

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 27, 2008

1:12 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Andrea Doll

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 101(2d L&C)

"An Act relating to private professional conservators, private and public guardians, and court hearings on the issue of incapacity; and establishing uniform adult guardianship and conservator jurisdiction and procedures."

- HEARD AND HELD

SENATE BILL NO. 211

"An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 101

SHORT TITLE: GUARDIANSHIP/CONSERVATORS/INCAPACITY

SPONSOR(S): LABOR & COMMERCE

02/28/07           (S)           READ THE FIRST TIME - REFERRALS

02/28/07 (S) L&C, STA, FIN  
03/08/07 (S) L&C AT 1:30 PM BELTZ 211  
03/08/07 (S) Heard & Held  
03/08/07 (S) MINUTE (L&C)  
03/13/07 (S) L&C AT 1:30 PM BELTZ 211  
03/13/07 (S) Moved CSSB 101(L&C) Out of Committee  
03/13/07 (S) MINUTE(L&C)  
03/14/07 (S) L&C RPT CS 3DP 1NR SAME TITLE  
03/14/07 (S) DP: ELLIS, BUNDE, DAVIS  
03/14/07 (S) NR: STEVENS  
03/27/07 (S) STA AT 9:00 AM BELTZ 211  
03/27/07 (S) Heard & Held  
03/27/07 (S) MINUTE (STA)  
03/29/07 (S) STA AT 9:00 AM BELTZ 211  
03/29/07 (S) Moved CSSB 101(STA) Out of Committee  
03/29/07 (S) MINUTE(STA)  
03/30/07 (S) STA RPT CS 3DP 2NR SAME TITLE  
03/30/07 (S) DP: MCGUIRE, GREEN, BUNDE  
03/30/07 (S) NR: FRENCH, STEVENS  
01/15/08 (S) RETURNED TO L&C COMMITTEE  
01/24/08 (S) L&C AT 3:00 PM BELTZ 211  
01/24/08 (S) -- Rescheduled to 01/25/08 --  
01/25/08 (S) L&C AT 3:00 PM BELTZ 211  
01/25/08 (S) Moved CSSB 101(L&C) Out of Committee  
01/25/08 (S) MINUTE(L&C)  
01/28/08 (S) L&C RPT CS(2D) 4DP NEW TITLE  
01/28/08 (S) DP: ELLIS, BUNDE, DAVIS, HOFFMAN  
02/06/08 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/06/08 (S) Heard & Held  
02/06/08 (S) MINUTE(FIN)  
02/19/08 (S) FIN RPT CS(2D L&C) 4DP 3NR  
02/19/08 (S) DP: ELTON, THOMAS, DYSON, HUGGINS  
02/19/08 (S) NR: HOFFMAN, STEDMAN, OLSON  
02/19/08 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/19/08 (S) Moved CSSB 101(2d L&C)) Out of  
Committee  
02/19/08 (S) MINUTE(FIN)  
02/25/08 (S) TRANSMITTED TO (H)  
02/25/08 (S) VERSION: CSSB 101(2D L&C)  
02/27/08 (H) READ THE FIRST TIME - REFERRALS  
02/27/08 (H) L&C, JUD  
03/12/08 (H) L&C AT 3:00 PM CAPITOL 17  
03/12/08 (H) -- MEETING CANCELED --  
03/14/08 (H) L&C AT 3:00 PM CAPITOL 17  
03/14/08 (H) Moved Out of Committee  
03/14/08 (H) MINUTE(L&C)  
03/17/08 (H) L&C RPT 5DP 1NR

03/17/08 (H) DP: GARDNER, BUCH, RAMRAS, GATTO, OLSON  
03/17/08 (H) NR: NEUMAN  
03/27/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 211

SHORT TITLE: AGGRAVATING FACTOR: HOMELESSNESS

SPONSOR(S): SENATOR(S) DAVIS

01/16/08 (S) PREFILE RELEASED 1/4/08  
01/16/08 (S) READ THE FIRST TIME - REFERRALS  
01/16/08 (S) JUD  
02/01/08 (S) JUD AT 1:30 PM BELTZ 211  
02/01/08 (S) -- MEETING CANCELED --  
02/11/08 (S) JUD AT 1:30 PM BELTZ 211  
02/11/08 (S) Heard & Held  
02/11/08 (S) MINUTE(JUD)  
02/15/08 (S) JUD AT 1:30 PM BELTZ 211  
02/15/08 (S) Moved SB 211 Out of Committee  
02/15/08 (S) MINUTE(JUD)  
02/19/08 (S) JUD RPT 1DP 2NR  
02/19/08 (S) DP: FRENCH  
02/19/08 (S) NR: WIELECHOWSKI, MCGUIRE  
03/12/08 (S) TRANSMITTED TO (H)  
03/12/08 (S) VERSION: SB 211  
03/13/08 (H) READ THE FIRST TIME - REFERRALS  
03/13/08 (H) JUD  
03/27/08 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

DANA OWEN, Staff  
to Senator Johnny Ellis  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 101 on behalf of Senator Ellis, chair of the Senate Labor and Commerce Committee, sponsor.

MARIE DARLIN, Coordinator  
AARP Capital City Task Force  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 101.

JOSHUA FINK, Director  
Anchorage Office  
Office of Public Advocacy (OPA)  
Department of Administration (DOA)

Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of SB 101.

DEBORAH BEHR

Chief Assistant Attorney General  
Legislation & Regulations Section  
Civil Division (Juneau)  
Department of Law (DOL);  
Commissioner

National Conference of Commissioners on Uniform State Laws  
(NCCUSL)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions on SB 101.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on SB 101.

ERNEST SCHLERETH

Attorney at Law  
Law Office of Ernest M. Schelereth, LLC  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on SB 101.

SENATOR BETTYE DAVIS

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 211.

TOM OBERMEYER, Staff  
to Senator Bettye Davis  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 211 on behalf of the sponsor, Senator Davis.

GEORGE BRIGGS, Executive Director  
Juneau Cooperative Christian Ministry  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of SB 211.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:12:03 PM](#). Representatives Dahlstrom, Lynn, Holmes, Ramras were present at the call to order. Representatives Coghill, Samuels, and Gruenberg arrived as the meeting was in progress. Representative Doll was also in attendance.

SB 101 - GUARDIANSHIP/CONSERVATORS/INCAPACITY

[1:12:14 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 101(2d L&C), "An Act relating to private professional conservators, private and public guardians, and court hearings on the issue of incapacity; and establishing uniform adult guardianship and conservator jurisdiction and procedures."

REPRESENTATIVE DAHLSTROM moved to adopt the proposed House committee substitute (HCS) for SB 101, Version 25-LS0559\T, Bullard, 3/24/08, as the work draft. There being no objection, Version T was before the committee.

[1:13:12 PM](#)

DANA OWEN, Staff to Senator Johnny Ellis, Alaska State Legislature, on behalf of Senator Ellis, chair of the Senate Labor and Commerce Standing Committee, sponsor, stated that Senator Ellis supports the proposed changes to SB 101. Mr. Owen noted that the legislature first established licensing and regulatory oversight of private professional guardians and conservators in 2004. Senate Bill 101 is intended to improve upon current law, and was drafted with the cooperation of the Office of Public Advocacy (OPA); the Division of Corporations, Business, and Professional Licensing; and the Alaska State Association for Guardianship and Advocacy (ASAGA). In addition to being supported by the ASAGA, SB 101 is supported by the AARP and many other advocates of seniors in this state. He offered that there has not been any opposition to the bill thus far.

MR. OWEN explained that House Bill 280, which passed the legislature in 2004, and SB 101, have two goals, which are to ensure that seniors and other vulnerable adults are not taken advantage of by those entrusted to manage their finances and lives, and to encourage the development of this industry in Alaska. As Alaska's population grows and ages, these services

are becoming increasingly necessary. Version T incorporates into statutes the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to establish common procedures among states for jurisdictional transfer and enforcement issues in cases that cross state borders. Version T would clarify that the Division of Corporations, Business, and Professional Licensing may refuse to renew a license as well as take disciplinary action if the licensee has failed to meet the licensure requirements; would specify those criminal convictions that would preclude an individual from obtaining a license; and would require that public guardians possess the same certification and pass the same criminal background check required of private professional guardians.

MR. OWEN noted that additionally, SB 101 would make a number of improvements including eliminating the need for multiple licenses and fees; clarifying that bonding and insurance requirements are set by the court; clarifying that individuals caring for family members, and certain financial institutions are exempt from the licensing requirement; clarifying the requirements for the annual report required of all guardians and conservators; eliminating the need for a costly expert evaluation in cases where the respondent agrees to a protective appointment; requiring the court to make written findings if it deviates from the priority list of potential guardians and conservators; and exempting the records kept and maintained under existing AS 13.26.380(c)(3) from inspection or copying under the Public Records Act unless the records are relevant to an investigation or formal proceeding. He concluded by noting that he has only touched on a few of the provisions in SB 101.

[1:17:29 PM](#)

REPRESENTATIVE DAHLSTROM asked about the licensure requirements, including the cost to obtain a license and the timeframe to process the license, whether the bill will change the method by which a ward of the state petitions the court and requests a specific individual be named as a guardian, and, if so, how. She noted that SB 101 identifies felonies and misdemeanors but provides the department the authority to disqualify the crimes on any grounds it sees fit. She suggested that she would like a more thorough explanation of that process and whether SB 101 would remove any authority the court has to act as a guardian or conservator in a particular case.

1:19:06 PM

MARIE DARLIN, Coordinator, AARP Capital City Task Force, stated that the AARP supports SB 101. She emphasized that the need for guardians has grown and will continue grow with the aging of Alaska's population. The courts have found it more difficult to find family members who are willing to provide conservator or guardianship services, so the need for additional professional services arises. This bill would improve the quality of care for people who need conservators and guardians to assist them, she opined. She noted that SB 101 provides safeguards through the licensure and reporting requirements which will help to ensure that conservators and guardians are prepared through training and certification to better understand their responsibilities and requirements to care for incapacitated people. She pointed out that these services are helpful to family members since the incapacitated person is often not in the same town. She offered the AARP's full support for SB 101.

1:22:49 PM

JOSHUA FINK, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), noted that SB 101 was introduced by the Senate Labor and Commerce Standing Committee to fix some unintended consequences of House Bill 280, which passed the legislature in 2004. Mr. Fink echoed Mr. Owen's testimony on the bill's history, and noted that the primary unintended consequence of passage of the enabling legislation was that private professional guardians would be subject to multiple licensees; furthermore, an insurance requirement that did not make a lot of sense was added. Senate Bill 101 will help ensure the protection of vulnerable adults that have guardians, and encourages the growth of the guardianship and conservatorship industry to provide necessary services. This bill would only require an individual license, either for a full guardianship, which includes conservatorship services, or a conservatorship license - which does not include the guardianship, but only the financial aspects - or a partial guardianship, which allows the guardian to make decisions except for conservator services. He stated that he is not aware of any opposition to the bill.

MR. FINK stated that SB 101 eliminates the need for multiple licenses, such as an organizational license for a business and an individual license for each person in that business; SB 101 would require only an individual guardianship or individual conservatorship license. The bill also clarifies which criminal

convictions would preclude an individual from obtaining a license. He referred to Representative Dahlstrom's earlier question and responded that Sections 3 and 5 include any felony or misdemeanor that involves a crime of dishonesty such as fraud, misrepresentation, misappropriation, theft, or any crime that the department believes would hinder a person in providing guardianship or conservatorship services, including a catchall of "other crimes" such as assaulting an elderly person.

[1:25:49 PM](#)

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

MR. FINK explained that Section 3 applies to guardianships and Section 5 applies to conservatorships and removes the requirement in AS 08.26.020 that the applicant provide proof of bonding and insurance, since applicants have had difficulty obtaining a general letter of proof from insurance companies because the companies require a set of specific circumstances and facts for issuing bonds and insurance. Additionally, by court rule, the court can set the amount of an individual bond, so that's not necessary as a condition of licensure.

MR. FINK referred to Sections 7 and 8, and explained that the Division of Corporations, Business, and Professional Licensing asked for additional direction with respect to the information that must be included in the annual report, so this section outlines that the financial statement should include the total fees collected from the protected person, the total business expenses, and the documents necessary to establish financial solvency of the licensee. It also directs that the annual report be submitted to the OPA, rather than to the Department of Commerce, Community, & Economic Development (DCCED), since the OPA has the expertise in guardianships. He offered that the OPA has been asked to review the reports and flag for investigation any licensee whose financial report indicates the need for review.

[1:28:06 PM](#)

REPRESENTATIVE HOLMES noted that AS 08.26.080(4), which is not being changed by SB 101, requires a letter stating that the licensee has filed all required court reports in the previous calendar year. She asked who would prepare and sign that letter.

MR. FINK offered his understanding that the licensee would have prepared that letter.

REPRESENTATIVE COGHILL noted that AS 08.26.080 requires the licensee to submit the required information in the form of an annual report.

VICE CHAIR DAHLSTROM referred to proposed AS 08.26.080(3), and asked whether the licensee would be required to list all of his/her income plus the fees collected from the protected person. She inquired as to the necessity of the financial disclosure.

MR. FINK offered his understanding that the applicant's information needs only to include the information listed in the proposed section.

[1:30:47 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL); Commissioner, National Conference of Commissioners on Uniform State Laws (NCCUSL), explained that the department would interpret this requirement through the regulatory process. She indicated that she envisions that the licensee would be able to obtain a simple statement from his/her bank, for example, that he/she is in good standing, and that the requirement would not require the disclosure of every check the licensee wrote.

VICE CHAIR DAHLSTROM suggested that the committee might wish to clarify that point via an amendment.

MS. BEHR answered that that requirement is intended to prevent someone who is in bankruptcy or in a bad financial situation from taking advantage of someone with a limited mental capacity.

REPRESENTATIVE SAMUELS noted that the sponsor statement indicates that the bill mandates that public guardians meet or exceed the same standards as private professional guardians, and asked whether the OPA staff already meets those standards.

MR. FINK offered that the OPA currently has 15 or 16 guardians and all but 3 meet the proposed requirements, with the primary requirement being that the guardian obtains national certification. He explained that the 3 guardians who do not currently meet this requirement are new and will be administered the test this summer to ensure full compliance. As a matter of

policy, the OPA runs criminal background checks on guardian applicants, and this bill would place into statute requirements for actions that the OPA already performs.

[1:33:00 PM](#)

VICE CHAIR DAHLSTROM noted that proposed AS 08.26.020(4) in part reads, "the individual has not been convicted of a **felony or of a misdemeanor offense**", and asked whether that means that to be qualified as a guardian, the person could not have ever been convicted of a felony crime.

MR. FINK answered that this provision requires that the person not be convicted of a felony within 10 years before the application, and that felony cannot be one that involves fraud, misrepresentation, material omission, or other crime of dishonesty, or any crime that the department considers would be an impediment to providing services. In response to another question, he answered that the restrictions would be set by regulation promulgated by the DCCED. However, it is the intent of SB 101 that people who committed that type of crime would not be eligible to be conservators or guardians since those crimes encompass exploitation of vulnerable people.

MR. FINK explained that Section 10 would specify that the department may refuse to renew a license or could take disciplinary action against a licensee if the licensee fails to meet the licensure requirements. Section 11 would clarify that financial institutions regulated by the federal government are exempt from the licensure requirement, since they are more stringently regulated.

VICE CHAIR DAHLSTROM asked about specific licensure requirements, including the length of time, cost, and criteria for licensure.

MR. FINK offered that the court can appoint a temporary guardian at the time that it considers appointing a permanent guardian. He offered his understanding that the fee for a temporary license is \$50. He confirmed that this bill is designed to allow for a family member to care for another family member, and is aimed at licensing those guardians and conservators with more than two clients. In response to another question, answered that separate statutes address guardianship of minors.

REPRESENTATIVE HOLMES concurred.

MR. FINK pointed out that Section 18 would eliminate the need for an expert evaluation to determine if the respondent is incapacitated if the respondent agrees to a protective appointment, which is current practice in many venues. He noted that the OPA covers the cost for the evaluation which can be an expensive process for those in remote areas. He explained that Sections 20 and 24 require the court to make written findings if the court appoints someone of lower priority as a guardian or conservator. The order of priority in statute is the respondent's named choice, his/her spouse, an adult child or parent, a relative, family friend, private guardian, and the OPA as an appointment of last resort. He noted that this simply asks the court to explain why it is appointing the guardian.

[1:39:02 PM](#)

REPRESENTATIVE HOLMES referred to proposed AS 13.26.135(b), and noted that its requirement to serve notice to the respondent's spouse and parents is similar to a requirement in proposed AS 13.26.185(a). She asked whether there should a notice requirement for children.

MR. FINK offered that this requirement was added at the request of the [Alaska Court System's (ACS's)] court rules committee. However, he noted that "interested persons" would also be notified and that notice in guardianship proceedings is currently set in statute.

REPRESENTATIVE COGHILL relayed his understanding that some tension has existed between the appointment of public and private conservators. He asked whether SB 101 would change that dynamic.

MR. FINK indicated that that should not change under the bill. He relayed his hope that by requiring the court to explain its actions, the court will be more faithful to the statutory framework. He stated that from his own experience at the OPA, the court appears to be inclined to appoint OPA guardians and not consider private appointments. However, he said he views the OPA as an appointment of last resort. Thus, the court would be required, under this provision, to explain why a family member was not chosen. He opined that at times the OPA becomes involved in instances when family members have exploited vulnerable adults. He relayed that a court order will demonstrate instances in which the court determined it was in the best interests to appoint an OPA guardian.

REPRESENTATIVE COGHILL acknowledged that some family guardians are excellent and some are not. However, the same could be said of private guardians, depending on their personal management style. He cautioned that it is important to ensure that more financial requirements are placed on private conservators than on public ones, but this should not relieve the state of responsibility or accountability.

MR. FINK explained that SB 101 places the same requirements on both public and private guardians with respect to background checks and national certification. He referred to Sections 3 and 5, which establish those requirements, and noted that the exception is that the public guardian doesn't have to apply for the license, though he/she would still need to meet the overall requirements. In response to Vice-Chair Dahlstrom, Mr. Fink reiterated the order that the court uses to establish guardians, which includes a priority for an individual or organization nominated by the incapacitated person, then the person's spouse, an adult child or parent, a relative, a relative or friend who has demonstrated a long-standing interest in the person's welfare, a private professional guardian, and finally a public guardian.

VICE CHAIR DAHLSTROM questioned whether current statutes address the mental state of the person making the decision.

MR. FINK answered that that is addressed in statute.

MS. BEHR interjected that a guardian could be appointed in situations in which the incapacitated person is in a wheelchair and his/her mental capacity is fine, but he/she needs help in making health care decisions. She pointed out that sometimes people erroneously think a person has to be totally incapacitated in order to have a court appointed guardian, and that is not true. However, the appointments are made by clear and convincing evidence and require expert testimony to substantiate any claim. Thus, court appointments of guardians are not done lightly.

VICE CHAIR DAHLSTROM asked whether a person often selects an individual over a spouse.

MS. BEHR responded that it is possible for a person to select someone other than a spouse, such as in a case in which a person does not obtain a divorce for religious reasons, and perhaps has not seen his/her spouse for many years. In those instances it

makes sense that the person would select someone else as his/her first choice for guardian.

[1:46:42 PM](#)

MR. FINK added that when someone files a petition, such as for adult protective services by a hospital or a family member, the respondent is appointed an attorney, and in instances in which a person cannot afford an attorney, one is provided by OPA. Thus, if the person can express his/her wishes, legal counsel will represent those express wishes. In instances in which a person is unconscious, a guardian ad litem may be appointed. A court visitor is also appointed, and the visitor acts as an independent investigator for the court. In that regard, the court visitor visits family members, friends, and medical providers, and makes a recommendation to the court for the guardian. If a person wishes to be a guardian, but the court visitor disagrees, the visitor would make that recommendation known and the reason for that determination. He opined that although the vast majority of cases are not contested, in cases in which the guardian is contested, the person can also request a trial by jury.

MR. FINK referred to Section 27, and offered his understanding that it in part stipulates that public guardians must submit to a background check and the same certification as private guardians. He, too, explained that Section 26 exempts the records kept and maintained under AS 13.26.380(c)(3) from inspection and copying under the Public Records Act unless the records are relevant to an investigation or formal proceeding. He explained that Section 28 allows the OPA the ability to collect its monthly fee, which is currently allowed by regulation, and clarifies any possible ambiguity. He pointed out that the OPA currently charges a \$40/month fee for providing guardian or conservator services, but will defer that fee if a financial hardship exists. He noted that Section 28 also makes it clear that if the appointment ends during a period of deferment, the OPA's fee can still be collected.

MR. FINK pointed out that the sections he described outline the amendments that the Senate Labor & Commerce Committee agreed to introduce in the legislation; the OPA requested these changes through the, Division of Corporations, Business, and Professional Licensing.

[1:49:56 PM](#)

MS. BEHR offered to speak to the provisions that provide a new Chapter 27 in Title 13 and establish the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. She offered that this act was developed over many years between the states in order to streamline the guardianship actions and standardize the proceedings between states. She stated that SB 101 is supported by the DHSS, the National College of Probate Judges, and has the general support of probate attorneys. She explained that this bill would make it easier for family members to address the legal needs of incapacitated adult family members.

MS. BEHR relayed her own experience in which her mother, who lived in Fairbanks but had traveled to California to visit her daughter, suffered a major stroke. In this instance, the California court did not know how to proceed with the case since her mother was not a California resident. Her family decided that their mother needed to stay in California where the illness occurred, since that is where the needed care was being provided and since her sister could provide emotional support. However, the California court did not know if the case needed to be held in Alaska, which would have been expensive, she opined.

MS. BEHR pointed out that if her mother recovered in California and decided to move to Juneau, but still needed a guardian, then the changes in SB 101 would make it very easy to transfer the guardianship back to Alaska instead of requiring the family to initiate a whole new proceeding in Alaska and incur the associated costs. Additionally, if it turned out that the family's Fairbanks house was vacant and the family wanted to sell the home, SB 101 would allow for an easy method by which to register the California guardianship in Alaska and set up proceedings to sell the home. Currently, this process is complicated to achieve and is costly to families. This bill is designed for basic family decision-making, she opined, and offered that the National Conference of Commissioners for Uniform State Laws (NCCUSL) recommends adoption of the provisions in SB 101.

[1:53:43 PM](#)

REPRESENTATIVE GRUENBERG referred to a letter from Ernest Schlereth, a lawyer in the field of guardianship and conservatorship.

MS. BEHR relayed that she'd shared that letter with the NCCUSL, and that the NCCUSL accepted about 80 percent of Mr. Schlereth's

suggestions, stating that those changes did not dramatically change the proposed law's uniformity between the states. The remaining suggested changes would have dramatically changed the uniformity between states, she noted. Ms. Behr further noted that she previously spoke to Mr. Schlereth about this, so he is aware of the suggestions that were incorporated into SB 101.

MR. FINK, in response to an earlier question regarding the cost of licensure, reiterated that the initial application fee for guardianship is \$50, and noted that the biennial license fee is \$450.

[1:55:52 PM](#)

MS. BEHR, in response to Representative Coghill, agreed that in order to have uniformity, states such as California would need to adopt the proposed Act. She noted that she anticipates that passage of the uniform Act will happen in time. She explained that when changes are proposed, that the NCCUSL wants there to be some uniform principles, though each state can adopt unique provisions, such as Alaska's definition of guardianship which includes conservatorship powers, so that if a person is a full guardian in Alaska, he/she could also do conservatorship duties such as perform bank account functions as well as provide health care decisions. In many states those functions are separated. She pointed out that SB 101 is not designed to change how a guardian is appointed; rather, it is designed to address interstate issues and jurisdiction.

REPRESENTATIVE COGHILL asked how many states have adopted the proposed uniform Act.

MS. BEHR said currently about four or five states have passed the uniform Act, and it is pending in many states. She said she anticipates that many states will move quickly to adopt the proposed uniform Act, similar to what happened with the Uniform Child Custody Jurisdiction Act (UCCJA), which it parallels. She further noted that the same types of practitioners perform children's cases and family cases.

REPRESENTATIVE GRUENBERG pointed out that the UCCJA was enacted in the early '70s, revolutionized the practice of child custody, and eliminated to a large extent any civil kidnappings. It required the courts to give full faith and credit, in the constitutional sense, to domesticated decisions, and required the parties to litigate in the same state, so that they could not "forum shop." He opined that very quickly many states

adopted the UCCJA, although a few states held out. The federal government then "federalized" the Act by passing a federal law that established the interstate laws. He recalled that the remaining states then adopted the UCCJA. Currently, a revised Uniform Child Custody Jurisdiction Act has been adopted by most, if not all states. He pointed out that the revised UCCJA is not entirely without ambiguity. Therefore, if this act is modeled on the UCCJA, he opined that adopting this Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will be extremely helpful, and he anticipated that one day the federal government will "federalize" this Act, too.

[2:00:27 PM](#)

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), stated that Version T contains changes requested by the court, primarily technical amendments, that stem from a court committee that works on guardianship issues. He offered that Sections 1 and 2 contain the most substantive changes, and pointed out that the preference is generally for a family member or close family friend to be interested in guardianship, and that the ACS counts on that actually happening. The preferences that the court is required to follow direct the court to look first to family members and close friends. However, it can be a problem in some circumstances in which the duties can be somewhat burdensome, and people miss work to take the ward to appointments, which can put a real strain on some guardians.

MR. WOOLIVER noted that Section 1 and 2 will allow a family member or friend to receive compensation, if approved by the court, for his/her role as guardian, without having to go through the process of becoming a licensed, private, professional guardian. The procedure in this bill is set up for the people who provide these services and is not aimed at family members. In some instances, he surmised, some compensation might enable some family members who provide the same services to continue providing those services.

MR. WOOLIVER offered his understanding that Sections 19 and [22] update the notice provisions of statute. When the court has a petition for a person to become a ward, it is required to notify family members. Currently, the statute requires that that notification be through a process server; SB 101 updates the statute to reflect current practice of notifying family members by e-mail, certified mail, or fax, though in some instances a process server is still necessary.

REPRESENTATIVE HOLMES pointed out that this section only refers to spouse and parents. However, she noted that other parts of the statute reflect that adult children or other interested parties are to be notified.

MR. WOOLIVER concurred.

2:04:30 PM

VICE CHAIR DAHLSTROM asked whether notice is sufficiently addressed in another statute.

MR. WOOLIVER opined that noticing provisions are well understood and are not ambiguous.

REPRESENTATIVE GRUENBERG noted that both Sections 19 and 22 use the term "certified mail", and asked whether that certified mail is "return receipt requested" or if it would be necessary to change that language in the bill.

MR. WOOLIVER expressed his belief that it would always be the case that certified mail is sent return receipt requested.

MR. WOOLIVER explained that Section 23 corrects an error made when the guardianship statutes were last . He explained that a full guardian has the powers of guardian and conservator, and this section would clarify that a full guardian and not just a guardian could also be appointed as a conservator. He pointed out that Section 25 would clarify that with limited exceptions, when a conservator has been appointed, his/her rights terminate upon the death of the ward. Mr. Wooliver noted that while this provision doesn't change existing law, it helps to ensure that the current statute does not contain language that conflicts with other statutes.

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

ERNEST SCHLERETH, Attorney at Law, Law Office of Ernest M. Schelereth, LLC, stated that he prepared a letter dated September 13, 2007, but has not yet had an opportunity to review Version T of the bill. His particular interest, he relayed, is to ensure that the respondent has proper representation and that his/her rights are retained. He noted that in his letter, he'd recommended that the proposed Uniform Adult Guardianship and

Protective Proceedings Jurisdiction Act be amended to include the term, "interested" so that a court may allow a wide variety of people to participate in what is otherwise a closed proceeding; under the probate code, the term "interested" has to do with picking out folks that have some degree of nexus to the court proceeding.

MS. BEHR pointed out that that change has been incorporated into Version T, specifically on page 23. In response to a comment by Representative Gruenberg, Ms. Behr offered to meet with Mr. Schlereth to address any other concerns he may have.

CHAIR RAMRAS indicated that SB 101, Version T, would be held over.

The committee took an at-ease from 2:15 p.m. to 2:25 p.m.

SB 211 - AGGRAVATING FACTOR: HOMELESSNESS

[2:25:57 PM](#)

[Contains brief mention of HB 292, companion bill to SB 211.]

CHAIR RAMRAS announced that the final order of business would be SENATE BILL NO. 211, "An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

CHAIR RAMRAS asked whether SB 211 is identical to HB 292.

SENATOR BETTYE DAVIS, Alaska State Legislature, sponsor, offered her understanding that it is.

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TOM OBERMEYER, Staff to Senator Bettye Davis, Alaska State Legislature, offered that SB 211 would add an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness. This bill allows the court to increase the term of imprisonment, up to the maximum, for even the first offense. Currently, the aggravated sentencing provisions of AS 12.55.155(c)(22) allow imposition of a sentence above the presumptive range set out in AS 12.55.125, if the crime was committed on the bases of the victim's race, sex, color, creed, physical or mental disability, ancestry, or national origin. Senate Bill 211 adds homelessness to that list, and its purpose is to deter and punish defendants motivated to harm homeless

people who are particularly vulnerable and are increasingly targets of crime. He pointed out that violent crimes against homeless people have increased by 65 percent, from 2005 to 2006, according to the 2006 [report] by the National Coalition for the Homeless. This represents a 170 percent increase since the organization's first study in 1999. The national trend is reflected in more than 14,000 individuals who experienced homelessness in Alaska each year, according to the Alaska Interagency Council on Homeless report, Keeping Alaskans Out of the Cold. This violence against the homeless has a direct impact on the victim, the victim's family, the community, and Alaska as a whole.

MR. OBERMEYER relayed his understanding from other research in Alaska that about 25 percent of the homeless are veterans, and that about 5,000 children are homeless each year. The homeless include families and not just derelicts. The definition of homeless that the Alaska Housing Finance Corporation (AHFC) uses in part reads, "Any individual who lacks a fixed, regular, and adequate nighttime residence or has a primary nighttime residence in any facility not designed for permanent living". He surmised that this definition would include those that end up in a nighttime shelter, or who are, in fact, living out on the street. In response to a question, stated that that definition generally means a person without a regular nighttime shelter.

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REPRESENTATIVE GRUENBERG recalled camping out with friends or temporarily staying with friends while awaiting the sale of a home. He asked whether the term homeless could include someone who is camping out in a tent. He suggested that the term needs to be defined for purposes of SB 211.

MR. OBERMEYER said he believes that the definition should include those who are in a temporary circumstance, since those people are also more vulnerable. He surmised that as soon as someone is not in permanent housing, he/she is at risk. He opined that SB 211 is intended to protect those people who are intentionally being sought out by someone in order to perpetrate hate crimes against them. He noted members' packets contain information on specific instances of crimes against the homeless. He reiterated that SB 211 would add an aggravating factor for sentencing in instances in which a perpetrator has a predisposition to pick on someone who is vulnerable [because of his/her homeless status.

REPRESENTATIVE GRUENBERG stated that while he supports SB 211, his is interested in determining whether the committee should define the term, "homelessness".

MR. OBERMEYER opined that such a definition would not be necessary due to the difficulty in capturing all of the people that should be included; some people might fall outside of any such definition.

REPRESENTATIVE GRUENBERG offered his belief that a judge would likely determine that instances in which a victim is staying with a relative or friend for several weeks would not fall under the term, "homelessness." He suggested that the sponsor use a narrower definition so that no question exists for the judge. The rule of lenity, he surmised, allows that statutory terms will be construed as narrowly as possible to protect the accused.

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SENATOR DAVIS elaborated that SB 211 is intended to affect more than just street people. She explained that the aforementioned definition for "homelessness" is used for housing purposes. She pointed out that her son is living in her home temporarily but if a census were taken, he would not be counted; he would be considered homeless. Therefore, the term "homeless" as used in the bill does not just refer to people living on the street or those who don't have a place to go. And if a person is down and out and is facing a foreclosure and not just a pending sale of his/her home, that the person would also be vulnerable at that point and likely could be considered homeless as well.

CHAIR RAMRAS pointed out that everyone is vulnerable to assault crimes, and listed an example. He stated that he is not certain in his own mind that those who are homeless should enjoy any greater rights than other folks who are not homeless.

SENATOR DAVIS noted that legislators are here to make laws to help people who cannot help themselves.

REPRESENTATIVE SAMUELS questioned why a judge should be allowed to sentence a perpetrator depending on the victim's homeless status, since the crime would be the same were it perpetrated against someone who was not homeless. For example, if a woman is raped, the impact of that violent crime is the same on the victim regardless of whether she is homeless. He explained that he is struggling with the concept of creating a different class

of victim. He suggested that the committee consider raising the sentences for all of these crimes rather than to add aggravating factors for the homeless. He opined that to differentiate between the two types of victims illustrates the problem with SB 211.

REPRESENTATIVE LYNN asked how the provisions of the bill would be applied in the instance of one homeless person assaulting another homeless person.

MR. OBERMEYER answered that an aggravating factor would apply by definition. In response to Representative Samuels, he recalled from his own experience in traveling the Chester Creek trail in Anchorage that many Native women sleep in the woods and are constantly assaulted simply because they are homeless. He opined that the homeless person has a higher propensity to become a victim than someone who is not homeless. He opined that while it is possible to define "homeless", he believes that the term is generally understood and so almost doesn't require a definition. He said he thought that it might be helpful to us the definition of homeless from the National Council on Homeless Model Legislation, rather than the AHFC's definition because the latter delves into housing issues as well. He opined that the concept of this bill, to add an aggravating factor for homelessness, is appropriate.

REPRESENTATIVE HOLMES referred to articles in members' packets that contain information about perpetrators and crimes they have committed. She relayed that she found the articles frightening, particularly those about people preying on homeless people simply because they think they will not face any consequences. She offered her belief that the average person who is jogging on a coastal trail has more ability to deal with the after effects of the crime such as the question of whether to pursue prosecution. She pointed out that that certainly doesn't negate the nature of the crime or make it less horrific. She opined that when perpetrators target the homeless because they think of them as being less human, that's a worthwhile distinction to be made with regard to increased sentencing.

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CHAIR RAMRAS offered his understanding that the working poor and a percentage of the productive population move from being homeless to living in a home. He offered to provide the committee with such statistics from the community of Fairbanks. He questioned whether a person's rights are materially changed

if the person has a home except for the months of May, June, and July. He offered his belief that one victim should not have more rights than another victim simply due to his/her living conditions.

SENATOR DAVIS questioned whether Chair Ramras disagreed with that section of the law.

CHAIR RAMRAS stated that he is troubled by proposals to add aggravating factors and enhanced penalties in statute, adding that although he is sympathetic to the concern about hate crimes and views the actions against the homeless as hate crimes, he is still concerned about extending additional rights to specific groups of people. He stated that while he is empathetic with a homeless person's increased vulnerability, he is not moved to add an aggravator factor for sentencing.

MR. OBERMEYER asserted that SB 211 does not change the rights of an individual victim; instead it merely increases the judge's discretion for recognizing an aggravating factor at sentencing if it was determined that the victim had a crime perpetrated against them because he/she was homeless. He surmised that a person who is staying at someone's home is more vulnerable than someone living in his/her own home.

CHAIR RAMRAS suggested that "vulnerable" is a defining term, and offered that victims are looking for satisfaction and sometimes restitution. He opined that those who have been assaulted, regardless of whether they are homeless or have a disability, all feel that they are entitled to seek the same level of justice. He stated that he supports fairness for all victims in seeking justice.

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MR. OBERMEYER stated that SB 211 would not change the seriousness of a crime; again, it would simply give the judge the ability to increase sentencing. He opined that the prosecutor and judge would need to exercise judgment in these cases.

REPRESENTATIVE LYNN surmised that the difficulty will be in determining the motivation of the perpetrator in attacking a particular person unless the perpetrator made statements to the effect that he/she attacked the person because of his/her homeless status.

MR. OBERMEYER explained that each case would need to be determined on a case-by-case basis. However, he opined that the propensity for being attacked is much higher if the person is homeless.

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GEORGE BRIGGS, Executive Director, Juneau Cooperative Christian Ministry, indicating that his organization is currently doing business as the Glory Hole, stated that he recognizes that aggravating factors are very difficult to prove. He surmised that perhaps only one such case might be proved. Regardless, it is important for a judge to have the ability to consider aggravating factors at sentencing so that when the prosecutor can prove that a person was attacked on the basis of his/her homelessness, it would be considered a hate crime and thus subject to the aforementioned aggravating factor. In response to Chair Ramras, he noted that the Glory Hole serves about 40 for breakfast and about 100 for dinner, and is a 40-bed facility.

SENATOR DAVIS asked for suggestions to improve the bill.

CHAIR RAMRAS said he has trouble with the bill fundamentally, and stated that he did not intend to move SB 211 at this time.

SENATOR DAVIS clarified that she is merely requesting that SB 211 be allowed to move to the House floor.

CHAIR RAMRAS said he is not sure how SB 211 could be improved given that it is only proposing a one-word change.

SENATOR DAVIS opined that if this bill passes and helps one homeless person, then it is worth passing.

REPRESENTATIVE LYNN noted that it would be helpful for him if the bill contained a narrower definition of the term "homelessness".

SENATOR DAVIS expressed a willingness to consider that point.

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REPRESENTATIVE COGHILL surmised that "homelessness" will be difficult to define. He then read portions of AS 12.55.155(c)(22), and portions of AS 12.55.155(c), which read:

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person; ...

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance; ...

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior; ...

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

REPRESENTATIVE COGHILL suggested that existing aggravating factors can already be applied, and stated that he favors seeking action against the perpetrator for the crime he/she commits instead of seeking a higher sentence based on the class of the victim. He expressed concern that unless the bill defines "homelessness", it will create a conundrum for the courts. He opined that a substantial set of laws currently exists to address the behavior that SB 211 is attempting to address. He indicated that he would vote "no" on the bill in its current form.

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SENATOR DAVIS asked to be allowed to work to narrow the definition of "homelessness".

CHAIR RAMRAS announced that SB 211 would be held over.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:08 p.m.