated that existing Alaska law - specifically the phrase "less liens and encumbrances," found in AS 13.16.680(a) - addresses that point already. In response to a question, he offered his understanding that the term "value" means "equitable interest".

1:08:07 PM

REPRESENTATIVE SAMUELS moved to report HB 196, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 196(JUD) was reported from the House Judiciary Standing Committee.

HCR 5 - 2007 NATIONAL CRIME VICTIMS' RIGHTS WEEK

1:08:25 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 5, Supporting the 2007 National Crime Victims' Rights Week.

1:08:49 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor, offered that HCR 5 is important because Alaskan agencies responsible for assisting victims of violent crimes need to be reminded of the rights of crime victims as outlined in the Alaska State Constitution. In addition, [adoption of] HCR 5 will coincide with the 2007 National Crime Victims' Rights Week.

The resolution contains boilerplate language with the exception that it references Alaska's constitutional rights of crime victims.

CHAIR RAMRAS, after ascertaining that no one wished to testify, closed public testimony on HCR 5.

1:10:55 PM

REPRESENTATIVE SAMUELS moved to report HCR 5 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCR 5 was reported from the House Judiciary Standing Committee.

HB 90 - BAIL

1:11:26 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 90, "An Act relating to bail."

REPRESENTATIVE SAMUELS, speaking as a joint prime sponsor, moved to adopt the proposed committee substitute for HB 90, Version 25-LS0331\K, Luckhaupt, 3/7/07, as the work draft. There being no objection, Version K was before the committee.

REPRESENTATIVE SAMUELS mentioned that HB 90 has many parts, and that department representatives would explain the bill.

1:13:33 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that the provisions of the bill that were suggested by the DOL are intended to fine tune legislation passed in the last 10 years; for example, legislation passed last year, Senate Bill 218, addressed sentences for sex offenders and mandatory minimum terms of probation for sex offenders, and other pieces of legislation funded a cold case prosecutor and addressed the electronic distribution of indecent material to minors. In addition to fine tuning such legislation, HB 90 also proposes to insert into statute standards regarding when a court can order credit against sentences for time spent in treatment facilities.

MS. CARPENETI indicated that Section 1 of Version K can best be explained in terms of last year's Senate Bill 218, which in part established mandatory probation periods for felony sex

offenders, but which neglected to change the mandatory probation period for rape from 10 years to 15 years. Section 1 makes it a crime for a sex offender to violate certain provisions of probation/parole, and does so for two reasons, one being that one main way of delaying or preventing recidivism is to maintain a pretty aggressive supervision program while an offender is on probation/parole. However, because the current mandatory period of probation for rape was not altered by Senate Bill 218, rape offenders may run out of "time hanging over their heads" in terms of doing a revocation of probation procedure if, for example, they don't show up for a polygraph or are committing other behavior indicative of recidivism. The change proposed via Section 1 will establish another tool for prosecutors to supervise sex offenders and perhaps delay recidivism.

1:17:01 PM

REPRESENTATIVE GRUENBERG asked whether there are any other crimes that fall into that category as well.

[Chair Ramras turned the gavel over to Representative Coghill.]

MS. CARPENETI said she is not aware of any but would research that issue further. She went on to explain that Section 2 of the bill fine tunes previously-passed legislation that prohibited an adult from electronically distributing indecent material to minors; that legislation arguably only pertained to electronic distribution by an adult of indecent material depicting minors to children, and Section 2 would specifically prohibit an adult from distributing indecent material - whether it depicted adults or minors - to children. Section 3 adds a reference to the statute being changed via Section 2 to AS 11.61.129, which pertains to the forfeiture of equipment used in the commission of the crimes referenced therein; this change will allow forfeiture of the equipment used in the distribution of indecent material to children.

MS. CARPENETI explained that Section 4 changes the statute of limitations for the crime of "attempt, solicitation, or conspiracy to commit murder" from five years to indefinitely. The concept of this change came to the DOL's attention after the legislature funded the DOL's cold case prosecutor; in investigating/reinvestigating certain old murder cases, the cold case prosecutor found that it would be helpful, when there are a series of possible defendants, to be able to charge not only murder but also attempt, solicitation, or conspiracy to commit

murder. Doing so, however, is not currently possible with a five-year statute of limitations on those crimes.

REPRESENTATIVE GRUENBERG asked why currently only the crime of murder has no statute of limitations.

MS. CARPENETI surmised that it is because of the seriousness of the crime of murder, but said she would research that issue further.

[Representative Coghill returned the gavel to Chair Ramras.]

REPRESENTATIVE GRUENBERG asked whether Section 4 ought to include crimes such as "accessory after the fact to a murder."

1:23:28 PM

MS. CARPENETI characterized that as a reasonable suggestion; although Alaska's statutes don't specifically list that crime, current statute does make it a felony crime to hinder the prosecution of another felony.

REPRESENTATIVE GRUENBERG posited that an indefinite statute of limitations should apply just to situations involving murder.

REPRESENTATIVE LYNN said he is surprised that the crime of kidnapping doesn't have an indefinite statute of limitations, since it does in most other states.

MS. CARPENETI said she would research that issue further.

REPRESENTATIVE COGHILL said he would be reluctant to have the crime of kidnapping have an indefinite statute of limitations, offering his belief that most cases of kidnapping originate from family disputes.

MS. CARPENETI remarked that there are different levels of kidnapping. She then noted that Section 5 is intended to limit what she termed "serial" bail hearings, which are disconcerting to the victims; Section 5 would require those representing offenders to get all information supporting a bail release presented at one time, rather than piecemeal over the course of several bail hearings - in essence limiting what information may be considered to be new information for the purpose of justifying a new bail hearing.

1:26:34 PM

REPRESENTATIVE GRUENBERG remarked that a "newly discovered evidence" standard has been established via the court in Salinas v. State, and suggested that Section 5 will engender litigation regarding what constitutes new evidence. He questioned whether the committee ought to "engraft the Salinas-type contours onto this" provision.

MS. CARPENETI went on to explain that Section 6 would enact standards that the courts must follow in deciding how much credit and whether to give credit against a term of imprisonment for time spent in a treatment facility. These standards follow "decisional law" to a great degree, and the rationale for this provision is that the DOL would like judges throughout the state to be reasonably consistent when granting credit against a term of imprisonment, since right now there is some inconsistency. Section 6 proposes to assist judges in granting credit in a reasonably fair way by requiring three things: the treatment must be ordered by the court; the program must meet the standard set out in Section 6 - which pretty much mirrors what the courts have set out in Nygren, that being that the treatment program has to be pretty similar to incarceration and the person must participate fully in the program; [and the director of the treatment program must inform the court in writing that the person has participated in and complied with the program's requirements].

MS. CARPENETI, in response to a question, noted that in Section 6, proposed AS 12.55.027(c) stipulates:

> (c) To qualify for credit against a sentence of imprisonment for time spent in a treatment program, the treatment program and the facility of the treatment program must impose substantial restrictions on a person's liberty that are equivalent to incarceration, including the requirement that a participant in the program
>
> (1) must live in a residential facility operated by the program;
>
> (2) must be confined at all times to the grounds of the facility or be in the physical custody of an employee of the facility;
>
> (3) is subject to disciplinary sanctions by the program if the participant violates rules of the program and facility; sanctions must be in writing and available for court review;

(4) is subject to immediate arrest, without warrant, if the participant leaves the facility without permission.

CHAIR RAMRAS, referring to a situation he was familiar with wherein a young woman attended and successfully completed a treatment program in the Lower 48, characterized the criteria outlined in proposed subsection (c) as being too specific given what the state currently has to offer.

MS. CARPENETI remarked that Section 6 doesn't limit or address the original sentence imposed by the court. For example, if the best thing would be for a person to attend a treatment program that doesn't fit the aforementioned criteria, the court does have discretion to fashion the sentence based on a particular program.

1:33:11 PM

REPRESENTATIVE GRUENBERG, referring to proposed subsection (c)(4), suggested that the words, ", without warrant," be deleted since "the normal body of law" determines when a warrant is necessary.

MS. CARPENETI pointed out, however, that if one wants credit against a sentence for time spent in a treatment program, that program has to be similar to incarceration, and since escaping from jail results in the person being arrested without a warrant, the same ought to hold true for the treatment program.

REPRESENTATIVE SAMUELS remarked that if a person is able to come and go from a particular treatment program, then time spent in that program shouldn't be credited towards a jail sentence.

MS. CARPENETI, in response to a question, said that the point of putting these standards into statute is that the court will then be required to look at and comply with this statute before granting someone credit towards a sentence of imprisonment. It should provide judges with the incentive to actually investigate whether time spent in a particular treatment program is worthy of credit.

REPRESENTATIVE HOLMES referred to Section 6, specifically proposed AS 12.55.027(d) - which says, "A court may not grant credit against a sentence of imprisonment for time spent in an private residence or under electronic monitoring" - and noted that the words, "in an private residence" should instead read,

"in a private residence". She asked whether anyone is currently being given credit for time served under electronic monitoring.

MS. CARPENETI said that that issue was recently litigated in the Alaska Court of Appeals case, Matthew v. State; the court ruled that a person's time under electronic monitoring should not qualify for credit against a sentence of imprisonment. She offered her understanding that there have been some cases in which credit has been awarded for time spent in a private residence. The DOL wanted to clarify that point, and so brought forth the language in proposed subsection (d). In response to a question, she acknowledged that Section 6 only applies to the courts, not to the Department of Corrections (DOC).

CHAIR RAMRAS asked whether a person must comply with all four of the requirements outlined in proposed AS 12.55.027(c)(1)-(4).

MS. CARPENETI said yes, noting that the word, "and" should be added to the end of subsection (c)(3) to clarify that point.

CHAIR RAMRAS expressed interest in hearing from the court system regarding how it will interpret this provision given the lack of state resources. He indicated that he is concerned that HB 90 will be applied in situations where the person is more of a danger to himself/herself than to society.

MS. CARPENETI offered her understanding that Section 6 won't apply to such people, and merely reflects past court rulings.

1:43:36 PM

MS. CARPENETI explained that Section 7 expressly deals with a problem raised by Senate Bill 218 wherein the mandatory maximum period of probation outlined in AS 12.55.090(c) should have been extended but wasn't.

[Chair Ramras turned the gavel over to Representative Coghill.]

REPRESENTATIVE GRUENBERG asked how the proposed period of 25 years was arrived at.

MS. CARPENETI said that given that the current mandatory minimum period of probation is now 15 years, the mandatory maximum period of probation should exceed that amount. In response to a comment, she said that this provision pertains to probation periods, and that electronic monitoring could be imposed for probation.

REPRESENTATIVE GRUENBERG asked whether, under Section 7, one might be subject to electronic monitoring for the full 25 years.

MS. CARPENETI said that such seems really unlikely, but offered to research the issue further. She then relayed that Section 8 pertains to the crime of electronic distribution of indecent material to minors, which, when originally established, was inadvertently not included as a sex offense, which requires sex offender registration. The behavior outlined in proposed AS 11.61.128, which is being added and referred to in AS 12.63.100(6) via Section 8, is classic grooming behavior and should be considered a sex offense for registration purposes.

REPRESENTATIVE HOLMES noted that there is no section 126 in AS 11.61, and yet Section 8 of the bill proposes to reference AS 11.61.125 - 11.61.128.

MS. CARPENETI explained that such references are commonly drafted that way, and surmised that should future legislation propose to insert a section 126, it too will pertain to a sex offense. She went on to explain that Section 9 addresses post conviction relief applications. Under Section 9, applications based on a claim of ineffective counsel must be filed within one year after the court's final decision on the prior application. This provision is important for victims and the whole judicial system because it will provide an end date for litigation pertaining to post conviction relief.

1:51:00 PM

TAMARA LIENHART relayed that on April 22, 1985, her grandmother, grandfather, and great aunt were murdered by Winona Fletcher and Cordell Boyd. She said that she feels strongly about supporting HB 90, adding that she and her remaining family members were surprised to learn that Ms. Fletcher's case was reopened and had been open for several months and yet they were not notified even though such notification is required by law.

[Representative Coghill returned the gavel to Chair Ramras.]

MS. LIENHART said that all the pain and suffering her family was subjected to at the time of the murders was relived upon discovering that Ms. Fletcher is pursuing post conviction relief; the first petition was filed on August 9, 2005, and for the last year the district attorney's office and the Office of Victims' Rights (OVR) have repeatedly said that Ms. Lienhart and

her family needn't worry, "this will all go away," but as of today, April 10, 2007, Ms. Fletcher's case is still not resolved. Ms. Lienhart said that over the last year and a half she and her family have seen newspaper articles featuring Ms. Fletcher and a television interview with Mr. Boyd; Ms. Fletcher has gone through several attorneys and her case remains open though technically, legally, nothing has changed. The possibility remains that something could happen and Ms. Fletcher could be set free.

MS. LIENHART said she and her family have been told that Ms. Fletcher's case was reopened on the basis that there was "new" information submitted after sentencing, but this so-called "new" information was actually submitted into the case file over 20 years ago. How can such a situation be possible, Ms. Lienhart asked. Over 20 years have gone by and there still are no laws to keep such requests for post conviction relief from resurfacing. This has been a difficult process, Ms. Lienhart remarked, given that Ms. Fletcher was originally sentenced to 298 consecutive years - 99 years given for each person she murdered - but then had her sentence reduced to 99 years to be served concurrently; 22 years later, Ms. Fletcher is trying to get yet another reduction in her sentence via post conviction relief.

MS. LIENHART said that the language in HB 90 regarding post conviction relief is a start, adding her hope that no one else will ever have to go through the same ordeal that her family has had to go through when her grandparents and great aunt were murdered. She also offered her hope that HB 90 will be expanded to address situations such as the one she and her family are now being subjected to; the bill should set a time limit on information submitted as "new" and a time limit on open requests for post conviction relief. One year and seven months is an excessive period of time for victims to have to relive their ordeal. She concluded by saying that she knows it's too late for her family to see relief in this area; instead, with regard to post conviction relief, they will have to continue to wait, watch, hope, and pray that nothing further transpires to reopen this case.

REPRESENTATIVE SAMUELS remarked that without the passage of [HB 90], even the great grandchildren of a victim could be faced with an ordeal similar to what Ms. Lienhart and her family are currently undergoing.

MS. CARPENETI went on to explain that Section 10 pertains to the DOC and says that a prisoner may not be awarded a good time deduction in his/her sentence for time he/she spends in a treatment program, in a private residence, or while on electronic monitoring. Section 11 contains applicability and effective date clauses.

2:00:15 PM

KATHERINE J. HANSEN, Interim Director, Office of Victims' Rights (OVR), Alaska State Legislature, said her comments would be focused on Section 5 of Version K. She relayed that since the enactment last year of AS 12.30.020(j), crime victims have had continuing problems with having to come to court multiple times on short or no notice for repeat bail hearings. She said she has had several victims tell her that they felt as though they were equally or more so victimized through the bail process and criminal justice process in addition to what they suffered at the hands of their perpetrator. One of her clients, Ms. Hansen explained, whose partner had made three attempts on her life, has had to face 14 bail hearings, and each time she has had to decide whether she would be able to face the person who'd tried to kill her and make a statement against him, knowing that there was a chance that he would be released.

MS. HANSEN said she has had more than one client who's had to face a similar situation. She offered her belief that the change proposed by Section 5 is necessary in order to protect the constitutional rights of victims to be treated with dignity, respect, and fairness, and to fairly balance those rights with a defendant's rights to reasonable bail. She relayed that she has attended bar bench conferences in which private defense attorneys have requested that judges start a process whereby the attorneys don't have to submit written information to make a subsequent bail hearing request to change from asking for third party custodians that have been denied to later asking for electronic monitoring; to justify this request, these attorneys cited strategic benefits for the defendants. Section 5 would reduce the trauma and unfairness experienced by victims in having to repeatedly come back to court for bail hearings, often on very short notice.

REPRESENTATIVE HOLMES asked whether an exception to Section 5 could be carved out for those in jail on minor charges.

MS. HANSEN opined that the two legal questions that a judicial officer has to answer in considering whether and what bail is

appropriate are whether reasonable conditions to protect the public and the victim can be set and whether the defendant will make his/her court appearance, not whether the crime is a major or a minor one. She said her focus is on the crime victim, and so her concern is that these victims are being treated unfairly by the system and are being hurt, day after day, without anyone being there to speak up for them. Realistically, she remarked, tightening bail provisions will promote fair settlement of cases, even minor ones. Currently there are numerous options available to defendants seeking bail, and the OVR simply wants defendants to raise all those points at one hearing rather than piecemeal at several hearings simply for strategic reasons. The problem currently, she remarked, is that [the judicial system] is not looking at how the victim is being affected by all the options currently available to a defendant.

2:05:44 PM

PATRICIA HAAG relayed that more than once her ex-husband has tried to kill her, and seemingly he has all the rights while she has very few. She offered her belief that the bill should be passed because the laws need to be changed. This man who has repeatedly attempted to kill her currently gets to pull her into court without appearing himself, thereby keeping her - the victim - wrapped up with legal issues. This situation has affected her and her entire family, she relayed, remarking again that the current laws need to be tightened in order to help both the public and the victims.

2:10:19 PM

MARTI GREESON, Alaska Monitoring Services, LLC; Executive Director, Anchorage Chapter, Mothers Against Drunk Driving (MADD), relayed that she has also been involved with an Anchorage community action group that is looking at how alcohol abuse and underage drinking is harming families and communities and at what can be done to increase safety and health in the communities. A goal, she remarked, is to be able to look at criminal prosecution and sentencing in a holistic manner and in an individual manner, identifying the difference between violent crimes and other crimes, and to look at how the provisions of Version K will impact the DOC. Specifically, she opined, Section 6 will have a fiscal impact on the DOC; the cost to the DOC for incarceration is approximately $120 per day, while the cost for electronic monitoring is approximately $12-$15 per day and this cost is borne by the offender. Heavy case loads for correctional and probation officers make it unlikely that they

will engage in random electronic monitoring and drug testing, and must instead perform such monitoring and testing regularly, thus allowing defendants to know when they will be monitored or tested.

MS. GREESON said that with regard to what impact taking away credit will have on the doc's electronic monitoring program, a tremendous point of consideration is, what is the ultimate impact on the community; the focus, hopefully, will be on changing behaviors. The majority of those serving jail time will be returning to the community and so the DOC must do more than simply warehouse them. Cognitive thinking classes and victim impact classes were once offered but budgetary cuts have eliminated them. Life skills classes are currently being planned, but they won't address responsibility and accountability for behaviors or learning new tools for behavior change once offenders return to the community. Alaska does have options in terms of new technology; for example, alcohol monitoring and Global Positioning System (GPS) monitoring are available, thereby allowing alcohol consumption monitoring and the establishment of inclusion and exclusion zones. Each offender under electronic monitoring [by her company] is assigned a case manager who will immediately contact and confront violators and addresses their violations.

MS. GREESON mentioned that she has also been working with Anchorage's [Anti-Gang & Youth Violence Policy Team], which has discussed the fact that offender/criminal behavior is resulting from disenfranchisement. She referred to the cultural diversity of Anchorage's residents, and remarked that the aforementioned policy team is noticing that there are fewer opportunities and less knowledge available that would allow people to find appropriate representation or understanding of the criminal justice system or programs that could provide assistance.

2:17:46 PM

STEVE CHRISTOPHER, Chief Operations Manager, Alaska Monitoring Services, LLC, after noting that he, too, would be speaking to Section 6 of Version K, referred to the Matthew case, and said that there is currently another Alaska Court of Appeals case wherein the argument is being made that the intent of legislation enacted in 1998 - House Bill 272 - was for time spent under electronic monitoring when used by private providers to be awarded credit as if it were time served in jail. He also mentioned that a study [conducted] by the Alaska Judicial Council (AJC) shows a 66 percent recidivism rate in the state.

Section 6 of HB 90, he opined, doesn't address how tightening down on preventing those seeking treatment from getting jail credit is going to reduce the recidivism rate since they will instead simply be sitting in a jail cell, or address where the money will come from for incarcerating them, and won't ease the current overcrowding of Alaska's jails.

MR. CHRISTOPHER opined that the language of proposed AS 12.55.027(c)(2) - located on page 4, lines 24-25 - creates a double standard because it requires employees of a treatment facility to escort defendants whenever they leave the facility; currently many treatment programs allow defendants to work in the community without escort, and time spent in these programs does count for jail credit. He also suggested that the zoning requirements for residential facilities need to be looked at if those facilities are to meet the standards set out in Section 6.

REPRESENTATIVE SAMUELS argued that not adopting Section 6 will result in a double standard because - for the exact same crime - those who can afford a treatment program won't have to go to jail whereas those who can't afford a treatment program will have to spend time in jail. With regard to the issue of recidivism, he pointed out that those who are in jail are not committing crimes while there, and remarked that if recidivism rates are as high as has been suggested, it is imperative that the legislature ensure that those treatment programs for which a person can receive jail credit actually work.

MR. CHRISTOPHER concurred with the latter point, but argued that treatment programs must address a person's behavior while he/she is out in the community rather than while sitting in jail.

REPRESENTATIVE SAMUELS, referring to the aforementioned AJC study, opined that the recidivism rates for those who've undergone treatment look the same as for those who haven't.

CHAIR RAMRAS asked whether the language in subsection (c)(2) will affect the halfway house in Fairbanks.

MR. CHRISTOPHER said he is not able to address that specific issue, but pointed out that that facility currently doesn't have enough staff to escort its cliental out in the community as would be required by subsection (c)(2).

2:23:53 PM

DWAYNE PEEPLES, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), in response to a question, offered his understanding that Section 6 applies only when the court has ordered someone to attend a specific facility for treatment, and he is not aware of the court ever having ordered someone to attend the halfway house in Fairbanks. The DOC contracts with that facility would not be affected by Section 6.

REPRESENTATIVE HOLMES asked Mr. Peebles to comment on Section 10.

MR. PEEBLES relayed that the DOC's interpretation of Section 10 is that it will significantly impact its electronic monitoring programs - reducing the number of participants - but the DOC will be discussing this point further with the DOL. In response to a question, he said that there is a difference in cost between an offender being on electronic monitoring and being in jail. If this provision adversely affects the DOC's electronic monitoring program significantly, a greater number of people will be spending time in DOC facilities or moved to out-of-state institutions.

REPRESENTATIVE SAMUELS suggested instead that it will result in more people being on electronic monitoring for a longer period of time because all that is being altered is that those people won't be earning credit against their jail sentences.

MR. PEEBLES argued that a person may simply choose not to go on electronic monitoring to begin with.

REPRESENTATIVE SAMUELS asked, "Why would we let them make that choice."

MR. PEEBLES said offenders are in part helping pay for the electronic monitoring program; again, the DOC anticipates an impact on the number of participants on electronic monitoring. He offered his understanding that such an impact has already occurred with regard to court assigned electronic monitoring.

REPRESENTATIVE SAMUELS asked of Ms. Carpeneti, "A prisoner may not be awarded 'good time' for any time done under any circumstances after they've been offered [electronic monitoring]?"

MS. CARPENETI acknowledged that as a possibility. She surmised that the philosophical question is, does the legislature think

somebody on electronic monitoring - after being released from prison and put on electronic monitoring - should be granted an additional one-third reduction in his/her overall jail sentence for that period when he/she is out, living at home, eating dinner with his/her family, and watching TV. She offered her belief that the DOL will be able to address the DOC's concerns.

2:29:23 PM

CHAIR RAMRAS - remarking that he is interested in the public's wellbeing, the number of people who are in correctional facilities, and the offender's welfare - asked what kinds of offenses does a person commit that would qualify him/her to be on electronic monitoring.

MR. PEEBLES offered to get that information to the committee.

REPRESENTATIVE COGHILL surmised that Ms. Carpeneti is raising the question of why should someone be granted both the ability to be at home under electronic monitoring and a reduction in a prison sentence that is earned simply because he/she was first granted the ability to be at home under electronic monitoring. Granting good time is meant to be a reward for being a model citizen while in jail, and it is not necessarily the case that someone who is granted the ability to stay home under electronic monitoring is going to be behaving like a model citizen while at home. He noted that there is a difference between being a model citizen and simply refraining from acting badly.

CHAIR RAMRAS argued, though, that simply because one has a higher quality of life while being on electronic monitoring, it doesn't equate with being free altogether. In one instance that he knew of, he relayed, the person behaved better while wearing an electronic monitor and was ultimately released for time served while on electronic monitoring.

MS. CARPENETI remarked that the DOL supports electronic monitoring in many situations because it's a wonderful tool; however, the question, again, is whether, when a person is sentenced, is serving a term of imprisonment, and is released on electronic monitoring, that person should also get good time credit for that time they've been released. In response to a question, she explained that Section 10 only applies to electronic monitoring by the DOC; it doesn't apply to the courts because the courts don't give good time.

2:35:11 PM

REPRESENTATIVE SAMUELS, referring to the provision regarding post conviction relief, asked what could be done to ensure that the descendants of a victim don't have to face repeat court hearings as has Ms. Lienhart.

MS. CARPENETI offered her belief that it is not possible to tell a person that he/she can't file a lawsuit regardless that the lawsuit may have no basis and will be thrown out. She surmised that an application for post conviction relief as described in the bill would ultimately be dismissed, but a person can still file such an application. In response to another question, she said that legislation passed in 1995 has had a huge affect on post conviction relief and litigation by prisoners, though there was a period, right after passage of that legislation, wherein, because the legislation included time limits, people brought suits in an effort to meet those time limits; however, after that particular period, there has been a steady decrease in the amount of post conviction relief litigation and applications that have been granted. She opined, therefore, that that legislation has really had a good affect on limiting litigation by prisoners who've been convicted. She also offered her understanding that Ms. Fletcher filed her latest application for post conviction relief pro se, though it may be that an [attorney from the Public Defender Agency (PDA)] has since been assigned to her case.

REPRESENTATIVE SAMUELS questioned whether the defendant's right to counsel applies to post conviction relief litigation.

MS. CARPENETI said it does for a defendant's first application for post conviction relief, and for presenting a claim that one's first lawyer was ineffective.

CHAIR RAMRAS asked whether proposed AS 12.55.027(c)(4) would have an affect on someone seeking out-of-state treatment.

MS. CARPENETI remarked that it wouldn't have a negative effect on people attending out-of-state treatment programs, though any such program would have to comply with the standards set forth in [Section 6]. In response to further questions, she indicated that people will still be able to seek out-of-state treatment, though under proposed AS 12.55.027(c)(4), a person could be subject to arrest in the jurisdiction of the treatment program.

2:41:36 PM

QUINLAN G. STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), relayed that he would be commenting on some unintended consequences of HB 90. For example, Section 5 could result in someone sitting in jail beyond his/her potential maximum jail time without getting a bail hearing; he suggested that a release valve could be crafted for this provision, particularly for "smaller" offenses.

REPRESENTATIVE GRUENBERG referred to the fiscal note provided by the Office of Public Advocacy (OPA) and read the second paragraph of the analysis. He too suggested that language could be added to Section 5, and perhaps some of the bill's other sections, to eliminate the problem expressed by Mr. Steiner and the OPA's fiscal note analysis. He asked Mr. Steiner to work with the OPA and review Section 5 and craft some alternative language.

MR. STEINER offered his understanding that at least one of the concerns expressed in the OPA's fiscal note analysis - the concern regarding third-party custodians - has been resolved in Version K.

REPRESENTATIVE GRUENBERG requested that the bill be held over in order to give the OPA and the PDA an opportunity to provide alternative language.

CHAIR RAMRAS remarked that perhaps Section 5 may unfairly affect those people that seem to do more harm to themselves than to the community.

REPRESENTATIVE GRUENBERG surmised that Section 6 may be unfair because only some can afford treatment.

MR. STEINER acknowledged that treatment is something that is available for those that can afford it. He went on to say that one other unintended consequence of the bill pertains to proposed AS 12.55.027(c)(2) - the requirement that a defendant be in the physical custody of an employee of a treatment facility when not in the facility; this requirement might make it difficult for a person to visit his/her attorney or attend court hearings because of a lack of sufficient staff. Sometimes such circumstances are addressed via the court wherein it will order that a person may not leave a facility except for court hearings and visitation to counsel.

2:48:25 PM

REPRESENTATIVE GRUENBERG asked whether Section 6 is unconstitutional because only some can afford treatment.

MS. CARPENETI pointed out that Section 6 merely attempts to address the [fact] that one person gets to go to a treatment program because he/she can afford it while another person goes to jail because he/she can't afford to go to a treatment program.

REPRESENTATIVE GRUENBERG clarified that he is concerned that Section 6 might violate a person's right to treatment.

MS. CARPENETI assured the committee that Section 6 does not violate that right; instead it simply ensures that when attending a treatment program, the time spent in that treatment facility must be similar to time spent in jail in order to qualify for credit.

REPRESENTATIVE SAMUELS opined that if Section 6 is deleted, judges will continue to award credit for time served inconsistently because there will be no criteria established regarding what type of treatment programs qualify; Section 6 establishes qualifying criteria.

REPRESENTATIVE GRUENBERG argued that only some will be able to afford to take advantage of Section 6.

MS. CARPENETI remarked that the issue of who can afford treatment is broader than the issues addressed in the bill; again, Section 6 merely tries to equalize the criteria regarding the awarding of credit towards one's sentence.

REPRESENTATIVE GRUENBERG again questioned whether, under the criteria established in the bill, the state is denying financially poor felons equal protection under the law when only some people can afford treatment and the state does nothing to provide treatment to those who can't.

MS. CARPENETI said she would research the issue of a person's right to treatment.

REPRESENTATIVE LYNN pointed out that all persons are subject to inequities in life due to their differing financial circumstances.

REPRESENTATIVE GRUENBERG clarified that he is simply questioning whether allowing some people - those that can afford it - to

attend a treatment program will strengthen the constitutional argument made by those that can't afford to attend a treatment program at all if the state provides no treatment.

2:57:24 PM

JOSHUA FINK, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), said that there may be an unintended consequence of Section 6 regarding Nygren credit. In the past, he relayed, back when he still represented clients, he sent a number of them to the Salvation Army program, which is available to low-income defendants; as part of the year-long rehabilitative program, the Salvation Army requires clients to get a job after a certain number of months. Therefore, under Section 6, he opined, a low-income defendant may be precluded from attending such a program if he/she is going to be denied credit when complying with a program that requires him/her to hold a job. It may be worthwhile, he remarked, for the committee to speak to some treatment providers to see what they require in their residential treatment programs. He also mentioned that the Akeela House Residential Substance Abuse Recovery Center is another treatment center that requires its clients to find employment as part of its treatment program.

MR. FINK, in response to a question regarding the OPA's fiscal note, relayed that it pertained to the original bill, and that [Section 5 of Version K] addresses the OPA's concern as expressed in the fiscal note somewhat though not completely. He indicated that should Section 5 be adopted as currently written the OPA would still be able to use a different, though cumbersome, process to ensure that a defendant is not held longer than his/her potential maximum sentence without a bail hearing. There is a constitutional problem, he opined, with holding someone pretrial beyond any possible maximum jail sentence for what he/she might be convicted of.

REPRESENTATIVE GRUENBERG indicated that he would be researching the issue raised about treatment programs further, particularly given that certain treatment programs require their clients to hold down a job.

CHAIR RAMRAS closed public testimony, and relayed that HB 90, Version K, would be held over so that the concerns raised could be addressed.

HB 159 - STILLBIRTH CERTIFICATE

3:04:04 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 159, "An Act relating to the issuance of a certificate of birth resulting in a stillbirth." [Before the committee was CSHB 159(HES).]

3:04:43 PM

SANDRA WILSON, Intern to Representative Carl Gatto, Alaska State Legislature, sponsor, relayed on behalf of Representative Gatto that HB 159 is intended to give closure to parents of a stillborn child, which [will be defined as a fetal death occurring after a gestational age of 20 completed weeks]. Currently 15 states offer a certificate of stillbirth, and HB 159 proposes to give parents of a stillborn child the option of receiving a stillborn birth certificate in addition to a death certificate. Members' packets, she indicated, contain [copies of a "Certificate of Birth Resulting in Stillbirth" from Texas and Indiana]. She offered her understanding that approximately 1 percent of all births are stillbirths, and that an average of 30,000 fetuses die of Sudden Antenatal Death Syndrome (SADS). House Bill 159 is intended to give parents of a stillborn child the recognition that they had a child.

3:06:38 PM

RICHARD OLSEN relayed that on August 17, 2000, he became the father of a stillborn child. After describing his stillborn child, he mentioned that after the stillbirth, he and his wife were left with no record that the birth event occurred. He offered his understanding that a certificate of birth currently specifies that it pertains to a live birth, and characterized this as recognition of another type of birth - a stillbirth. He also offered his understanding that it is virtually impossible for a pregnant woman to cause her child to be stillborn. Stillbirths are naturally occurring events, and the mother of a stillborn baby goes through the same processes as one who gives birth to a live baby, and so the certificate being authorized by HB 159 would recognize that the mother did give birth. He opined that parents of a stillborn child are entitled to that recognition. In conclusion, he attempted to assure the committee that proponents of such certificates are not claiming personhood for the stillborn child.

REPRESENTATIVE GRUENBERG referred to the language on page 1, lines 4-8 - which says, "(a) The person required to file a fetal death registration under AS 18.50.240(b) shall advise the mother and, if the father is present, the father of a stillborn child (1) that the parent may request the preparation of a certificate of birth resulting in stillbirth;" - and suggested that the committee insert language stipulating that the notification referred to therein be written notification rather than just oral notification. He asked whether providing written notification would be a difficult process.

3:12:41 PM

PHILLIP MITCHELL, Chief, Vital Statistics, Division of Public Health (DPH), Department of Health and Social Services (DHSS), said it would not be impossible to do, adding that the division has considered providing hospitals with some form of information card that they could distribute to parents of stillborns. He also mentioned that information could put on the division's web site.

REPRESENTATIVE GRUENBERG suggested that the words, ",if the father is present," be changed to, ", the father if known,".

REPRESENTATIVE LYNN suggested instead using the words, ", the father if available,".

REPRESENTATIVE GRUENBERG said that that would be fine.

MR. MITCHELL indicated that such a change would not create difficulties.

REPRESENTATIVE GRUENBERG referred to the language in proposed subsection (b), which in part stipulates that the certificate shall include the last name of the parent who requests the certificate, and asked what would happen in situations wherein the parents have different last names and both request the certificate.

MR. MITCHELL said that on a live birth certificate, if the mother is not married, the father's name is not allowed to go on the certificate regardless of parental acknowledgement; therefore, under HB 159, he surmised, the father wouldn't be able to request the certificate. He mentioned that currently if the mother and father are married but have different last names, the division requires them to come to an agreement regarding

which last name to use on the certificate. He also mentioned that he would research these issues further.

REPRESENTATIVE GRUENBERG opined that these issues need to be addressed in the legislation itself. He then asked whether the legislation would apply to stillbirths that took place in the past.

MS. WILSON explained that proposed subsection (g) says: "(g) A parent may request that the bureau issue a certificate of birth resulting in still birth regardless of the date on which the certificate of fetal death was issued."

MR. OLSEN, with regard to the earlier question about which last name to use on the certificate, suggested that the same procedures used for certificates of live birth should be used for certificates of stillbirth.

MR. MITCHELL, in response to a question, said that the division plans on charging the same fee for a certificate of stillbirth as it currently does for a certificate of live birth - $20.

MS. WILSON, in response to a question, indicated that [proposed subsection (h) says, "(h) The department may adopt regulations needed to implement this section.]".

MR. MITCHELL added that the division already has the statutory authority to charge fees for its services.

3:19:24 PM

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 159.

MR. MITCHELL relayed that [the division] supports HB 159, though he suggested that proposed subsection (f) be deleted because the fetal death record already contains all necessary information. In every real sense, he remarked, the division already registers stillbirth events and could start issuing certificates right away.

REPRESENTATIVE HOLMES questioned whether the bill needs to have language added that would allow the division to conform its procedure for issuing a certificate of stillbirth with its procedure for issuing a certificate of live birth.

MR. MITCHELL said he would check on that point, but offered his understanding that the fetal death record would be the same as a record of live birth, and so it would contain the mother's last name if she is unmarried. He mentioned that the division may need to establish a procedure whereby paternity can be established for the purpose of including it in fetal death records.

REPRESENTATIVE GRUENBERG remarked that some of the aforementioned issues of concern could be resolved by the division via regulation if the bill were amended to give the division the necessary regulatory authority.

3:22:57 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to change the language on page 1, lines 5-6, to read, "required to file a fetal death registration under AS 18.50.240(b) shall, if possible, in writing, advise the mother and, if the father is available, the father of a stillborn child".

REPRESENTATIVE HOLMES objected. She said that she is assuming that this notification would be occurring in the hospital at the time of delivery, and opined that the term, "the father is available" is ambiguous and could place an unnecessary burden on the division to go hunting down fathers who are not present at time of delivery.

REPRESENTATIVE GRUENBERG suggested that the language could be changed, to "if known".

REPRESENTATIVE LYNN suggested instead using the words, "makes himself known".

REPRESENTATIVE GRUENBERG said he would accept that wording.

REPRESENTATIVE HOLMES said she doesn't want to put a burden on the division to round people up.

REPRESENTATIVE GRUENBERG restated Amendment 1 such that it would instead change the language on page 1, lines 5-6, to read: "shall, if possible, in writing, advise the mother and, if the father makes himself known, the father of a stillborn child".

MR. MITCHELL pointed out that any burden would be on hospital personnel because they are the persons required to file the fetal death record.

REPRESENTATIVE HOLMES removed her objection.

REPRESENTATIVE GRUENBERG again restated Amendment 1 such that it would now instead change the language on page 1, lines 5-6, to read: "shall, if possible, in writing, advise the mother and, if the father has made himself known, the father of a stillborn child".

CHAIR RAMRAS after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

3:28:31 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to delete subsection (f).

REPRESENTATIVE LYNN objected for the purpose of discussion. He said he is not sure why this deletion is necessary.

MR. MITCHELL remarked that other states that issue such certificates do not create a special record as would be required by subsection (f); instead, those other states just use the same information that is already on the fetal death record. In response to a question, he indicated that the deletion of subsection (f) would result in the language of the bill reflecting best practices as they are known in the states that currently issue certificates of stillbirth.

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor, relayed that he has no objection to Amendment 2.

REPRESENTATIVE LYNN removed his objection.

CHAIR RAMRAS, after ascertaining that there were no further objections, announced that Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG asked whether the division would currently be able to resolve - via regulation - potential disputes wherein both parents request that their [different] last names be included on the certificate.

MR. MITCHELL said he would research that issue further, but remarked that the division may currently be able to resolve any such disputes given that for certificates of live birth the division is already able to require parents to agree on a last name.

REPRESENTATIVE GATTO offered his belief that the division's current regulations already address this point.

REPRESENTATIVE GRUENBERG suggested that an administrative procedure could also be used deal with disputes. He then asked Mr. Mitchell to check on the issue of fees.

MR. MITCHELL agreed to do so.

3:32:11 PM

REPRESENTATIVE GRUENBERG moved to report CSHB 159(HES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 159(JUD) reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:32 p.m.