

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 8, 2008

1:03 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn (via teleconference)
Representative Ralph Samuels
Representative Lindsey Holmes
Representative Mike Doogan

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 307

"An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies."

- MOVED HB 307 OUT OF COMMITTEE

HOUSE BILL NO. 281

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns."

- HEARD AND HELD

HOUSE BILL NO. 237

"An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; establishing a procedure for the removal or suspension of a regent; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 307

SHORT TITLE: DOMESTIC VIOLENCE OFFENSES

SPONSOR(S): REPRESENTATIVE(S) HOLMES, GARA, DAHLSTROM,
FAIRCLOUGH, JOHNSON, BUCH, HARRIS, DOLL

01/11/08 (H) PREFILE RELEASED 1/11/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) JUD, FIN
02/08/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 281

SHORT TITLE: CAMPAIGN FINANCE COMPLAINTS

SPONSOR(S): REPRESENTATIVE(S) LYNN, GATTO

01/04/08 (H) PREFILE RELEASED 1/4/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) STA, JUD
01/17/08 (H) STA AT 8:00 AM CAPITOL 106
01/17/08 (H) Heard & Held
01/17/08 (H) MINUTE(STA)
01/19/08 (H) STA AT 11:00 AM CAPITOL 106
01/19/08 (H) Moved CSHB 281(STA) Out of Committee
01/19/08 (H) MINUTE(STA)
01/22/08 (H) STA RPT CS(STA) NT 1DP 3NR 2AM
01/22/08 (H) DP: LYNN
01/22/08 (H) NR: ROSES, COGHILL, DOLL
01/22/08 (H) AM: JOHNSON, JOHANSEN
01/22/08 (H) FIN REFERRAL ADDED AFTER JUD
01/25/08 (H) JUD AT 1:00 PM CAPITOL 120
01/25/08 (H) -- MEETING CANCELED --
02/01/08 (H) JUD AT 1:00 PM CAPITOL 120
02/01/08 (H) Heard & Held
02/01/08 (H) MINUTE(JUD)
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120
02/06/08 (H) <Bill Hearing Rescheduled to 02/08/08>
02/08/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE ANNA FAIRCLOUGH

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided comments as a joint prime sponsor
of HB 307.

GERALD LUCKHAUPT, Attorney

Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: As the drafter, responded to questions during discussion of HB 307.

PEGGY BROWN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 307, but expressed concerns.

CHRIS ASHENBRENNER, Executive Director
Council on Domestic Violence and Sexual Assault (CDVSA)
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Indicated support of HB 307.

JEFFREY LANDVATTER
Public Safety Employees Association, Inc. (PSEA);
State Trooper
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 307.

MELANIE JAMES, Domestic Violence Sexual Assault (DVSA) Advocate
SeaView Community Services ("SeaView")
Seward, Alaska

POSITION STATEMENT: Testified in support of HB 307.

TIM WHEELER
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 307.

JUDY CORDELL, Executive Director
Abused Women's Aid in Crises (AWAIC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of the concept of HB 307, but expressed concerns.

RICK SVOBODNY, Deputy Attorney General
Central Office

Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 307, and indicated support of the concept embodied in the bill.

BROOKE MILES, Director
Alaska Public Offices Commission (APOC)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 281.

SHIRLEY R. DEAN, Commissioner
Alaska Public Offices Commission (APOC)
Department of Administration (DOA)
Douglas, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 281.

JANET DeYOUNG, Chief Assistant Attorney General - Statewide
Section Supervisor
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 281.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 281.

MIKE SICA, Staff
to Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 281, provided some information on behalf of Representative Lynn, one of the bill's joint prime sponsors.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:03:37 PM](#). Representatives Coghill, Samuels, Holmes, Doogan, Dahlstrom, and Ramras were present at the call to order. Representative Lynn (via teleconference) arrived as the meeting was in progress. Representative Johnson was also in attendance.

HB 307 - DOMESTIC VIOLENCE OFFENSES

[1:04:07 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 307, "An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies."

[1:05:57 PM](#)

REPRESENTATIVE HOLMES, speaking as one of the bill's joint prime sponsors, said that HB 307 is intended to address Alaska's high rate of domestic violence (DV), and proposes something that was recommended by the task force created by legislation last year. Over 6,000 cases of DV in Alaska were reported in 2005, and Alaska ranks highest in the nation with regard to female victims killed by male perpetrators [of DV]. House Bill 307 provides that if one has been convicted twice before for DV crimes, then the third [or subsequent] conviction for a DV crime will bring with it a class C felony penalty. Referring to the U.S. Supreme Court case, Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004), she mentioned that the proposed increased penalty might only apply in situations in which the prior DV offenses occur after the effective date of the Act. By the time a person is convicted of more than two DV crimes, he/she has probably committed many more such crimes, and so a message needs to be sent that this type of behavior is unacceptable.

REPRESENTATIVE DAHLSTROM, speaking as one of the bill's joint prime sponsors, remarked that HB 307 takes a small step towards addressing the problem of DV in Alaska.

[1:11:04 PM](#)

REPRESENTATIVE ANNA FAIRCLOUGH, Alaska State Legislature, speaking as one of the bill's joint prime sponsors, said she supports HB 307, and asked the committee to do the same. She noted that another legislator has said, "What we allow, we encourage." Therefore, she opined, if people start to "dis-

incentivize" acceptance of violence in the home, then domestic violence will start to be reduced.

REPRESENTATIVE SAMUELS pointed out, though, that the language on page 2, lines 7-8, says in part, "References to previous convictions include convictions before, on, or after the effective date of this Act", and expressed a preference for that concept as opposed to requiring that the prior convictions occur after the bill's effective date.

REPRESENTATIVE HOLMES relayed that that issue has not yet been clarified.

[1:15:02 PM](#)

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter, in response to a question regarding Section 2 of HB 307, explained that a third or subsequent DV crime, even if that third or subsequent DV crime is a misdemeanor, will subject the perpetrator to a class C felony penalty. Characterizing that third or subsequent DV crime as an inchoate crime, he explained that it will become a class C felony crime once the predicate DV crimes and the elements of that current DV crime are proven. He noted that the way he drafted the language of Section 2, it specifies that a third or subsequent DV crime will both become a class C felony crime and subject the perpetrator to a class C felony penalty. In response to questions, he indicated that existing statutes provide for a similar increase in levels of crime and penalties for multiple driving under the influence (DUI) crimes and multiple shoplifting crimes, and for an increase in penalties for certain multiple felony crimes. He observed that it is within the purview of the legislature to determine what level crimes should be and to establish penalties for crimes as it sees fit.

MR. LUCKHAUPT said that HB 307 is designed to look back at a perpetrator's prior DV crimes, and pointed out that in Blakely, Justice Scalia specifically stated that the court's decision in Blakely doesn't apply to prior convictions; in other words, prior convictions don't have to be proven to a jury. Mr. Luckhaupt reiterated that prior convictions are already being taken into consideration for other types of crimes, adding that after Blakely, the state's sentencing statutes were rewritten to specifically say that the fact of prior convictions doesn't have to be proven to a jury. Furthermore, although the prosecution

might be required to prove to a jury that the prior convictions were really for violent crimes occurring against a household member, since that is what distinguishes DV crimes from all other violent crimes against a person, the sentences themselves for the prior convictions might provide sufficient indication that they were for DV crimes, thus alleviating the need to have the jury consider the fact that the victim was a household member of the perpetrator.

MR. LUCKHAUPT referred to the memorandum [included in members' packets] he'd written on this issue, and explained that the U.S. Supreme Court considered a similar federal law providing greater punishment for those committing multiple, aggravated burglaries, and ruled that if the sentences themselves don't indicate whether the prior convictions were for same type of crime as the current crime, then the fact that they were must be proven to a jury in order to comply with Blakely. The court in that aforementioned case, however, acknowledged that Blakely doesn't really favor defendants who don't wish to have a jury hear about prior convictions at all. He surmised, therefore, that even if Blakely somehow applies with regard to HB 307 and the fact of the prior convictions must be proven to a jury, doing so might not be "all that terrible" from a prosecutorial standpoint.

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PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said that the ANDVSA is 1,000 percent in support of HB 307, which, by specifically targeting repeat DV offenders, would send a message that domestic violence is a very serious crime and will no longer be tolerated. However, the ANDVSA is concerned that the current system doesn't have a way to track how many DV crimes are actually charged as such but then "plead down" to lesser crimes; if it is not known how often such occurs, then simply increasing the penalty to a felony for a third or subsequent DV offense might just be giving DV perpetrators more to bargain over. This lack of information means that even if HB 307 becomes law, no one will really know how effective it is or what impact it has. For example, even though Nevada passed similar legislation, authorities there have indicated that they don't really know how effective their law is or what impact it's having on perpetrators.

MS. BROWN relayed that another of the ANDVSA's concerns pertains to how HB 307 will affect women, particularly those in rural Alaska, who [mistakenly] get arrested for DV under "Alaska's

mandatory arrest law," since they are unlikely to contest such charges because they feel they must return home to their children as soon as possible and they are not educated about the consequences of allowing such charges to go uncontested. In closing, she relayed that the ANDVSA is also concerned with the lack of prosecutors in Alaska.

REPRESENTATIVE HOLMES relayed that Section 1 of the bill is intended to address the ANDVSA's concern regarding women who mistakenly get arrested for DV under Alaska's mandatory arrest law; Section 1 [which adds language to the uncodified law of Alaska] states that before accepting a plea, the judge must determine that the person being charged under Section 2 of the bill really is the aggressor and not the victim.

MS. BROWN thanked the joint prime sponsors for addressing that point.

REPRESENTATIVE DAHLSTROM concurred that the sponsors are attempting to address that issue.

[1:31:34 PM](#)

CHRIS ASHENBRENNER, Executive Director, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety (DPS), relayed that the CDVSA has submitted a letter of support for HB 307. Domestic violence is an extremely serious problem, and the goal is to reduce it and eliminate it. House Bill 307 will help send the message that DV will not be tolerated in Alaska, and society's response to DV is the key to eliminating it. Repeat DV offenders just seem to keep getting away with their DV crimes, and don't seem to care about the current penalties. Serving three days, ten days, or thirty days in jail is not much of a deterrent for repeat DV offenders, she relayed, adding that it's quite telling when a victim of domestic violence says, "I don't want him to go to jail because he'll be out in a few days and then he'll really be pissed off"; that victim's safety was compromised by the justice system's lack of [adequate] response. She relayed that as of 2005, 26 other states have some sort of enhanced penalties for [repeat DV offenders], and said that she and the CDVSA believe that Alaska should join those states. Ms. Ashenbrenner said she concurs with Ms. Brown's comments and concerns, and mentioned that the aforementioned task force brought forth a lot of recommendations to improve the justice system with regard to holding domestic violence offenders accountable.

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JEFFREY LANDVATTER, Public Safety Employees Association, Inc. (PSEA); State Trooper, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that domestic violence is one of the most dangerous crimes that law enforcement officers respond to; officers are in a very high state of alert when responding to such calls, and, whenever possible, at least two officers respond in order gain control of these very volatile situations. The state takes DV crimes very seriously, but a repeat offense in even the most dangerous DV situations is still just a misdemeanor. House Bill 307, he opined, will send a clear message to DV offenders that if they continue to commit DV crimes, they are going to be charged with a felony, adding his belief that the proposed law will help to keep the most violent offenders off the street, thereby making Alaska communities safer.

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MELANIE JAMES, Domestic Violence Sexual Assault (DVSA) Advocate, SeaView Community Services ("SeaView"), relayed that both she and SeaView support HB 307. A report from the Centers for Disease Control and Prevention (CDC) indicates that 25 percent of women and 11 percent of men are victims of "intimate partner violence," and according to her experience as a DVSA advocate, she relayed, many women are victimized by men who have battered all the women they've been in relationships with. For example, SeaView tracked one batterer who'd been arrested for assault in the fourth degree for beating four of the women he'd had a relationship with, and found he'd been in relationships with and beaten five other women who never pressed charges. Because this man only used his fists when beating up his domestic partners, he was never charged with anything other than assault in the fourth degree. House Bill 307 would give prosecutors a tool to remove such DV offenders from the community for a longer period of time. In conclusion, she asked that HB 307 be passed from committee.

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TIM WHEELER relayed that his 22-year-old daughter has recently been charged with her second DV crime because the man she is living with assaults her and, then, when she struggles with him to protect herself, he calls the police and reports that she's assaulting him, and she is the one who ends up getting thrown in jail. Mr. Wheeler said he supports HB 307, but cautioned that

more efforts towards educating people about the problem of domestic violence must also be made, since his daughter is the third woman her current boyfriend has done this with.

CHAIR RAMRAS acknowledged that laws sometimes have unintended consequences.

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JUDY CORDELL, Executive Director, Abused Women's Aid in Crises (AWAIC), said that the AWAIC supports the intent of HB 307, but has concerns regarding the bill's [potential] unintended consequences. One concern pertains to the lack of data regarding conviction rates; such data would answer the question of whether even the current laws are being enforced, particularly given that the system currently allows DV perpetrators to plead down their crimes to disorderly conduct and thereby avoid any sentencing enhancement for subsequent DV offenses. Another concern - as highlighted by the prior testifier - pertains to law enforcement's ability to determine who the "primary aggressor" really is in DV situations. Yet another concern pertains to HB 307's use of the term, "domestic violence"; specifically, the AWAIC would prefer that that term be replaced with the term, "interpersonal violence".

REPRESENTATIVE HOLMES concurred that the lack of conviction data regarding DV crimes is troubling, and noted that the aforementioned task force has discussed that issue.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 307.

REPRESENTATIVE COGHILL asked whether the joint prime sponsors had considered changing the term, "domestic violence" to the term, "interpersonal violence".

REPRESENTATIVE HOLMES said she had not, but offered to research that issue further.

REPRESENTATIVE COGHILL, noting that such a language change might have an impact on prosecutions, asked whether it would also address the concern pertaining to [law enforcement officers incorrectly charging the wrong person with a DV crime].

REPRESENTATIVE HOLMES posited that in addition to the requirement outlined in Section 1, prosecutorial discretion should also help ensure that the bill won't be applied to the

victims of DV. She remarked, though, that she would be willing to consider possible changes to HB 307 that would more effectively address that issue.

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RICK SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), in response to a question, said that currently Alaska law doesn't define the term, "interpersonal violence".

REPRESENTATIVE FAIRCLOUGH concurred, but offered that the CDC, at the federal level, is considering using the term, "interpersonal violence" as a way of actually preventing interpersonal violence. Alaska's law in that regard is antiquated, she remarked, and until that term is defined in Alaska law, use of it could create problems with regard to judicial interpretation. In response to a question, she offered to provide the committee with the CDC's definition of the term, "interpersonal violence", and indicated a preference for keeping the term "domestic violence" in the bill since that is the term currently used in Alaska law.

MR. SVOBODNY mentioned that the bill would apply to all offenses under AS 11.41 - crimes against a person - including but not limited to offenses such as stalking, custodial interference, and reckless endangerment.

REPRESENTATIVE SAMUELS asked whether the DOL supports the language of HB 307 and the way it is structured.

REPRESENTATIVE LYNN relayed that he supports the bill.

MR. SVOBODNY said that he supports the concept embodied in HB 307, and thinks that those who repeatedly commit misdemeanor assault offenses should, at some point, be treated as felons. He pointed out, however, that although Section 1 requires the court to determine whether an offender who is pleading guilty or no contest to a DV crime actually committed that crime, such a requirement is already included in the Alaska Rules of Court in that a court must make a determination that there was probable cause that a crime was committed; therefore, from a structural standpoint, Section 1 is not necessary. He also opined that there is a big problem with regard to retroactivity, adding that although he doesn't disagree with Mr. Luckhaupt that technically the current language of the bill doesn't raise a Blakely issue

merely because it considers prior offenses, it has the exact same problems that Blakely had.

MR. SVOBODNY observed that currently there is no assault crime that has as an element of it that [the perpetrator and the victim] were in a domestic relationship that meets the [statutory] definition of such, and so the court would be unable to look back and find those crimes without simply guessing or relying on the opinion of the current prosecuting attorney or the opinion of the judges who sentenced the perpetrator for those prior crimes, and thus surviving a challenge on that issue could be problematic because the aforementioned element wouldn't have been proven to a jury. So although one way to deal with such a situation would be to simply have a new trial and present evidence that the prior convictions were for DV crimes, there are both legal and practical problems with doing so. He indicated that the lack of the aforementioned element in DV cases raises "a very interesting ex post facto argument," and opined that the bill is proposing a major change. He surmised that that is why the drafter chose to create a whole new chapter in statute - AS 11.21. In conclusion, he said he doesn't like the structure of HB 307, but thinks the concept of it is great.

REPRESENTATIVE DAHLSTROM offered her belief that not too many of those committing DV crimes are thinking about the timeframes during which they commit those crimes - rather, such offenders aren't thinking to begin with. She said she doesn't want to let such offenders off the hook, and asked that any proposed amendment include a "look back" period in Section 3 - perhaps a period not less than nor greater than 10 years.

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REPRESENTATIVE COGHILL relayed that he'd been thinking of offering an amendment that would result in only those prior convictions occurring on or after the effective date of the bill being considered, and indicated that such a change would address some of the concerns raised.

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, to delete from page 2, lines 7-8, the language, "References to previous convictions include convictions before, on, or after the effective date of this Act."

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE DOOGAN questioned whether the difficulty is that there wouldn't be factual proof that a prior conviction included the element of domestic violence.

MR. SVOBODNY concurred, adding, "We know that it is a domestic violence case because we ... do keep track and it makes a difference as to what the sentencing may be in that particular case, but we didn't prove it to a jury," and that's what results in a Blakely issue.

REPRESENTATIVE DOOGAN asked whether there might be cases in which the element of DV has been proven to a jury at least twice before the effective date of the bill.

MR. SVOBODNY said not in Alaska; "We do not have offenses that require proof to a jury that ... this was a domestic violence assault or a domestic violence offense."

REPRESENTATIVE DOOGAN clarified that his question is whether there might be cases in which it had been proven that it was domestic violence, regardless of whether such proof was required.

MR. SVOBODNY indicated that there have been cases in which factually the issue of [DV] did come up. For example, in a case in which a husband hits his wife, the state must prove that the husband knowingly caused physical injury to another person, and in the course of the trial, it will come out that the person causing the injury is the victim's husband; so factually the evidence of that would be there, but there is no requirement that the domestic relationship itself be proven to a jury.

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REPRESENTATIVE SAMUELS asked whether, if Amendment 1 were not adopted, the DOL would be able to proceed with prosecution. He expressed a preference for leaving the language of the bill as is, but not if it would result in further litigation for the state.

MR. SVOBODNY said that if the legislature says the bill is retroactive, then that's how [the DOL] will view it, and the State will simply have to try to prove that the prior convictions were for DV offenses. He noted that most of the time, when a new law is enacted, the State pays for any subsequent appeals.

REPRESENTATIVE DAHLSTROM opined that Alaska should be on the cutting edge in saying that [domestic violence] is unacceptable. By deleting the words pertaining to previous convictions, then in a situation like the one described by Mr. Wheeler, the true perpetrator of DV won't be held accountable for any of his/her previous DV crimes. She opined that the legislature ought to ere on the side of the victim, and suggested that they instead consider another amendment to page 2, lines 7-8, such that only those prior convictions occurring within the last 10 years be considered.

2:09:40 PM

REPRESENTATIVE COGHILL said that the concept of retroactivity is always troublesome for him. Saying he agrees with the concept of making a third or subsequent DV offense a felony, he opined that it is proper for the legislature to make such a policy call with regard to crimes occurring [on or after] the effective date of the bill. He then referred to the comments regarding how the bill, in its existing form, might affect those, [particularly in] rural areas, who've inaccurately plead [guilty to DV crimes] in the past.

REPRESENTATIVE HOLMES asked whether the existing aggravating factor for DV assaults [AS 12.55.155(c)(18)] has to be proven to a jury.

MR. SVOBODNY said that that aggravating factor does need to be proven to the jury, but that would be in a present case and wouldn't address prior convictions. Furthermore, aggravating factors apply to felony cases. He suggested that perhaps an easy way to address this issue would be to have the predicate crimes be any kind of assault - not just DV assaults. In this way, the DOL would not be faced with having to change history after the fact by specifying that the prior convictions were for DV offenses.

REPRESENTATIVE SAMUELS asked whether the DOL would have the discretion to not apply the proposed enhanced penalty in a current DV case.

MR. SVOBODNY said the DOL does have that discretion, but noted that in instances of a third DUI offense and its accompanying enhanced penalties, although the DOL doesn't have to, it does try to prove the prior DUI convictions.

REPRESENTATIVE SAMUELS said he doesn't consider the language that Amendment 1 is proposing to delete to be a retroactive provision because the bill is addressing a current third or subsequent DV crime.

REPRESENTATIVE FAIRCLOUGH surmised that adoption of Amendment 1 would provide for an opportunity to train law enforcement officers regarding the new law and the importance of documenting DV crimes correctly, and could perhaps minimize appeals. She too opined that Alaska should be on the cutting edge of holding perpetrators of domestic violence accountable.

REPRESENTATIVE DOOGAN referred to Amendment 1, and asked what's the worst that could happen.

MR. SVOBODNY said that the DOL could go through with a criminal prosecution and obtain a conviction and a sentence that might then be overturned by the Alaska Court of Appeals.

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REPRESENTATIVE COGHILL withdrew Amendment 1. He said, however, that he doesn't want to institute a limitation on the look back period as suggested by Representative Dahlstrom.

REPRESENTATIVE DAHLSTROM, in response to a question, expressed a preference for keeping the HB 307 as it's currently written.

REPRESENTATIVE HOLMES referred to Section 1, and asked whether it could be improved so as to further ensure that the proposed enhanced penalty isn't applied to victims of DV.

MR. SVOBODNY indicated that he doesn't have any specific language to suggest, and reiterated that before accepting a plea, the courts already have to find probable cause that the crime was committed and that it was committed by the person who has been accused of committing it. He acknowledged, though, that there will be those who, for any number of reasons, will inaccurately plead guilty to a DV crime; this does happen, but not with much regularity. Furthermore, it is the district attorney's duty to correct instances of incorrect guilty findings.

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REPRESENTATIVE DAHLSTROM moved to report HB 307 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SAMUELS commented that as HB 307 continues through the process, as long as the concepts of the bill remain intact - providing an enhanced penalty for a third or subsequent DV offense and allowing the courts to look back at prior DV offenses - he would be amenable to language that would improve the bill.

CHAIR RAMRAS, noting that there were no objections to the motion, announced that HB 307 was reported from the House Judiciary Standing Committee.

HB 281 - CAMPAIGN FINANCE COMPLAINTS

[2:22:29 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 281, "An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns." [Before the committee was CSHB 281(STA).]

REPRESENTATIVE LYNN, speaking as one of the bill's joint prime sponsors, said that HB 281 adds another brick to the foundation of [public] trust, and that he would like to see it reported from committee. He mentioned that he does have a conflict of interest in that as a legislator he could at some point end up violating the bill's provisions, but he is willing to take that chance because he feels building up the foundation of trust between the people of Alaska and the state's elected officials is more important than any individual legislator. He remarked that recent history clearly indicates the need for an increase in the period of time [during which a complaint may be filed] from one [and two years] to five years, and for requiring that certain records be kept for six years. He acknowledged, however, that the bill shouldn't cast too large a net regarding who must retain records, and so he would be willing to have Section 1 deleted via an amendment. He relayed that he would also be amenable to an amendment that would change who may file a complaint, from a "registered voter", to a "person". He concluded by saying that HB 281 is a proactive bill that will give the Alaska Public Offices Commission (APOC) the essential tools needed to protect the public trust.

CHAIR RAMRAS noted that members' packets contain a proposed amendment [labeled 25-LS1115\K.3, Finley/Bullard, 2/8/08] that would change "registered voter" to "person".

CHAIR RAMRAS, in response to a question, explained that he was considering offering a conceptual amendment that would delete Section 1 of the bill so that businesses wouldn't have the burden of retaining records for political candidates. He mentioned that he is also interested in deleting the language on page 2, lines 12-13, because he feels that when he has completed his public service as an elected official, he does not want to find himself in violation of the law simply because he didn't keep certain records for six years [after his last election].

[2:29:41 PM](#)

BROOKE MILES, Director, Alaska Public Offices Commission (APOC), Department of Administration (DOA), offered that HB 281 provides the APOC some important tools. At the top of the APOC's wish list regarding legislation, she relayed, was to have the statute of limitations pertaining to campaign disclosure [complaints] expanded from one year. She also indicated that the three other provisions of law that fall under the purview of the APOC either have no specific statute of limitations or differing ones. Although the APOC had originally requested an expansion of the statute of limitations to four years, it is amenable to the five years proposed by the bill, since some terms for statewide office are four years and there is an 18-month campaigning period. She offered her understanding that lobbyists, who also fall under the purview of the APOC, currently have a four-year statute of limitations. The bill also includes a provision regarding the retention of records, because it is difficult to conduct an investigation without access to those records. She explained that the APOC is in favor of having Section 1 of the bill removed, thereby allowing the existing AS 1513.040(f) to remain as is because it has proven to be a useful tool.

MS. MILES relayed that the APOC is concerned about the bill's current proposal to change who can file a complaint, from a "person", to a "registered voter". Alaska's existing lobbying laws limit who may file a complaint to a "qualified voter", but the other laws regarding filing complaints specify that complaints must be filed by "a person", thus allowing anyone, including groups or parties, to file a complaint. If "person" is changed to "registered voter" as the bill is currently proposing, it would preclude political parties and certain groups that consider themselves watchdogs over Alaska's

political process from filing complaints. And although some legislators have expressed fear that someone can currently file a complaint while hiding his/her identity behind a group or party, the APOC has never had a "secret" or "sneaky" person file a complaint because complaints are required to be sworn statements and thus anonymous complaints aren't allowed. The APOC, therefore, requests that the statutes regarding who may file a complaint be allowed to remain as is, using the broader term "person" as opposed to the proposed term "registered voter".

REPRESENTATIVE SAMUELS opined that a party or "so-called watchdog group" shouldn't be allowed to file a complaint because that enables an individual to hide behind the party or group; only individuals should be allowed to file complaints.

MS. MILES pointed out that although under current law a group or party may file a complaint, it is still an individual within that organization who signs the sworn statement.

REPRESENTATIVE SAMUELS remarked that if that's the case, then he doesn't see the advantage of allowing groups or parties to file a complaint. Furthermore, he opined, if a person thinks that wrongdoing has occurred, he/she should be willing to file a complaint as an individual.

[2:39:43 PM](#)

MS. MILES said that from the APOC's point of view, allowing groups or parties to file complaints depoliticizes the complaint process. She then relayed that the APOC is also concerned about the proposed new language to AS 15.13.380(b) on page 2, lines 24-26 - "**The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.**"; although the APOC knows that this language is meant to say that the statute of limitations doesn't apply to those who knowingly impede discovery, the inclusion of this language could raise legal issues. Another of the APOC's concerns pertains to Section 6, which proposes a new subsection to AS 24.45.131 and says in part, "(d) If a member of the commission or a member of its staff files a complaint, that member of the commission or member of its staff may not participate in any proceeding of the commission relating to the complaint." She offered that the APOC has found this provision to be unworkable. First of all, a commission member would never file a complaint, though he/she may ask staff to review facts to determine whether staff should

initiate a complaint. The language in Section 6 would preclude staff from filing complaints.

MS. MILES, in response to a question, indicated that different commission members have in the past recused themselves from participating in a particular complaint [because of a conflict of interest].

REPRESENTATIVE COGHILL noted that Section 9 contains similar language, and asked whether it would be better to remove Sections 6 and 9 and thereby stay with the existing procedure.

MS. MILES clarified that the APOC would prefer that Sections 6, 9, and 10 be deleted [because of that language].

REPRESENTATIVE COGHILL, noting that commission members currently have authority to levy fines, said he doesn't want commission members to be the drivers of the complaints, the discoverers of all pertinent information, and the leviers of the fines. He therefore expressed favor with the concept of deleting those sections. He surmised that the aforementioned language wound up being added simply because it exists in the statutes pertaining to the Select Committee on Legislative Ethics. He expressed a preference for having a committee substitute (CS) brought before the committee that would address the concerns regarding Sections 6, 9, and 10.

CHAIR RAMRAS indicated that he doesn't want to make changes to statute just for appearances sake, and that he would prefer to have a CS that only addresses specific problems with current statute.

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REPRESENTATIVE LYNN pointed out the intent of HB 281 is to give the APOC and the Select Committee on Legislative Ethics the tools they need to do the job they've been created to do.

MS. MILES posited that the language on page 2, lines [21-23], [which is part of existing AS 15.13.380(b),] addresses [Representative Coghill's] concern regarding commission members' activities during the complaint process, and relayed that the APOC is comfortable with that language, which reads, "If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint". She indicated a

preference for not having a similar restriction placed on APOC staff.

2:49:28 PM

SHIRLEY R. DEAN, Commissioner, Alaska Public Offices Commission (APOC), Department of Administration (DOA), concurred, and relayed that as far as she is aware, no commissioner of the APOC has ever filed a complaint. She characterized the proposed expansions of the period of time during which a complaint may be filed and the period of time that records must be kept as benefiting the people of Alaska and [APOC commissioners].

REPRESENTATIVE DOOGAN asked whether APOC staff, if made aware of a possible violation, can both file a complaint and then investigate it.

MS. MILES said that under current law staff can do so as long as the [complaint] is filed within one year.

MS. DEAN added that if a possible violation doesn't fall under the purview of the APOC, the APOC would refer it on to the appropriate entity.

REPRESENTATIVE DOOGAN surmised that at issue is the length of the statute of limitations regarding when complaints can be filed.

MS. MILES concurred.

2:52:51 PM

JANET DeYOUNG, Chief Assistant Attorney General - Statewide Section Supervisor, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), in response to a question, said that the current penalties for a violation of the programs administered by the APOC range from \$10 per day to \$50 per day depending on the specific program. Although the APOC has discretion to take various factors into account when assessing a penalty, the penalty structure is pretty much the same for each program regardless of the violation.

REPRESENTATIVE COGHILL asked what would be a reason for filing a civil action under [the laws being addressed by the bill].

MS. DeYOUNG, to illustrate an example, relayed that she'd participated in an action that was brought by a citizen under

the legislative financial disclosure law, and that particular case was a challenge to an election on the basis that the conflict of interest statement was inaccurate.

REPRESENTATIVE COGHILL surmised, then, that there are two courses of action available: one pertains to the ability of the APOC to levy a penalty, and the other pertains to the ability of a person to bring a civil suit. Extending the time period that records should be kept speaks to both types of action.

REPRESENTATIVE SAMUELS asked how soon the APOC must act after a complaint is filed.

MS. DeYOUNG said that under current law - a combination of regulation and statute - there is a specific time period during which the matter must come before the APOC. Also, either the complaint filer or the respondent can request expedited attention, which [if granted] requires that action occur within 60 days.

REPRESENTATIVE SAMUELS surmised, then, that if the APOC doesn't act on a complaint within 60 days, it can't then go forward with the complaint.

MS. DeYOUNG clarified that the 60-day deadline only pertains to the expedited process. Furthermore, extensions can be granted for those complaints that are not going through an expedited process. She offered as example situations involving special sessions and legislative immunity from compulsory process. That legislative immunity always goes into effect any time the legislature is in session, and, to some extent, limits the APOC's ability to conduct investigations and hold hearings. In response to a question, she concurred that in such instances, once the special session is over, the APOC can continue with the complaint process.

[2:59:12 PM](#)

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics, Alaska State Legislature, offered that the complaint process of the Select Committee on Legislative Ethics is a little bit different than that of the APOC. She noted that HB 281 is proposing to change the statute of limitations regarding when a complaint may be filed with the Select Committee on Legislative Ethics to five years. Ms. Anderson said she would echo Ms. Miles's comments regarding any "person" filing a complaint versus only a "registered voter".

Furthermore, although the Legislative Ethics Act has always stipulated that any "person" can file a complaint, with the term "person" including individuals and organizations, Ms. Anderson said that she isn't aware of any complaint ever having been filed with the Select Committee on Legislative Ethics that was filed by anyone other than an individual person.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 281.

[3:02:12 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 1, labeled 25-LS1115\K.3, Finley/Bullard, 2/8/08, which read:

Page 2, line 18:

Delete "registered voter [PERSON]"

Insert "person"

Page 3, lines 14 - 15:

Delete "registered [QUALIFIED] voter"

Insert "person [QUALIFIED VOTER]"

Page 3, line 24:

Delete "registered voter"

Insert "person"

Page 4, line 17:

Delete "registered voter"

Insert "person"

Page 4, line 27:

Delete "registered voter"

Insert "person"

Page 5, lines 6 - 7:

Delete "registered [QUALIFIED] Alaska voter"

Insert "person [QUALIFIED ALASKA VOTER]"

REPRESENTATIVE SAMUELS objected, and said he agrees with the goal of depoliticizing the complaint process, but disagrees that [allowing organizations and parties to file complaints] will accomplish that goal.

MS. MILES said that the APOC feels that allowing organizations and political parties to file complaints would make the complaint process less "Jane versus Joe." She suggested that

perhaps using the term "individual" would alleviate members' concerns with the terms "person" and "registered voter", but mentioned that she's not yet had a chance to discuss this suggestion with APOC commissioners.

REPRESENTATIVE SAMUELS said he doesn't have a problem with allowing someone who is not a registered voter to file a complaint. However, he remarked, it seems that replacing "person" with "individual" would have the same effect as replacing "person" with "registered voter" with regard to the APOC's view that using the term "person" depoliticizes the complaint process.

MS. MILES, on the issue of who has filed complaints with the APOC, offered her understanding that Representative Lynn's staff has prepared some statistics which might prove helpful to the committee.

[3:05:44 PM](#)

MIKE SICA, Staff to Representative Bob Lynn, Alaska State Legislature, on behalf of Representative Lynn, one of the joint prime sponsors of HB 281, relayed that research of the APOC's files indicates that complaints have been filed by the Democratic Party, the Republican Party, the Republican Moderate Party, the Alaska Independent Party, various districts' political organizations, the Alaska Public Interest Research Group (AkPIRG), the Anchorage Education Association, the "Cook Inlet Driftnet Association," the Alaska Support Industry Alliance, and the "Denali Citizens Against Taxes." He also noted that in researching other states' statutes regarding who can file a similar complaint, he couldn't find even one state that restricted filing to a "registered voter" or a "qualified voter".

REPRESENTATIVE SAMUELS questioned whether other states define "person" to include a corporate entity.

MR. SICA indicated that he'd not researched that point.

REPRESENTATIVE HOLMES offered her understanding that in legal usage, the word "person" generally includes groups and corporations.

CHAIR RAMRAS, in response to a comment, surmised that the question seems to be whether using "person" in Alaska law

provides an individual trying to manipulate the complaint process too much anonymity.

REPRESENTATIVE LYNN pointed out that even in instances where a complaint is filed by an organization, it is still an individual that signs the complaint. He said he assumes that before a group files a complaint, it has met and agreed to file the complaint.

CHAIR RAMRAS argued that that might not be true in all cases, particularly given the structure of some groups.

REPRESENTATIVE DOOGAN said he finds it difficult to conceive of a situation in which an accusation against someone engaged in political activity can be depoliticized. He opined, therefore, that the legislature shouldn't be doing anything to limit the class of people who can file a complaint, particularly since there has not been any compelling reason offered for doing so.

[3:09:55 PM](#)

REPRESENTATIVE HOLMES said that given that even if it's a group that's filing a complaint, it's an individual who has to sign the complaint form, and so the respondent would have the name of that person. She surmised that it would be helpful for the respondent to know that a complaint is coming from a group as opposed to just a single person.

REPRESENTATIVE SAMUELS expressed concern that an individual wanting to file a complaint could simply create an organization and then use the name of that organization to label the respondent of the complaint and make him/her look bad in the media.

REPRESENTATIVE DOOGAN said that one reason a group might decide to file a complaint is so that the cost of proceeding with the complaint will be borne by the group rather than just an individual.

CHAIR RAMRAS asked how much time and expense is involved in filing a complaint.

MS. MILES said it depends on the complexity of the complaint. For example, some complainants have come forth with significant documentation, which takes time and money to compile, and some complainants come forth after obtaining legal advice, which usually comes at some cost.

REPRESENTATIVE COGHILL, referring to Amendment 1, noted that the change proposed to page 5, lines 6-7, of the bill pertains to proposed AS 39.50.100 - Enforcement by private citizens - and to bringing a civil action. He indicated that he would prefer, therefore, that that provision remain as is in the bill and not be expanded to include groups or parties.

[3:15:52 PM](#)

REPRESENTATIVE COGHILL made a motion to amend Amendment 1 to remove the change proposed to page 5, lines 6-7, of the bill.

REPRESENTATIVE HOLMES objected.

MS. MILES explained that the civil actions referenced in proposed AS 39.50.100 would be addressed by the courts, not the APOC.

MS. DeYOUNG added that typically the Alaska Court System (ACS) does not restrict plaintiffs in a civil action, and that there might be constitutional issues raised by providing limitations on access to the courts.

REPRESENTATIVE COGHILL asked whether the existing language of AS 39.50.100 has been problematic.

MS. DeYOUNG said that the one civil action she is aware of was brought by two individuals and presumably they were qualified Alaska voters, and so she has not seen the existing language challenged.

REPRESENTATIVE DOOGAN asked whether, if he were to file a complaint and the APOC chose not to act on it, he could then bring a civil action in order to force the APOC to act.

MS. DeYOUNG said the action referenced in AS 39.50.100 is a direct action brought by a citizen, and would result in a proceeding in superior court. However, if a complaint is filed with the APOC but the complainant is not satisfied with the APOC's action, there is an appeal process available - that would be an appeal into court.

REPRESENTATIVE HOLMES noted that lawsuits are often brought by companies and groups, and thus she would prefer to leave the language of Amendment 1 as is.

[3:19:11 PM](#)

A roll call vote was taken. Representatives Samuels, Dahlstrom, Coghill, and Ramras voted in favor of the amendment to Amendment 1. Representatives Lynn, Holmes, and Doogan voted against it. Therefore, the amendment to Amendment 1 was adopted by a vote of 4-3.

REPRESENTATIVE SAMUELS maintained his objection to Amendment 1, as amended.

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A roll call vote was taken. Representatives Lynn, Holmes, Doogan, Coghill, and Ramras voted in favor of Amendment 1, as amended. Representatives Dahlstrom and Samuels voted against it. Therefore, Amendment 1, as amended, was adopted by a vote of 5-2.

CHAIR RAMRAS asked the committee to next consider the APOC's recommendation regarding the deletion of [certain sections].

REPRESENTATIVE COGHILL surmised that the issue is whether a staff member could file a complaint and then continue to participate in that complaint process, whereas if a commissioner files a complaint, he/she must then recuse himself/herself from the proceeding.

MS. MILES concurred. She indicated that the problematic language is, "or a member of its staff" in Section 6 of the bill.

REPRESENTATIVE COGHILL surmised that a conceptual amendment could address that point, noting that some of the sections containing that problematic language also contain the proposed increase to the period of time in which complaints may be filed.

REPRESENTATIVE COGHILL made a motion to adopt Conceptual Amendment 2, to remove from Sections 6, 7, 9, and 10 references to the APOC's staff members.

REPRESENTATIVE DOOGAN objected. He said he is not certain that Conceptual Amendment 2 would alleviate the APOC's concerns.

MS. MILES, in response to comments, clarified that the commissioners act as adjudicators and therefore should not be

filing a complaint and then continuing to be involved with the proceeding pertaining to that complaint.

[3:24:11 PM](#)

REPRESENTATIVE DOOGAN offered his belief that Conceptual Amendment 2 as previously stated wouldn't allow for that, and suggested a revision.

REPRESENTATIVE COGHILL offered his understanding that staff members should be able to file a complaint and then participate in any forthcoming proceeding.

REPRESENTATIVE COGHILL then withdrew Conceptual Amendment 2.

MS. MILES said that the APOC is amenable to restricting a commissioner from filing a complaint and then participating in the complaint process, but doesn't wish to similarly limit staff members, because there have been times, during the normal course of business, when staff have been responsible for filing a complaint if no other person has done so, and staff should be allowed to then participate in the complaint process.

CHAIR RAMRAS said he is not sure he supports the changes proposed to HB 281, and cautioned against being too reactive to current events.

[3:29:26 PM](#)

REPRESENTATIVE LYNN opined that it bodes well for the legislature to be reactive to recent circumstances.

REPRESENTATIVE COGHILL expressed favor with expanding the time period during which complaints may be filed. He also relayed that it was a staff member that discovered his violation of [a filing deadline].

REPRESENTATIVE SAMUELS observed that he should have objected to the withdrawal of Conceptual Amendment 2, because it appeared to address the APOC's point that staff should be able to file a complaint [and participate in the complaint process] because that's their job. He said he is thinking that the elimination of Sections 6, 9, and 10 would make the bill better.

REPRESENTATIVE COGHILL pointed out, though, that simply deleting the aforementioned sections would also effect changes to the proposed longer time period for filing a complaint.

REPRESENTATIVE DOOGAN said he supports extending that time period. In response to a comment, he said he would like to have more time to consider the bill.

REPRESENTATIVE COGHILL indicated that he would be willing to work with the sponsor to address the APOC's concerns.

[3:34:06 PM](#)

REPRESENTATIVE LYNN made a motion to adopt Conceptual Amendment 3, to delete Section 1 from HB 281 and renumber the remaining sections accordingly. There being no objection, Conceptual Amendment 3 was adopted.

CHAIR RAMRAS mentioned that he still has a concern regarding Section 2 - the section addressing the preservation of records.

MS. MILES said that the APOC supports the preservation of records for a period of six years under the campaign disclosure statute because it will assist the APOC in conducting investigations; six years will cover the proposed five-year period during which a complaint may be filed plus one year.

[CSHB 281(STA), as amended, was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:37 p.m.