

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 10, 2008

1:18 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Bob Lynn

COMMITTEE CALENDAR

HOUSE BILL NO. 410

"An Act requiring state oil and gas leases to be construed in favor of the state and against the person challenging the state's interpretation of the lease."

- HEARD AND HELD

HOUSE BILL NO. 255

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

- MOVED CSHB 255(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 410

SHORT TITLE: OIL & GAS LEASE TERMS

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

02/19/08	(H)	READ THE FIRST TIME - REFERRALS
02/19/08	(H)	JUD, RES
03/10/08	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 255

SHORT TITLE: DUAL SENTENCING

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

05/04/07	(H)	READ THE FIRST TIME - REFERRALS
05/04/07	(H)	JUD, FIN
05/11/07	(H)	JUD AT 1:00 PM CAPITOL 120
05/11/07	(H)	Heard & Held
05/11/07	(H)	MINUTE(JUD)
01/21/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/21/08	(H)	Heard & Held
01/21/08	(H)	MINUTE(JUD)
02/25/08	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/08	(H)	Scheduled But Not Heard
03/03/08	(H)	JUD AT 1:00 PM CAPITOL 120
03/03/08	(H)	Scheduled But Not Heard
03/10/08	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

KURTIS GIBSON, Deputy Director
 Division of Oil & Gas
 Department of Natural Resources (DNR)
 Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 410, answered questions.

JEFF LANDRY, Senior Assistant Attorney General
 Oil, Gas & Mining Section
 Civil Division (Anchorage)
 Department of Law
 Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 410, answered questions.

JEANNE OSTNES, Staff
 to Representative Craig Johnson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Reviewed the changes encompassed in CSHB 255, Version L, on behalf of the sponsor, Representative Johnson.

REPRESENTATIVE CRAIG JOHNSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 255.

ANNE CARPENETI, Assistant Attorney General
 Legal Services Section

Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 255, answered questions.

ANTHONY NEWMAN, Program Officer
Division of Juvenile Justice
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 255, answered questions.

QUINLAN G. STEINER, Director
Public Defender Agency
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 255, provided comments.

GERALD LUCKHAUPT, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Spoke as the drafter of HB 255.

DWAYNE PEEPLES, Deputy Commissioner
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 255, answered questions.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:18:22 PM](#). Representatives Holmes, Gruenberg, Dahlstrom, and Ramras were present at the call to order. Representatives Coghill and Samuels arrived as the meeting was in progress. Representative Lynn was excused.

HB 410 - OIL & GAS LEASE TERMS

[1:20:03 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 410, "An Act requiring state oil and gas leases

to be construed in favor of the state and against the person challenging the state's interpretation of the lease."

[1:21:32 PM](#)

The committee took an at-ease from 1:21 p.m. to 1:24 p.m.

[1:24:16 PM](#)

REPRESENTATIVE GRUENBERG, speaking as the sponsor, relayed that HB 410 will require that for state oil and gas leases any ambiguity in the statutes be interpreted in favor of the state. This concept is based on a clause in the form lease used by the Alabama Department of Conservation and Natural Resources. This legislation is based upon the November 2007 case, ExxonMobil Corporation v. Alabama Department of Conservation and Natural Resources, in which an attorney revised the standard lease form from one that was more favorable to the lessee to one that is more favorable to the state. In doing so, a uniquely state-friendly lease was devised in an effort to maximize royalty interest for the state. The clause at issue in the aforementioned case was paragraph 27, which specifies "[i]n case of ambiguity, this lease always shall be construed in favor of the LESSOR and against the LESSEE." A number of the justices in the aforementioned case believed that certain clauses weren't ambiguous, and therefore didn't have to reach the construction according to the clause. Furthermore, others felt that paragraph 27 rendered the issue clear. In fact, that clause alone caused a number of justices on the Alabama Supreme Court to rule in favor of the state, which was worth millions of dollars to the State of Alabama. The current lease form contains a provision that says, "This lease is to be interpreted in accordance with the rules applicable to the interpretation of contracts made in the State of Alaska." He noted that a number of cases in Alaska specify that when there is a contract of adhesion, a party that drafts a contract on a take-it or leave-it basis, it's construed more strictly against the drafter. This [legislation] would change the interpretation of oil and gas leases, such that it would require that the ambiguous language be construed strictly in favor of the state and against the person/entity challenging the state's interpretation.

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KURTIS GIBSON, Deputy Director, Division of Oil & Gas, Department of Natural Resources (DNR), in response to Representative Gruenberg, specified, speaking on behalf of the

administration, that the Division of Oil & Gas doesn't oppose HB 410. He characterized the legislation as primarily a legal issue regarding how ambiguity in the lease itself should be reviewed by the courts. In further response to Representative Gruenberg, Mr. Gibson deferred to the Department of Law (DOL) regarding whether this could potentially make a difference in litigation for the State of Alaska. However, he offered his opinion that to the extent HB 410 tilts the playing field in favor of the state, it would favor the state. He noted that the aforementioned is his unqualified and nonlegal opinion.

REPRESENTATIVE GRUENBERG asked if there are cases in which lessees feel that certain clauses are ambiguous and argue with the state, such that this would come into play.

MR. GIBSON replied yes, there are certainly times in which there are ambiguities with regard to the lease form. To the extent that those ambiguities would be ruled in favor of the state, it would appear to benefit the state.

CHAIR RAMRAS inquired as to the meaning of ambiguous in the context of HB 410.

MR. GIBSON reiterated that this is primarily a legal issue that more or less deals with the legal interpretation of contracts, and thus is probably best answered by DOL. As the state's representative in many of these contractual issues, the Division of Oil & Gas would certainly favor anything that would improve the state's legal standing in the event of an ambiguity. Mr. Gibson related his understanding that HB 410 doesn't directly affect the lease forms as currently written. He characterized the legislation as a prospective change. In further response to Chair Ramras, Mr. Gibson clarified that from the standpoint of the Division of Oil & Gas, the administration supports HB 410. He mentioned his understanding that DOL supports HB 410, although he said he isn't qualified to speak on behalf of DOL.

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REPRESENTATIVE HOLMES offered her understanding that the earlier mentioned case in Alabama will likely be interpreted similarly in Alaska. She then referred to page 10 of the Supreme Court of Alabama's document, which says "When a contract is subject to two reasonable but differing interpretations, it is ambiguous." On page 19 of the same document it says "A term in a contract is ambiguous only if, when given the context, the term can reasonably be open to different interpretations by people of

ordinary intelligence." She opined that the aforementioned is in line with her understanding that a situation in which two reasonable interpretations of a section of a contract would be when it's considered ambiguous.

CHAIR RAMRAS surmised that it sounds like a difference of opinion. Therefore, he questioned when a difference of opinion is considered to be ambiguous under a legal definition.

REPRESENTATIVE GRUENBERG informed the committee that the Alaska Supreme Court has interpreted the term "ambiguous" twice. One of those cases, Williams v. Crawford 982 Pacific 2d 250 Alaska 1999, specifies the following: "A contract is ambiguous only if taken as a whole it is reasonably subject to different interpretations." Representative Gruenberg surmised that a contract or a clause could be considered ambiguous or not. However, since it would be reasonable for there to be different interpretations, the court would first have to find that each interpretation was reasonable. If there are two or more different reasonable interpretations, then the clause could be held to be ambiguous. One of the 9th Circuit Court of Appeals cases, Roberts v. Continental Insurance Company, says a policy provision is ambiguous if susceptible to two reasonable interpretations by a court.

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REPRESENTATIVE GRUENBERG referred to Amendment 1, and explained that it is intended to address a typographical error in the bill; Amendment 1 read [original punctuation provided]:

Line 10 - After "Section" - Delete "2"; Insert "1"

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REPRESENTATIVE GRUENBERG relayed that when reading [the Alabama decision] it seemed the provision was very protective of the state and might be worth reviewing, which ultimately resulted in the introduction of HB 410.

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JEFF LANDRY, Senior Assistant Attorney General, Oil, Gas & Mining Section, Civil Division (Anchorage), Department of Law, explained that in this context ambiguous would be a term or phrase in the lease that has two different but reasonable interpretations. In such a situation, the court would have to

determine which party would prevail. Mr. Landry characterized this as a very subtle area of the law in which DOL believes Alaska's courts generally do a good job. If there are ambiguities in the lease, normally the parties would turn to extrinsic evidence to try to determine and ascertain the expectations and intentions of the parties. For instance, there could be contemporaneous communications between the parties when the contract was entered into. It could also be course of conduct by the parties. The court would weigh that evidence and determine how to interpret that particular term or phrase in the lease.

REPRESENTATIVE HOLMES, drawing from her experience as a contract attorney, commented that the concept of ambiguity is fairly common in contract law. Representative Holmes clarified that just because two parties have differing views as to what something means, it doesn't make it an ambiguous. In order to be ambiguous, the court must find that both are reasonable interpretations. She asked how, in the absence of the provisions proposed in HB 410, the courts are interpreting the lease provisions now.

MR. LANDRY recalled that the last oil and gas case in which the court opined on ambiguous terminology was the Amerada Hess litigation.

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REPRESENTATIVE HOLMES inquired as to what the courts might do now without the proposed section.

MR. LANDRY acknowledged that the common law rule is that the ambiguous terms would normally be construed against the drafter. The aforementioned wasn't an issue in the Amerada Hess case because the lease form was conducted through a regulatory process. Therefore, the reasoning was that the public, and presumably the oil companies, already had input into the lease form. Additionally, Judge Carpeneti as well as others were aware that the lease form was written by the oil companies and folded into a regulatory process. The subsequent lease forms have all been written by the Department of Natural Resources (DNR), and thus the common law would call for those leases to be interpreted against the drafter, the state. However, the Alaska Supreme Court may not follow that rule. He opined that if there was an ambiguous term, the court would look to extrinsic evidence and review the course of conduct of the parties, contemporaneous statements by the drafters, etcetera. He

reiterated that this is a very subtle area of the law and the Alaska courts are very attuned to these issues, particularly with respect to the state's oil and gas leases. Mr. Landry said, "So, we don't really know what would happen." This proposed legislation would upset the common law and would have an impact on how the court would look at extrinsic evidence.

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REPRESENTATIVE GRUENBERG asked if the passage of HB 410 would simplify and perhaps prevent a lot of lengthy and expensive litigation on these points of contract interpretation.

MR. LANDRY answered that he wasn't sure. He noted that [HB 410] would change the common law. To the extent possible, DNR, he opined, should try to sweep ambiguous terms out of its leases. Mr. Landry related his assumption that the standard proposed in HB 410 is intended to only apply to the court system. He then opined that the legislation almost forces the commissioner to interpret ambiguous language in favor of the state, regardless of the evidence. The aforementioned may be problematic, he remarked.

CHAIR RAMRAS concurred.

MR. LANDRY, in response to Representative Gruenberg, said that he read the Alabama case, which doesn't involve statute but rather involves Alabama writing an entirely new state-friendly oil and gas lease. The aforementioned lease has similar language to the proposed statute in HB 410 embedded in the lease form. Mr. Landry related his understanding that Alabama used a prospective application. In further response to Representative Gruenberg, Mr. Landry concurred that the justices that construed the clause in the contract in the Alabama case didn't find it to be problematic, but rather outcome determinative. He remarked that it was the law of Alabama.

REPRESENTATIVE GRUENBERG asked if there would've been a significant difference in the result in the Alabama case had it been statutory language as opposed to a clause in the lease. He questioned the difference; "wouldn't they have used it the same way?"

MR. LANDRY said he isn't particularly familiar with the Alabama courts.

REPRESENTATIVE GRUENBERG asked if there would make any difference to Alaska courts whether the language is embedded in the lease or a governing statute.

MR. LANDRY responded, "Probably so."

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REPRESENTATIVE DAHLSTROM asked what engendered the introduction of HB 410: something in the past or a possibility in the future.

REPRESENTATIVE GRUENBERG specified that he introduced the legislation due to the possibility of [problems] in the future. Representative Gruenberg explained that he came across the Alabama case, which seemed to be an insightful way of protecting the state's interests and a unique solution to the problem. After not being able to correspond with the commissioner [in a timely fashion], Representative Gruenberg said that he thought it could be put into Alaska law.

REPRESENTATIVE GRUENBERG, in response to Chair Ramras, confirmed that HB 410 would favor the state. In regard to concerns that the legislation may dissuade [oil & gas] clients, Representative Gruenberg pointed out that in Alabama that wasn't the case when the clause was in place.

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REPRESENTATIVE DAHLSTROM inquired as to the sponsor's thoughts regarding Mr. Landry's comment that HB 410 is problematic. She then asked if it would be fair to institute this provision in family law court.

REPRESENTATIVE GRUENBERG acknowledged that the term problematic caught his ear, which is why he inquired as to Mr. Landry's thoughts as to whether the Alabama Supreme Court justices who found the clauses ambiguous found it to be problematic. Representative Gruenberg opined that the justices didn't find the clause problematic as the clause was applied. The justices' opinions were short, succinct, and outcome determinative. Representative Gruenberg said he understood Mr. Landry's answer to not dispute his answer. In further response to Representative Dahlstrom, Representative Gruenberg informed the committee that similar clauses are sometimes used in family law contracts, wills, and trusts. These are in terrorem clauses in which in a will "if you dispute my interpretation of what I

wrote, you get nothing under the will." Such clauses have been upheld, and thus there is precedent in the law for such. He then recalled that some of [these clauses] are included in family law contracts. He explained that factual background in family law causes is usually not the same, although it may sometimes be the same in pre-marital contracts. He related his understanding that in family law these clauses apply strictly if the marriage is very short, but less strictly if the marriage continues. Therefore, if one challenges a contract after a short marriage, he/she loses.

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REPRESENTATIVE HOLMES highlighted that this clause wouldn't determine the outcome of all oil and gas lease challenges. This clause, she opined, would only come into effect in a situation in which the outcome of the challenge hinged on a term, phrase, or section being considered ambiguous. Since the parties in oil and gas leases are what's referred to as "sophisticated parties," the chances of having ambiguous terms is limited. "This is not outcome determinative for all lease challenges, it would only be outcome determinative on specific points that appear not to come up very often," she pointed out.

REPRESENTATIVE DAHLSTROM questioned then whether this legislation proposes a law that's not really necessary.

REPRESENTATIVE HOLMES said that she's a bit troubled as there are a lot of questions as to how a term would be determined to be ambiguous. However, she opined that it's helpful to provide clarity to contract law.

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REPRESENTATIVE GRUENBERG informed the committee that the goal of the transactional attorney as opposed to a litigator is to keep the clients out of court and to provide certainty and clarity in the drafting of the agreement. The fact that this has arisen only once shouldn't make the difference in this case because Alaska is a young state and the large contracts are relatively recent in development. Representative Gruenberg pointed out that there aren't many of these cases because in most cases in the Lower 48 oil and gas development doesn't occur between the sovereign and the developer as it's mostly private parties who own subsurface rights. However, when it's the sovereign resources that are at stake it's a form of public land law, and therefore the interests at stake are a bit different than they

would be in other types of oil and gas leases. Although there may not be many of these cases, if the state can be saved from litigation and have certainty in its favor in even one case, then the precaution is well worth it because the stakes are so large in each case.

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CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 410.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1 [text provided previously]. There being no objection, Amendment 1 was adopted.

CHAIR RAMRAS relayed that HB 410, as amended, would be set aside.

HB 255 - DUAL SENTENCING

[2:10:55 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 255, "An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 255, Version 25-LS0914\E, Luckhaupt, 1/18/08, which had been adopted as the work draft on January 21, 2008.]

The committee took an at-ease from 2:12 p.m. to 2:22 p.m.

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REPRESENTATIVE DAHLSTROM moved to adopt CSHB 255, Version 25-LS0914\L, Luckhaupt, 2/22/08, as the working document. There being no objection, Version L was before the committee.

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JEANNE OSTNES, Staff, to Representative Craig Johnson, Alaska State Legislature, relayed that Version L doesn't include the expansion of bill sentencing for youth, as specified in Section 1 of the prior versions. Section 1 of Version L adds arson in the second degree as an offense, when committed by a 16- or 17-

year-old, eligible for dual sentencing. Under both the original version and Version L, the use of dual sentencing is expanded so that a previous adjudication isn't required when a 16- or 17-year-old commits a class B felony against a person or commits misconduct involving weapons in the first or second degree. Section 2 in Version L doesn't create any changes, attempt to clarify the existing process, and doesn't add the new subsection proposed in the original version of HB 255. Ms. Ostnes explained that instead Section 2 of Version L makes changes to an existing subsection of the statute, AS 47.12.120(j), such that when a juvenile who is dual sentenced receives his/her orders, he/she will be required to remain under the supervision of the department until the juvenile's 20th birthday. Other juveniles are only required to remain under juvenile restriction until their 19th birthday. However, that may be extended to the 20th birthday only if they consent to the extension and it's specifically granted by a court. Juvenile's who are dual sentenced will remain under department jurisdiction until their 20th birthday, unless a court discharges them earlier.

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MS. OSTNES pointed out that in HB 255, Section 3 added a new condition, violation of a condition of probation, to the list of factors in AS 47.12.160(d). However, Version L doesn't attempt to add a probation violation to the list of activities that may prompt the imposition of the adult sentence, instead Section 3 in Version L amends AS 47.12.160(a). To be consistent with the changes in Section 2 of Version L that allow the court to retain jurisdiction until the minor reaches 20 years of age, Section 2 now also clarifies that the court may modify or enlarge a judgment, order, or discharge the minor in the exercise of the court's power of protection over the minor or for the minor's best interest. Section 4 of the original version amended the burdens of proof necessary for imposition of the adult sentence in a dual sentencing case, but Version L doesn't change the existing burdens of proof. Instead, it amends AS 47.12.240(c) to state that the department may transfer custody of a minor, who is subject to dual sentencing, at least 16 years of age, and for whom the department has filed a petition with the court to impose the adult sentence, to the Department of Corrections (DOC) and the minor may remain under DOC's custody pending resolution of the petition. Ms. Ostnes acknowledged that [the legislation] changed quite a bit, which she attributed primarily to discussions she had with members or their staff in conjunction with the Division of Juvenile Justice (DJJ).

REPRESENTATIVE GRUENBERG expressed concern with the language on page 2, line 27 and page 3, line 5, which read "modify or enlarge a judgment". He asked if, after a judgment is entered, it can be modified to increase it or would that be a violation of due process or double jeopardy. Secondly, can the court do the aforementioned without triggering the right to a jury trial, in so far as new evidence would be taken. He opined that it's somewhat similar possibly to the use of an aggravating factor. The U.S. Supreme Court has recently said that if an aggravating factor that requires additional evidence is imposed, proof beyond a reasonable doubt has to be shown and it has to go before a jury. The Alaska Supreme Court has said that in a delinquency case there is the right to a jury trial, proof beyond reasonable doubt.

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REPRESENTATIVE GRUENBERG then turned attention to page 3, line 29 and opined that transfer of custody to the department should [require] a hearing. In the 48 hours or so that it would take to get that hearing set up, administrative segregation could be [imposed].

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REPRESENTATIVE CRAIG JOHNSON, Alaska State Legislature, offered his understanding that once a dual sentence is imposed, "you've gone through the process. I don't know that we're talking about additional evidence, but we're actually serving the sentence on the same crime." Therefore, since the process has occurred and the sentence was imposed simultaneously, it's not necessary for a second hearing, he opined. He likened it to a request for parole that is denied. Representative Johnson said that he didn't believe it to be a double jeopardy situation because it's imposed at the same time.

REPRESENTATIVE GRUENBERG said he would suppose that it would depend upon the circumstances of the case as to whether new evidence is taken. He suggested that the term "enlarge" may be ambiguous, and therefore it may require [definition]. He explained that his concern is in regard to if "enlarge" means to increase in size a sentence that was already imposed and if that's based on new evidence, if there is a jury trial involved.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), pointed out that this language is part of existing law. She explained that juvenile adjudications aren't criminal matters, but rather are civil matters. Therefore, juveniles who have been adjudicated are those who committed an offense that would've been a crime were the juvenile an adult. This requires a hearing to enlarge or change a disposition of a child, it's not imposed unilaterally. As long as it is related to the juvenile adjudication/disposition, there wouldn't be a constitutional concern, she opined. She noted that it wouldn't be enlarged absent a hearing.

REPRESENTATIVE GRUENBERG recalled that there are a series of cases that provide juveniles many constitutional protections in delinquency cases. He related his understanding that the right to a jury trial and double jeopardy are constitutional protections in delinquency cases.

MS. CARPENETI noted her agreement, and added that the sponsor was correct in comparing the process to that of a probation revocation hearing when there is concern regarding the behavior of a child under their supervision.

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REPRESENTATIVE GRUENBERG asked if a judgment can be enlarged in a probation hearing for an adult.

MS. CARPENETI said that she isn't familiar with that term in the criminal justice field for adults, but [the court] can certainly impose time in jail that has been suspended.

REPRESENTATIVE GRUENBERG said that's not what he's talking about. He clarified that he's referring to the technical term "enlarge." He opined that the term of incarceration couldn't be increased to more years for an adult probationer.

MS. CARPENETI confirmed, "You certainly couldn't add time that wasn't imposed in the beginning."

REPRESENTATIVE GRUENBERG stressed that the aforementioned is about what he's concerned. Therefore, if it can't do so for an adult, can it constitutionally be done for a child, he questioned.

MS. CARPENETI suggested that it would be helpful to have examples of what is done when the adjudication is enlarged. She said she didn't believe time is added.

REPRESENTATIVE GRUENBERG expressed the need for the term to be carefully defined in order to avoid constitutional problems, particularly in relation to the Blakely case.

MS. CARPENETI related her belief that Blakely isn't involved in this area of the law, but rather would be involved in the disposing of the juvenile. Blakely isn't used afterwards when the juvenile is under the supervision of the court and the juvenile hasn't complied with conditions. She, again, suggested that concrete examples may be helpful, and reiterated that this law has been in place for a long time.

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ANTHONY NEWMAN, Program Officer, Division of Juvenile Justice, Department of Health and Social Services (DHSS), said that in the juvenile justice system juveniles are routinely placed on probation while participating in a rehabilitative program of some kind. The distinction is that these aren't sentences but rather are rehabilitative programs. The judge will bring the juvenile and his/her family along with the probation officers to the court for the hearing and can extend the probation service up to a year or two. The aforementioned, he noted, happens frequently.

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REPRESENTATIVE GRUENBERG asked Mr. Newman to define the term "enlarge" as used in HB 255.

MR. NEWMAN said that he hasn't heard the term "enlarge" applied to the juvenile case, although the action of extending a juvenile disposition happens routinely. In further response, Mr. Newman confirmed that extending a juvenile disposition [happens routinely] for a probation violation. The initial disposition order occurs after the department receives commitment or supervision orders for up to two years or up to the age of 19.

REPRESENTATIVE GRUENBERG surmised, per the language on page 2, line 27, that could result in a sentence of more than two years. He then posed a scenario in which a juvenile is committed to the department for two years on his/her 14th birthday. At age 15,

that same juvenile violates a term of his/her probation. In such a situation, could there be a modification order that would extend the time in which the juvenile is committed beyond a total of two years from the initial date.

MR. NEWMAN replied yes. In further response to Representative Gruenberg, Mr. Newman said he wasn't aware of that being challenged.

MS. CARPENETI, in response to Representative Gruenberg, said that she would have to research whether that's double jeopardy. She offered her belief that it has surely been litigated.

REPRESENTATIVE GRUENBERG opined that the term "enlarge" seems to allow what he's concerned about. He reiterated his concern regarding the constitutionality of [allowing a juvenile disposition to be enlarged.]

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REPRESENTATIVE GRUENBERG expressed concern with page 3, line 29, and whether there could be a transfer of custody to the department for a probation violation without a hearing. He related his understanding that with dual sentencing, normally if the adult incarceration portion of that is to be imposed, there would have to be a second hearing.

MR. NEWMAN replied yes.

REPRESENTATIVE GRUENBERG opined that he doesn't want paragraph (4) on page 3, line 29, to be interpreted as allowing the department to "end run" that requirement of a hearing. He expressed the need to have language that prevents the aforementioned. To that end, he suggested on page 3, line 29, inserting the language ", after the hearing," following "**and**".

MS. CARPENETI directed attention the language "**pending resolution of the petition.**" located on page 3, lines 30-31, and pointed out that there would be a hearing on the resolution of the petition.

REPRESENTATIVE GRUENBERG acknowledged that this [addresses] a temporary transfer to an adult facility. He emphasized the need for there to be some kind of truncated hearing to support the transfer on a temporary basis.

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MS. CARPENETI suggested changing the age referenced in paragraph (4) on page 3 to 18.

REPRESENTATIVE GRUENBERG commented that such language would work.

CHAIR RAMRAS inquired as to how a minor could be 18 years of age.

MR. NEWMAN clarified that the minor can be 18 years of age because juvenile jurisdiction extends through age 19. As applied in the chapter [of Section 4] a minor means anyone under juvenile jurisdiction.

REPRESENTATIVE SAMUELS posed a situation in which a 16-year-old is going to the adult system, but is held in the [local] youth center. He suggested that the youth center wouldn't want a juvenile going to adult jail at the youth center.

MR. NEWMAN noted his agreement, adding that's why the language referring to the 16-year-old was utilized. He noted that there are other options, such as transferring the juvenile to another youth facility if it would be too difficult for the staff.

REPRESENTATIVE SAMUELS pointed out that juveniles at the youth centers are being rehabilitated. However, once an individual is to go to an adult facility, the argument in previous years has been that juveniles shouldn't be in the youth facility. He emphasized that he wouldn't want to send a juvenile who knows he/she is going to adult jail to associate with those [the youth center] is trying to rehabilitate.

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MS. CARPENETI related her understanding that Representative Gruenberg's concern is that it's pending the adjudication of the petition. The concern, she opined, is how to deal with a 16- or 17-year-old before it's resolved that the he/she should go to adult jail.

REPRESENTATIVE COGHILL surmised that it's within the discretion of the court.

MS. CARPENETI confirmed that to be the case. She also pointed out that language on page 3, lines 12-13, specify "a minor may

be incarcerated in a correctional facility", which offers discretion also.

REPRESENTATIVE HOLMES informed the committee that things such as the failure to complete a rehabilitation program or to comply with terms of a restitution order can cause a petition to be filed under AS 47.12.160(d). However, those might not necessarily trigger the imposition of an adult sentence. Representative Holmes said, "If you do have somebody ... under dual sentencing who commits a heinous crime and you think that they are going to ... end up in a adult facility, then maybe it makes sense to have them there, pending the resolution. But, if this is more of a failure to complete something and they may continue to stay under juvenile jurisdiction, then it seems counter-intuitive to hold them in an adult facility and then send them back down." Perhaps, there needs to be a hearing to determine where the person should be held, she suggested.

2:54:30 PM

REPRESENTATIVE SAMUELS offered his understanding that the system wouldn't file a petition if a restitution payment has been missed. The petition, he emphasized, will be filed when the desire is to move the juvenile to the adult system.

MR. NEWMAN concurred with that summation. He specified that the idea the [department] would seek to impose the adult sentence because the youth has failed to meet the terms of a rehabilitation program is meant to apply to the juvenile who has exhausted the system. Therefore, it's probably an 18- to 19-year-old at that point.

REPRESENTATIVE GRUENBERG pointed out that there could be a situation in which there's a petition to place the minor in an adult facility and it will take some time before the hearing can occur. That hearing would basically be a trial. In the meantime, there needs to be some sort of hearing in which evidence is taken and the right to cross examination is afforded. He likened the hearing to those for a temporary restraining order, which is usually fairly small. The hearing would provide the judge the opportunity to make a determination, which he opined is better than merely changing the age. While the aforementioned is accomplished, the juvenile could be placed in administrative segregation or something similar. Representative Gruenberg recalled talking with the sponsor about an amendment that could be addressed in the House Finance Committee.

2:57:49 PM

REPRESENTATIVE JOHNSON confirmed that to be his understanding as well and would carry such an amendment to the House Finance Committee. However, he acknowledged the chair's desire to send House Finance Committee as finished legislation as possible.

REPRESENTATIVE GRUENBERG noted his preference to address such an amendment in the House Finance Committee.

2:58:21 PM

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

QUINLAN G. STEINER, Director, Public Defender Agency, Department of Administration (DOA), relayed that HB 255 scales back the expansion previously put forth in the legislation to a more manageable expansion. With regard to the question of the transfer, he opined that it doesn't really hurt to have a hearing for a transfer of custody under the earlier mentioned circumstances. "If you win, later on, a "PTR" hearing, that person could've spent a substantial amount of time in an adult facility and then be immediately transferred back with the skills of an adult facility into the juvenile facility," he related. [A hearing prior to a transfer] wouldn't take a lot of time as it would be akin to a bail hearing.

3:00:25 PM

REPRESENTATIVE COGHILL questioned whether, at sentencing, a transfer would be contemplated since the person would be retained under the jurisdiction of the court.

MR. STEINER related his interpretation that Section 4(c)(4) refers to a transfer under AS 47.12.160(d), which seems to be a probation violation. He said he read the language to mean that theoretically one could be transferred merely on the filing of the petition. In further response to Representative Coghill, Mr. Steiner confirmed that the person would have a juvenile sentence and an adult sentence.

REPRESENTATIVE COGHILL surmised then that the court, upon finding a failure under AS 47.12.160(d), would anticipate the need to have the hearing if it retained jurisdiction.

MR. STEINER responded that it doesn't seem that a hearing would be automatic. It seems that a transfer could occur automatically, and therefore the juvenile could be moved to an adult facility without a hearing. The hearing regarding whether that person has committed a violation would come later or a hearing could be requested asking that the transfer be returned to the juvenile facility. Although he said he was sure such a hearing would be given, nothing in statute requires it.

[3:03:17 PM](#)

VICE CHAIR DAHLSTROM noted her agreement with Representative Samuels earlier comments. She then related her belief that it's better to leave the age at 16 years of age due to the heinous nature of the crimes.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. NEWMAN informed the committee that if the age is changed to 18 years of age and that individual commits a subsequent felony or misdemeanor, he/she will be recognized as an adult and be placed in an adult facility. Therefore, changing the age to 18 doesn't really accomplish anything. The division, he explained, was looking for some sort of trigger for the dangerous juvenile, but before the transfer of custody there was the desire to place a guard on the [department]. Without the filing of the petition, the department could transfer custody at any time. Therefore, there was the desire to have some sort of trigger to enable the transfer of custody, while limiting it in some way. The hearing is to determine the resolution of that petition.

[3:05:24 PM](#)

CHAIR RAMRAS surmised that the question is whether the age should be 16 or 18 and if the age is 16, whether there should be an interim hearing to provide an additional safeguard. He then asked if the committee is fairly comfortable with the remainder of dual sentencing in Version L.

REPRESENTATIVE SAMUELS, referring to the language on page 3, lines 3-7, expressed concern regarding the best interest of the people, the victim, and "the minor's best interest." He said, "I've got a specific question on the people's best interest and the victim's best interest as opposed to a court coming in and saying just the best interest of the minor sometimes makes me uncomfortable."

REPRESENTATIVE GRUENBERG offered his recollection that prior testimony had indicated that the court should also consider the protection of the public.

MR. NEWMAN recalled that comment, and suggested that it would be a quick amendment to add the following: "for the protection of the minor, minor's best interest, and the best interest of the public."

[3:07:17 PM](#)

REPRESENTATIVE SAMUELS, in response to Representative Gruenberg, confirmed that the aforementioned [suggested language embodies] the concept he was seeking.

MS. CARPENETI, in response to Representative Gruenberg, reiterated that ["enlarge"] is in current law and has been used and applied for years. In further response to Representative Gruenberg, Ms. Carpeneti suggested that the drafter may be able to explain the meaning of "enlarge."

[3:08:52 PM](#)

REPRESENTATIVE COGHILL opined that part of the issue with dual sentencing is when criminal law is mixed with Title 47 law, which is primarily civil in nature. The best interest of the child is almost always the standard in Title 47, he pointed out. At this point, the best interest of a minor who is a convicted of a felon is probably within the prison, he said.

REPRESENTATIVE DAHLSTROM related her understanding that if the age is changed from 16 to 18, this legislation isn't necessary. In situations in which the juvenile offender has committed a heinous crime, there is a constitutional obligation to [consider] what's in his/her best interest. However, Representative Dahlstrom opined that the best interest of the public and the victim rises above the best interest of the juvenile.

MS. CARPENETI clarified that raising the age to 18 would negate the need for [paragraph (4) on page 3, lines 28-31].

MR. NEWMAN related his understanding that the issue is when a juvenile age 16 has been dual sentenced and that juvenile commits another offense, where will that juvenile be held until it's resolved whether the adult sentence will be imposed. In

Version L, the department may transfer such a juvenile to an adult facility awaiting resolution of the petition.

MS. CARPENETI pointed out that as specified on page 3, line 12, it's discretionary with the court, which is current law.

[3:11:38 PM](#)

REPRESENTATIVE HOLMES remarked that she would be happy to leave the age at 16, but require a quick hearing to determine that the juvenile is to be held in an adult facility.

REPRESENTATIVE SAMUELS posited that it could take years to have the aforementioned hearing. In the meantime and in the worst case scenario, where is such a juvenile placed, he asked. The choices are to place the juvenile in the adult system and attempt to segregate him/her from the general population or place him/her in the most secure juvenile facility. Representative Samuels charged that an expedited hearing doesn't necessarily result in an expedited resolution.

REPRESENTATIVE GRUENBERG noted that he took exception to that. He informed the committee that he has practiced in this area of law and that an expedited hearing on a temporary placement results in a decision right away.

[3:13:23 PM](#)

REPRESENTATIVE SAMUELS, in disagreement with Representative Coghill's earlier statement, suggested that the best interest of the minor is to eliminate all the restitution and let the minor out of jail.

REPRESENTATIVE GRUENBERG informed the committee that the language "best interest" is a legal term of art that doesn't mean what the child wants. In these cases, a guardian ad litem can look out for the best interest of the minor and an attorney can represent what the child wants, which are specifically different. The aforementioned is discussed in the Veasey v. Veasey case, which is a child custody case.

REPRESENTATIVE SAMUELS noted his disagreement, stating that [Version L] proposes to give all jurisdiction to the court including restitution to the victim. He deferred to DOL regarding how to remedy this.

[3:15:47 PM](#)

REPRESENTATIVE GRUENBERG remarked that this returns to his earlier concern regarding whether the courts can legally and constitutionally enlarge the original punishment. He said that although he objects to having the protection of the public [over] the protection of the minor or what's in the minor's best interest, he doesn't mind having it be something that the court can consider as well.

[3:16:57 PM](#)

MS. CARPENETI pointed out that the language in Section 3 is talking about extension of the jurisdiction of the court, not the powers of the court to order restitution. Ms. Carpeneti clarified that the provision refers to how long [the court] deals with a child under the specified circumstances. This provision provides the court one more year. Ms. Carpeneti said that she wouldn't be concerned that any of the powers of the court are being changed, in terms of what it ordered or what adult sentence it imposed in the first place. The provision simply allows, under these circumstances, that if DJJ doesn't request the adult sentence to be imposed, DJJ is allowed to supervise the child for another year.

[3:18:12 PM](#)

REPRESENTATIVE GRUENBERG surmised then that originally the court has jurisdiction for two years or until the child becomes 19 years of age, whichever occurs first. If the child breaks probation, the court can extend probation until age 20.

MS. CARPENETI explained that generally juvenile jurisdiction over a child ends at age 18, although it can be extended to age 19. This legislation provides that for a person who is dual sentenced, DJJ jurisdiction could last until the person reaches the age of 20 unless there is a procedure in which the juvenile court releases the person earlier.

REPRESENTATIVE GRUENBERG further surmised then that would be imposed at the initial disposition.

MR. NEWMAN and MS. CARPENETI replied yes.

REPRESENTATIVE SAMUELS asked whether placing a period following the word "minor" on page 3, line 6, accomplishes anything.

MS. CARPENETI related her belief that the drafter used the language to mirror other language giving DJJ an additional year of supervision if the minor isn't given a dual sentence.

3:20:53 PM

GERALD LUCKHAUPT, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter, explained that Section 3 was included because as the last group of changes were being made he noticed that the first sentence of AS 47.12.160(a) applies to minors receiving dual sentences. He noted that the first sentence is existing law that relates how the court can stay the execution, modify, set aside, revoke, etcetera. However, the dual sentencing statute doesn't consider that a court can set aside the dual sentence or set aside the juvenile sentence as long as the adult sentence isn't hanging over it. Therefore, Mr. Luckhaupt opined that the application of that section needed to be cleaned up such to only allow the things the dual sentencing statute considers a court can do, which are to enlarge or modify a judgment. He pointed out that any order a court enters in a juvenile context is never longer than two years. Those orders are regularly enlarged for those who aren't 18 years of age. Those orders have to be enlarged if the juvenile is found to still need commitment to an institution or to the department. That's the way the juvenile system works because a limit of two years has been established to re-examine what's occurring with the juvenile and make the department continue working on reformation and rehabilitation of the juvenile. Basically, the exact language as in the prior version was used, minus the things offensive to a dual sentencing approach. He specified that the dual sentencing approach doesn't allow the juvenile sentence to merely be set aside and ended. He noted that the delinquency sections were drafted rather loosely in the 1990s and that "stuck out" as he tried to finalize the approach. He related that the language merely mirrors existing language and eliminates the principles that don't fit into the dual sentencing approach.

3:24:50 PM

REPRESENTATIVE SAMUELS said he finds it difficult to think of a circumstance in which it would be in the minor's best interest to have the dual sentence imposed.

MR. LUCKHAUPT pointed out that the provision doesn't come into play until after the dual sentence has been imposed. The language in Section 3 and the remaining sections in AS 47.12

don't apply to a criminal dual sentence. If the court finds one of the five violations, it has to impose the adult sentence. At that point, nothing about the sentence will be governed by Title 47, but rather will be governed by Title 12, the criminal code. Therefore, this only applies to the limited delinquency judgment.

REPRESENTATIVE SAMUELS related his understanding then that the legislation extends the age from 19 to 20. Therefore, he questioned whether the court could "do away with the adult sentence at anytime."

MR. LUCKHAUPT replied no.

CHAIR RAMRAS requested that someone review the five [violations].

[3:27:15 PM](#)

MS. CARPENETI specified that the five [violations] are the following: commits a subsequent felony offense; commits a subsequent offense against a person that is a misdemeanor and involves injury to the person or the use of a deadly weapon; fails to comply with the terms of a restitution order; fails to comply; fails to engage in or satisfactorily complete a rehabilitation program ordered by the court or required by a facility; juvenile probation officer; or escapes from a juvenile or other correctional facility.

REPRESENTATIVE COGHILL pointed out that the aforementioned five [violations] are in Title 47, which is under the civil protection of children.

MR. NEWMAN highlighted that the aforementioned five [violations] are discretionary in that the department has the discretion to petition for imposition of the adult sentence when one of the five violations occurs; it's not mandatory.

CHAIR RAMRAS surmised then that it's discretionary in the juvenile court system, but once one of the five [violations] has been cited by DJJ, the court "shall" impose an adult sentence.

MS. CARPENETI interjected that it must be proven, it's not just a petition.

[3:29:10 PM](#)

MS. CARPENETI, in response to Chair Ramras, clarified that there has to be a hearing on the petition. The question of the age, 16 or 18, is about where to place the child after the petition has been filed. In order for the adult sentence to be imposed there has to be a hearing and a fact finding. In response to Representative Holmes, Ms. Carpeneti specified that the five [violations] are located in AS 47.12.160(d).

MR. LUCKHAUPT remarked that it would be in the minor's best interest for the court to extend the jurisdiction to the age of 20 in certain cases. The aforementioned would be because the minor hasn't been rehabilitated or reformed.

REPRESENTATIVE COGHILL surmised then that under Section 4, the best interest of the minor would be to keep the minor in DJJ custody until the minor shows that he/she has been rehabilitated/reformed.

MR. LUCKHAUPT likened it to what would occur if the fact that there were any juvenile proceedings at all was ignored. He posed a situation in which an offender had already been found to be guilty at age 16, he/she would be held in an adult institution. Mr. Luckhaupt said he is equating the filing of the petition to the filing of information or an indictment. In that case, a juvenile wouldn't be held in a juvenile institution but rather an adult institution. The situation is one in which the minor has already been indicted and so the question is whether to impose the sentence. He related his understanding from Mr. Newman that the desire is to address situations in which minors aren't acting like minors and are hurting other minors in the facility. [The division] feels it can't protect the other minors and needed to do something quickly, he said.

[3:33:36 PM](#)

REPRESENTATIVE COGHILL opined that the question seems to be in regard to where to hold the minor when transferring from a minor facility to an adult facility. With regard to the question as to whether the guiding factor would be in the best interest of the child, he related his understanding from Mr. Luckhaupt, the drafter, that under any other charge the minor would be held in the appropriate prison. Representative Coghill suggested that the minor would be treated as a minor in the juvenile system until the minor has been shown to have failed one of the five criteria. However, if the minor is guilty of a felony, then that minor is likely to be a bad actor in the juvenile system and be hugely disruptive.

REPRESENTATIVE SAMUELS noted his agreement with Chair Ramras that his concern is that minors who are going to end up in an adult facility will be an especially bad influence on those minors in the juvenile facility who can be rescued, saved, and rehabilitated. Representative Samuels then noted his agreement with Mr. Luckhaupt in that as soon as the charging document refers to a felony, there won't be a discussion but rather the minor will be charged and it's left to the prosecutor.

3:36:07 PM

REPRESENTATIVE GRUENBERG reminded the members that if a minor commits one of these crimes, the minor could be charged with a new crime and then bound over to be tried as an adult. In virtually all of these cases the state has a choice, "but they're choosing to treat it as a probation violation. Representative Gruenberg then noted that the committee should have an amendment that he may want to offer.

3:37:15 PM

The committee took an at-ease from 3:37 p.m. to 3:39 p.m.

3:39:43 PM

REPRESENTATIVE GRUENBERG made a motion that the committee adopt Conceptual Amendment 1, as follows:

Page 3, line 28:

Delete "and"

Page 3, line 29, following "sentence"

Insert "and a court, following a hearing, has approved the interim transfer of the minor,"

CHAIR RAMRAS offered his understanding that Representative Samuels objected.

MR. LUCKHAUPT, in response to Representative Holmes, explained that Conceptual Amendment 1 has three parts before the minor can be transferred. The three parts are as follows: the minor must be at least 16 years of age, a petition has been filed, and following a hearing a court approves the interim transfer of the minor. Once the aforementioned criteria is met, the department may transfer the minor to an adult institution. He explained that the aforementioned is to allow the transfer of the minor prior to the hearing on the petition. Once that occurs and the

court finds the existence of the five [criteria], the minor serves the adult sentence at that point and is subject to the criminal sentencing and goes to a criminal institution. This would apply to the hearing that Representative Gruenberg wanted to go along with the filing of the petition.

REPRESENTATIVE COGHILL related his understanding that the language specifies the transfer of the minor from the Department of Health and Social Services (DHSS) and the Department of Corrections would occur pending the resolution of the petition. Therefore, a petition can be filed and the minor can be transferred pending the resolution of the petition.

REPRESENTATIVE GRUENBERG noted that's the case under the current language of the legislation.

MR. LUCKHAUPT said that for a 16-year-old minor a petition is filed and a hearing regarding the desire to transfer the minor is held, then the minor can be transferred pending the resolution of the petition.

[3:43:21 PM](#)

REPRESENTATIVE GRUENBERG said that he's offering Conceptual Amendment 1 because it can be a considerable period of time before the hearing on the petition is held. During that period of time, the minor would be in an adult population, which may or may not be appropriate. If the petition is denied, the minor is returned to the population in the juvenile detention center. At that point, the minor may have been the victim of some assaults at the [adult facility]. Therefore, Representative Gruenberg opined that it's important to have a hearing prior to taking that first step in order to avoid endangering the minor or those at the juvenile facility to which the minor is returned. He then asked if federal law requires a hearing prior to placing a minor in an adult facility.

MR. LUCKHAUPT related that there are issues with federal law regarding pre-trial incarceration of minors, including those who are runaways and minors facing delinquency proceedings. The situation this bill addresses is a minor who has been convicted of an adult criminal sentence, which is part of the dual sentencing approach. Mr. Luckhaupt said that he didn't know of any rules that address "the conviction after a conviction of a child that restricts a minor being in an adult institution."

MR. NEWMAN informed the committee that Representative Gruenberg's question is being asked of the U.S. Office of Juvenile Justice and Delinquency Prevention. Because the minor [being addressed in HB 255] has received a dual sentence the minor has been adjudicated in juvenile court "where those rules apply" as well as sentenced in adult court, it's not clear that "those rules would apply to a dual sentenced youth who has received that adult sentence."

REPRESENTATIVE GRUENBERG surmised then that it's not known whether [this proposed legislation] will violate federal law.

MR. NEWMAN remarked, "We don't believe that it does, but we're seeking confirmation." In further response to Representative Gruenberg, Mr. Newman said that he hasn't obtained any ruling.

REPRESENTATIVE GRUENBERG expressed concern as he said he didn't want the state to potentially violate federal law. He remarked that it's legally much safer to do what he's proposing with Conceptual Amendment 1.

[3:46:12 PM](#)

CHAIR RAMRAS said that although he shares Representative Gruenberg's concern, he is satisfied with the current language of the legislation.

REPRESENTATIVE SAMUELS pointed out that 16-year-old minors are already placed in the adult prison when charged. These are juveniles who have been convicted of an underlying crime and have violated one of the five offenses listed. The state has already made its policy choice to protect the public and protect the victims of these crimes. Representative Samuels said that he doesn't buy the argument that there will be a quick hearing. He related his preference for the existing language of the bill.

CHAIR RAMRAS related his understanding that a minor who commits a violent criminal offense was already being waived into the adult sentence. Therefore, the dual sentencing was designed for a minor who had committed a class A misdemeanor or felony and was going to have a dual sentence. If one of the five factors is violated, then that minor would be remanded into the adult system. This is a juvenile, he clarified, who committed a crime that wasn't so serious that he/she was initially waived into the adult system, but rather the minor was held in the juvenile system [until such time as] the minor stepped out of bounds in one of the five manners specified. Now, the question is whether

the court should weigh in with an additional hearing or whether the system can access.

[3:49:07 PM](#)

REPRESENTATIVE GRUENBERG instructed the members to review Section 4 of the original legislation, Version C. Section 4 specifies that the petition must be filed and the court must find those factors by a preponderance of the evidence. The court has to have a hearing and make the factual finding that the factors have been violated. Representative Gruenberg said:

Here, on a temporary basis, just on the filing of the petition alone, the kid goes into the adult slammer. There is no factual finding that that has, in fact, occurred. That is absolutely a key difference and that's all I'm saying. There's got to be a preliminary finding of one of those ... factors, that's all I'm saying. Otherwise, it's like filing a complaint. Anybody can file a complaint ... petition, I just want a court to make a preliminary finding of that before you put the kid in the slammer ... on a permanent basis

MS. CARPENETI highlighted that the lead-in on page 3, line 12, of Version L is discretionary.

REPRESENTATIVE GRUENBERG emphasized that the language doesn't specify what the court has to do. Therefore, if the court has the hearing, it will have to make the preliminary finding. He opined that there are significant problems in allowing a transfer on a temporary basis without any hearing when a hearing is required to do so on a permanent basis. "It's unfair not to require any kind of a hearing by the court, and just on the basis of a filing of a petition, the kid goes into the adult jail," he said.

[3:51:38 PM](#)

REPRESENTATIVE SAMUELS reiterated that it's already done with the auto waivers.

The committee took an at-ease from 3:51 p.m. to 3:54 p.m.

[3:54:04 PM](#)

DWAYNE PEEPLES, Deputy Commissioner, Department of Corrections, explained that DOC has three types of operations that could address some of the issues. At Spring Creek facility in Seward there is a youthful offender unit for those juveniles and those under age 21 who have already been waived and convicted. Within DOC facilities there are also protective custody units in which inmates are provided special protection. Furthermore, the minor could be placed in a segregated unit, which is a single cell, as a form of protective custody.

REPRESENTATIVE GRUENBERG said that although the aforementioned is a good idea, a brief hearing by the court could allow it to make the appropriate referral. He related his preference for leaving it to the court as to how this is set up. He pointed out that there is a specific requirement that the court make a very specific factual finding before the minor can be referred. The aforementioned isn't addressed "by this." Furthermore, how this is set up is more appropriately addressed by a judge, he opined, in order that no habeas corpus is filed. He emphasized the need to avoid passing legislation that will be struck down.

REPRESENTATIVE SAMUELS surmised that DOC already does this and that a 16-year-old minor won't be placed in the general population of an [adult] facility.

MR. PEEPLES replied yes.

REPRESENTATIVE GRUENBERG asked if it's done in every case.

MR. PEEPLES said that he couldn't testify to every case, but offered that it's normal procedure to try to keep [minors] segregated. For those [minors] who are dual sentenced and remanded, DOC would probably first look to transferring them to the Spring Creek facility.

REPRESENTATIVE GRUENBERG pointed out that there would be a period of time between when the minor is remanded and transferred. Furthermore, some of those individuals may be murderers and the minor may not be in the same category as the other youthful offenders. He emphasized the need to take care.

[3:57:55 PM](#)

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Conceptual Amendment 1. Representatives Dahlstrom, Coghill, Samuels, and Ramras voted

against it. Therefore, Conceptual Amendment 1 failed by a vote of 2-4.

[3:58:19 PM](#)

REPRESENTATIVE COGHILL moved to report CSHB 255, Version 25-LS0914\L, Luckhaupt, 2/22/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 255(JUD) was 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 3:58 p.m.