

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 2, 2009

1:08 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 13

"An Act relating to property crimes."

- HEARD AND HELD

HOUSE BILL NO. 9

"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

- HEARD AND HELD

HOUSE BILL NO. 101

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 13

SHORT TITLE: PROPERTY CRIMES

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) JUD, FIN
02/18/09 (H) JUD AT 1:00 PM CAPITOL 120
02/18/09 (H) Heard & Held
02/18/09 (H) MINUTE(JUD)
03/02/09 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 9

SHORT TITLE: CAPITAL PUNISHMENT

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) JUD, FIN
02/23/09 (H) JUD AT 1:00 PM CAPITOL 120
02/23/09 (H) Heard & Held
02/23/09 (H) MINUTE(JUD)
02/25/09 (H) JUD AT 1:00 PM CAPITOL 120
02/25/09 (H) Heard & Held
02/25/09 (H) MINUTE(JUD)
03/02/09 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 101

SHORT TITLE: EXEMPTIONS: LIFE INSURANCE; ANNUITIES

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/30/09 (H) READ THE FIRST TIME - REFERRALS
01/30/09 (H) L&C, JUD
02/18/09 (H) L&C AT 3:15 PM BARNES 124
02/18/09 (H) Moved Out of Committee
02/18/09 (H) MINUTE(L&C)
02/20/09 (H) L&C RPT 3DP 3NR
02/20/09 (H) DP: LYNN, CHENAULT, COGHILL
02/20/09 (H) NR: BUCH, HOLMES, OLSON
03/02/09 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

GARDNER COBB, Captain
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 13.

ROB COX, President
Public Safety Employee Association (PSEA)
Palmer, Alaska

POSITION STATEMENT: Expressed concerns with HB 13.

VICKI OTTE, Executive Director
Association of the ANCSA Regional Corporation Presidents-CEOs,
Inc.;

Chairman
MTNT Limited
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

CHARLES CAMPBELL
Juneau, Alaska

POSITION STATEMENT: As a former director of the [then] Division
of Corrections, testified in opposition to HB 9.

GEORGE SILIDES, Reverend
Rector
Holy Trinity Episcopal Church
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in
opposition to the death penalty.

ALFRED MCKINLEY, SR.
Alaska Native Brotherhood (ANB) Grand Camp
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in
opposition to capital punishment.

ALBERT JUDSON
Haines, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in
opposition to the death penalty.

MONTE SHADE
Fairbanks, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in
support of the death penalty.

JIM BETTS, State Advocate
Alaska State Council
Knights of Columbus
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

MIKE SMITH

Tanana Chiefs Conference (TCC)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

DEBORAH BLOOM

Willow, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in opposition to the death penalty.

DON ROBERTS, JR.

Kodiak, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in opposition.

JOHN NOVAK, Assistant District Attorney

3rd Judicial District (Anchorage)

District Attorneys

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

SUSAN S. McLEAN, Acting Deputy Attorney General

Criminal Division

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 9.

AMANDA MORTENSEN, Intern

Representative John Coghill

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 101 on behalf of the sponsor, Representative Coghill.

ACTION NARRATIVE

[1:08:49 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Ramras, Dahlstrom, Coghill, Gatto, Lynn, and Gruenberg were present at

the call to order. Representative Holmes arrived as the meeting was in progress.

HB 13 - PROPERTY CRIMES

1:11:55 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 13, "An Act relating to property crimes."

CHAIR RAMRAS noted that the committee has received letters from the Office of Victims' Rights (OVR), the Alaska Peace Officers Association (APOA), and the Public Safety Employees Association, Inc. (PSEA), and all were critical of the concept of [raising the threshold amounts for felony and misdemeanor] property crimes.

REPRESENTATIVE GRUENBERG recalled that local law enforcement agencies had opposed past iterations of this bill. He too referenced the letter by the OVR dated 2/27/09, and offered his understanding that it is meant to stand in place of any spoken testimony by the OVR.

CHAIR RAMRAS acknowledged that HB 13 raises some interesting policy questions, and that a felony conviction can change the trajectory of a person's life.

1:18:23 PM

GARDNER COBB, Captain, Anchorage Police Department (APD), Municipality of Anchorage (MOA), said that the APD does not support HB 13 on the grounds that it won't serve the community well. Regardless that the bill is meant to adjust for inflation and address the concern that young people might be being treated too harshly by having a felony conviction on their record, he said his 30-some years' of law enforcement experience indicates that prosecutors are pretty reasonable when considering young people who are first time offenders, and take into account several factors such as the circumstances, the nature of the crime, and the person's record, and this often results in a consolidation or reduction of charges or in a suspended imposition of sentence (SIS) or in a dismissal of charges on condition that restitution is paid.

CAPTAIN COBB said he is more concerned about career criminals continuing to wreck havoc on the community, and shared his and the APD's opinion that there is already too much slack in the

justice system for such people, and that the bill will not address that problem but in fact goes in the opposite direction.

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ROB COX, President, Public Safety Employee Association (PSEA), after relaying that he is in agreement with Captain Cobb, and that he made similar points in his written testimony, opined that HB 13 won't do anything to make law enforcement more efficient or provide better protection for communities but will instead just benefit criminals. Mr. Cox noted that in addition to raising the threshold amount distinguishing misdemeanor property crimes from felony property crimes [threefold], HB 13 also proposes to raise the threshold amount distinguishing class B misdemeanor property crimes from class A misdemeanor property crimes fivefold. He shared his fear that passage of HB 13 will transform petty thefts and shoplifting crimes into financially crippling losses for the victims, with little or no consequence.

MR. COX concurred with the comment that there is already too much leniency within the system as is, and pointed out that often class B misdemeanors - the threshold of which the bill is proposing to increase to \$250 - aren't even prosecuted, though not because the courts or prosecutors don't care, but instead because of their overwhelming caseload. Furthermore, plea agreements occur with regard to felony-level charges. On the issue of youthful offenders, he asked the committee to remember that felony charges don't carry a label - only felony convictions do - and in light of plea agreements and [prosecutorial discretion], he said he thinks that the concern about youthful offenders being labeled as felons is greatly reduced. In conclusion, he said the only other rationale he's heard for the bill is to inflation-proof property crimes, adding that he considers that to be bad motivation for changing statute.

MR. COX, in response to a question, remarked that \$500 is still a significant amount of money, and that at some point threshold amounts distinguishing different levels of crime do need to be set, and opined that with today's economy - even with the effects of inflation - the current threshold amounts are justifiable. In response to comments and a question, he offered his understanding that Canada has sentencing laws specifically pertaining to youthful offenders.

REPRESENTATIVE HOLMES said AS 11.46.130 appears to already address repeat offenders, providing that two or more prior

property crime convictions could result in a felony charge even if the original convictions were for misdemeanor property crimes.

MR. COX concurred. In response to a question, he offered his understanding that although job applications generally ask whether the applicant has been convicted of a felony, a minor's felony conviction "goes away" and he/she gets a "fresh start" when he/she turns 18.

[1:28:14 PM](#)

REPRESENTATIVE COGHILL clarified that it is not his intent to inflation-proof property crimes; rather his intent is to differentiate between "real" felons and misdemeanants. He questioned whether the current felony threshold amount of \$500 is simply being used as an additional tool to initially obtain custody of people, and whether misdemeanor perpetrators of property crimes are ever actually pursued. He said he would be amenable, however, to having HB 13 held over in order to conduct further research. The policy question to be addressed, he opined, shouldn't be "How can we bargain justice?" but rather, "What is real justice?"

CHAIR RAMRAS pointed out that homeowners and business owners across the state are often dissatisfied with how little attention is paid by law enforcement officers to property crimes. The current level of response by law enforcement is not adequate, he surmised, and warrants further consideration. He then relayed that HB 13 would be held over.

HB 9 - CAPITAL PUNISHMENT

[1:34:20 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 9, "An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure." [Before the committee was the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, which had been adopted as the work draft on 2/23/09.]

1:35:11 PM

VICKI OTTE, Executive Director, Association of the ANCSA Regional Corporation Presidents-CEOs, Inc.; Chairman, MTNT Limited, noted that since 1970, there have been 130 prisoners on death row in the U.S. who were found to be wrongfully convicted. Once a prisoner is executed, she remarked, it can never be undone. As an Alaska Native, she explained, she must loudly object to HB 9; Alaska Natives will be disproportionately affected by this proposed change in sentencing. Current statistics indicate that in 2007, Alaska's population was 70 percent white, and 15 percent Alaska Native; however, Alaska's prison population was 48 percent white and 36 percent Alaska Native. Native people represent over twice the prison population as they do the free population of Alaska. It is very likely, therefore, that this proposed death penalty will affect Native people twice as much. She said she herself has seen Alaska Natives accept plea agreements just to "get it over with," even when they were not guilty. Additionally, many Alaska Natives, particularly those in rural Alaska, cannot afford legal representation.

MS. OTTE relayed that Clinton T. Duffy, former prison warden of San Quentin State Prison, made the following statement, "The death penalty is the privilege of the poor." Court systems all over the country, no matter how well intentioned, make mistakes, she pointed out, adding, "We cannot afford to make a mistake with someone's life." All studies done on the death penalty and the cost of maintaining death row prison populations illustrate that it is more expensive to execute a prisoner than to imprison him/her for life. Why is the legislature considering implementing something so barbaric at a time when the state cannot afford it? If the legislature wants to spend that kind of money, she said, then she challenges the legislature to spend it instead on programs to keep Alaska's young people away from a life of crime, such as providing more money on workforce development.

MS. OTTE shared that her husband, who has spent 46 years in the field of law enforcement in Alaska and has seen horrific examples of what one human being can do to another, is opposed to the implementation of the death penalty. Indicating that her husband is not alone in that regard, she said that most of the law enforcement officers in Alaska that she's had the opportunity to get to know are adamantly opposed to implementation of the death penalty. If vengeance is the legislature's goal, then doesn't serving life in prison result

in greater suffering for the inmate than death? She encouraged the members to go home tonight, look in the mirror, and ask themselves whether they want to be personally responsible for the death of another human being, whether they as Alaskans want to lower themselves to the level of a killer, and whether they themselves would take on the job of being the one to push the button to end a person's life. She said that her assumption is that their answers will be "No." In conclusion, Ms. Otte asked members to please not pass HB 9 from committee.

MS. OTTE, in response to a question, reiterated that Alaska Natives are overrepresented in the prison population, and that people who cannot afford legal representation would be the ones who would suffer the most.

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CHARLES CAMPBELL, after relaying that he is a former director of the [then] Division of Corrections under the Hammond Administration and, in various roles, has been involved with corrections and criminal justice for quite some time, said he opposes HB 9 and has opposed all death penalty restoration proposals since coming to Alaska 30 years ago. He offered his understanding that former Senator Robin Taylor, who'd introduced a death penalty bill [during the Twentieth Alaska State Legislature], has since indicated that he is now opposed to the death penalty because of all the incidences of wrongful convictions. Regardless that Alaskans pride themselves on being different and not much inclined to be influenced by what people think or do elsewhere, Mr. Campbell opined, it is not a good idea to ignore the experience and tough lessons learned elsewhere with regard to the death penalty, particularly given that quite a few jurisdictions across the country are now looking, for fiscal reasons, at ways to discontinue all death penalty prosecutions, and given that legislation to repeal death penalty statutes is under serious consideration in seven states - with repeal likely to occur in three of those states.

MR. CAMPBELL posited that it has become quite obvious that the death penalty is the most problematic and useless of all criminal justice sanctions - and extremely expensive. He surmised that others have already spoken on the death penalty's inordinate cost, its lack of value as a deterrent, and its lack of fairness in application. He emphasized that the death penalty is destructive to the families of murder victims. He offered his understanding that in 1972, the U.S. Supreme Court struck down the use of the death penalty throughout the country,

and then, after four years, the Gregg v. Georgia decision restored the constitutionality of capital punishment but with very stringent requirements, and so the appeals of capital punishment cases now take many years - never less than six or seven years - and meanwhile the families of murder victims cannot properly get on with their grieving, cannot have closure to the terrible tragedy they've experienced.

MR. CAMPBELL surmised that these delays tend to encourage ongoing bitterness, frustration, and unhappiness for years. It is so much better, he opined, when the matter can be settled in a year or two as is the case in Alaska and other states enlightened enough to not have the death penalty; a 99-year sentence with appeals exhausted within a year or two is more useful in bringing closure. In conclusion, he urged members to listen to the pleas and advice of all those who've testified, and to lay "this ill-considered death penalty idea aside once and for all."

MR. CAMPBELL, in response to questions, said that although the loved ones of a murdered person may not ever have closure, a punishment that is actually administered comes closer to providing closure; that even if it could be shown that the cost of execution was less than the cost of lifetime incarceration, he would not change his mind; and that even if it were certain that an innocent person would not be executed, he would not change his mind. Remarking that he has been involved with the field of corrections for 60 years, he said he has been opposed to the death penalty for much longer than that due to the teachings of his father - a Baptist preacher during the time that Bruno Hauptmann was on death row; his father made it clear to him that the death penalty was wrong. Convinced by the evidence, he added, he also happens to have strong moral beliefs [against] the death penalty.

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GEORGE SILIDES, Reverend, Rector, Holy Trinity Episcopal Church, noting that prior speakers have already addressed [many of the points he was going to raise], said that the Episcopal church, as a denomination, has gone on record since 1958 as being opposed to the death penalty, and that members of the Episcopal church, in large, in Alaska, are very much opposed to the death penalty. He said that as the former vicar of St. Stephen's Episcopal Church in Fort Yukon, Alaska, and as regional missionary along the Yukon [River] - from Eagle to Stevens Village - he's worked among people who didn't have the kind of

law enforcement presence that might have been helpful in many kinds of criminal cases. He said he finds it difficult to believe that the State - already lacking the resources necessary to do a proper job of investigating lesser crimes - has at its disposal the resources necessary to properly investigate the circumstances surrounding a death penalty case sufficient to justify executing someone - something that can never be undone should exculpatory evidence later come to light.

FATHER SILIDES explained that for 12 years, as a priest living in San Francisco, California, it was his unfortunate privilege and honor to make regular visits to San Quentin State Prison as part of a renewal ministry, and to stand vigil outside the gate of the prison at every execution. The emotions of everyone outside the prison gate - regardless of which side of the death penalty issue they were on - were the same every single time an execution occurred. He said that although some would argue that it is helpful for [the legislature and Alaska's citizens] to have the conversation HB 9 is engendering, the vitriol that would arise once a law like HB 9 is passed "is beyond the understanding of any of those who have not witnessed it." [That vitriol] would deeply rend the social fabric of the state and, in particular, whenever an execution takes place, of the community where the death house is located.

FATHER SILIDES predicted that those who aren't present at any execution that takes place will lob [verbal] bombs at each other via e-mail and the Internet and media sound bites. This does nothing, he opined, to enhance the quality of life for the rest of the citizens of the state as they, at each and every execution, go through the process of debating "whether this is the person, this time, who should properly be executed, or whether, perhaps, we might be able convince someone of an extenuating [circumstance] that prevents us [from] having to take responsibility for ending another human life." He urged the committee to not put the state in the position of having to undergo the same kind of agony that plagues the states with the death penalty each and every time an execution takes place.

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FATHER SILIDES, in response to the question of what he would say to the family member of a murder victim, said that from personal experience, there is no final comfort to be provided by himself, though some comfort can be given when "one meets the person in their pain and acknowledges it and says that the crime is heinous and the pain is beyond measure." The moral depravity of

the person who may have committed the crime is not at issue; instead at issue is the moral strength, fabric, and ongoing life of the person who is suffering, the one who's lost, and what kind of life does he/she want to live going forward. He added:

That isn't heard, sometimes, immediately, but it does seem to take seed ..., does seem to come to fruition later, that they do not want to, in any way, become the person who committed the crime. ... It takes a deep relating to a person to be able to say what follows from that. ... There is no generic answer to the question other than, most of the time, the answer lies at ... who they are and who they wish to become, and the journey is going to be through terrible pain, in any case. But I guess my counsel has always been, "Do you want to be responsible, for the rest of your life, should you ever come to a clarity of mind and peace about the death, to have it infected by being responsible for further injury."

FATHER SILIDES, in response to another question, said that the responsibility of every [murder] is always that of the perpetrator - the crime lies with the person who does the killing - regardless of whether he/she is a convicted killer who escapes from prison or is released on a technicality or continues to [murder] in spite of steps being taken to stop him/her; the actual criminal behavior is his/hers. He said his counsel is, "the social fabric is ours to preserve regardless of those that seek to destroy it."

REPRESENTATIVE COGHILL pointed out that the State is tasked with holding people accountable and protecting its citizens, and surmised that the question being raised is whether the current justice system is adequate to that task.

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ALFRED McKINLEY, SR., Alaska Native Brotherhood (ANB) Grand Camp - after mentioning that he is a member of ANB Grand Camp's Executive Committee, and is a delegate to the Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA) and serves on its Judiciary Committee - posited that one of the reasons why the death penalty was abolished during territorial days was because the people of Alaska recognized it as being discriminatory. Discrimination is still a problem, and should HB 9 pass, only the minorities will be affected. Currently Alaska Natives receive longer sentences, and often can't afford

to hire a private defense lawyer. Furthermore, there is no law enforcement presence in many rural villages, and thus there is no one to address even the problem of bootleg alcohol and drug importation.

MR. MCKINLEY indicated that a former police chief, Frank C. White, Sr., relayed to him that back during territorial days, Alaska Natives would get arrested for certain things that white people wouldn't get arrested for, and were being charged with more serious crimes than white people were for the same acts. He also indicated that Alaska Natives oppose capital punishment because of the discrimination present in the justice system. In conclusion, he referred to proposed AS 12.58.010 and its stipulation that it will be the attorney general who would seek the death penalty, and pointed out that the attorney general is appointed and thus it's a political position.

REPRESENTATIVE HOLMES, in response to a question, explained that the provisions in the bill referring to the supreme court are referring to the Alaska Supreme Court.

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ALBERT JUDSON said he is diametrically opposed to the death penalty, and relayed that on April 9, 2007, a report by the American Civil Liberties Union (ACLU) illustrates that of the 3,350 people on death row, over 40 percent are African American, and that a disproportionate number of Native Americans, Latinos, Asians, mentally disabled persons, and poor people comprise the rest. Use of the term "capital punishment" is ironic, he opined, in that those with the capital don't get punished. Capital punishment is not a deterrent, either; states with the death penalty don't have lower crime rates or lower murder rates. The death penalty contributes further to the disparity of race because there is a rush to judgment and everything is assumed just because the defendant is a member of a minority group. Since 1973, 123 people in 25 states [have been exonerated or released from death row], and out of those 123 people, 23 innocent people had spent most of their life in prison, on death row. He offered his understanding that 25 of [the 123] people have been executed, and 25 were found not guilty because of DNA evidence.

MR. JUDSON said that in 1970, 55 people were executed, and that between 1980 and 1985, 20 people were executed; it is not known how many of those [75 people] were actually innocent. There is a disproportionate number of Alaska Natives who are imprisoned,

and once they are in the prison system, regardless of what they were charged with, they simply become part of the woodwork because of a lack of effective counsel. He opined that public defenders are not as effective as private attorneys, and that the points he's raised should be considered by members before they go any further with HB 9. In response to a question, he offered his belief that the disproportionate number of Alaska Natives in Alaska's prison system is due to a combination of things. For example, when he has discussions with Native leaders, the thought is that the thing that has had the biggest negative impact on Native peoples was the introduction of the current financial system because it destroyed their system of bartering and their economic sustainability.

[2:11:55 PM](#)

MONTE SHADE said he is absolutely for the death penalty and, as a white person, favors the execution of as many white candidates as will qualify for that penalty. He said he has never viewed the death penalty as a punishment but only as a deterrent. He then offered his belief that the execution of Russian deserters during the campaign against Berlin decreased the number of deserters thereafter; that the execution of Private Eddie Slovik in World War II resulted in the end of all desertions by U.S. soldiers; and that the execution of Bruno Hauptmann resulted in the end of all kidnappings until after World War II. He then mentioned the names of [executed] convicted killers Martha Beck, Raymond Fernandez, Carla Faye Tucker, Gary Gilmore, John Wayne Gacy [Jr.], and Ted Bundy, and referred to the Boston Strangler.

MR. SHADE offered his understanding that Cuba has a "death rate of .02 per 100,000 residents, Turkey .04 per 100,000, Saudi Arabia .04"; that "countless other death penalty nations" have no problem at all with murder; and that the U.S. has a 16-times greater per capita murder rate than the aforementioned nations. Those [death penalty] nations make an example of the condemned; they don't hide their execution, they display and widely publicize them, and this slows the murder rate in those countries to a crawl, he opined, adding that life sentences mean nothing as a deterrent in those countries. He offered his understanding that the European Union (EU) spends "tens of millions of dollars through U.S. organizations" to fight against or abolish the death penalty in the U.S., but that many EU member governments are attempting to reestablish the death penalty in order to deal with crime, murder, and terrorism.

MR. SHADE went on to say:

Alaska, too, is a an extremely murderous state, and due to the 2-minute attention spans [of] so many residents, I must bring to their memory the horrific slaughter and dismemberment of a multitude of Native women on Chena Hot Springs Road; also the killing spree from Fairbanks to Manly Hot Springs, the murder of a State police officer, and a number of others by an animal named [Silka] ... in Manley Hot Springs; the (indisc.) road killings by ... [a U.S.] Air Force NCO; and then also the seven or eight murders in Bethel; and who can forget the baker from Anchorage who hunted down dozens of women as if they were nothing but insects and then slaughtered them. The one example, though, kept so quite in the North and so typical of an Alaska serial crime, though not in Alaska: 58 innocent women raped, tortured, murdered, and dismembered then fed to his hogs, which he butchered and sold to dozens of Alaskans traveling through British Columbia to Alaska.

[2:16:39 PM](#)

JIM BETTS, State Advocate, Alaska State Council, Knights of Columbus, said that both he and the Knights of Columbus are opposed to the passage of HB 9, and expressed a preference for burying the bill, not another body. He stressed that HB 9 must be defeated. He added:

Remember that we are an evolving creation, and we as humans are mandated to improve and not diminish our human condition. The idea that we might deprive another human [of] life ... as quid pro quo - an eye for an eye - is an old and untenable cliché. The idea that the death penalty is a deterrent - we are not convinced. We must not live in a culture of death. ... We are not here to create another wrong, if we execute another person who may be innocent. We have alternatives; life imprisonment without possibility of parole speaks volumes to the journey we have made from crude logic, barbarism, and brutality.

Let us evolve our actions, let us set the bar of human response above these base animal [instincts], to leave the cruelty and the nihilists, and move to a world where we turn our cheeks to kneejerk-punishment reactions. Now is the time to be heard, unabashed,

certain and resolved, that life in any form is to be cherished. Life is precious, from the womb to the tomb, and, as such, we turn away from the culture of death and create instead a culture of life. Death, and death alone, will be the time for final reckoning, and all humans will reconcile with god - that judgment is his and his alone.

MR. BETTS, in response to a question, he offered his belief that the goal of incarceration is to restrict the access of certain individuals to the general population.

[2:20:20 PM](#)

MIKE SMITH, Tanana Chiefs Conference (TCC), after noting that the TCC is composed of the 42 communities and tribes in the Interior, said that historically, the tribes in the region have a well-documented concern about racial disparities in Alaska's justice system experienced by Alaska Natives. The TCC, in fact, has a standing resolution on this issue. The statistics clearly illustrate that Alaska Natives have a higher rate of convictions, and receive more onerous sentences than any other racial group in Alaska; Alaska Natives comprise only 15-18 percent of Alaska's population, but comprise roughly 36 percent of correctional-facility inmates. During territorial days, the majority of convicted murderers were white, but the majority of people executed were Natives and other minorities.

MR. SMITH surmised that the critical issue is not whether people favor or oppose the death penalty, but rather who will be executed under the death penalty. The well-documented imposition of the death penalty upon innocent people is an obvious concern, but of equal concern is the disproportionate imposition of the death penalty upon racial minorities - the importance of race as a factor in the imposition of capital punishment is also well documented. For example, under federal law, the death penalty may be imposed for certain drug-trafficking crimes, and the [U.S. Government Accountability Office (GAO)] has documented that 75 percent of those convicted under that law were white, but that 89 percent of those executed under that law were racial minorities. Racial inequality is injected into the justice system at various points of discretion exercised by police, prosecutors, judges, and juries. At each of these points of discretion, decisions are dominated by non-Native people. This discretion in Alaska and elsewhere in the nation disfavors racial minorities, and acts against their best interest.

MR. SMITH said that the TCC has long been concerned about the disparate treatment of Native people by the Alaska justice system, and that this concern was recently highlighted by the racially-charged Hartman murder trial in Fairbanks in which some people feel State prosecutors used what he characterized as racial arguments and circumstantial evidence to obtain the wrongful conviction of [three] young Native men in front of a predominately white jury. Questions have been raised about the failure of the police to make serious inquiries about white persons of interest in this murder case; the Hartman murder trial has raised serious concerns regarding the basic fairness of the Alaska justice system towards Alaska Natives, and once again reaffirms the longstanding concern that TCC delegates and the TCC itself have about such inequalities. In conclusion, he opined that before addressing the justness of a death penalty, Alaska first needs to address the inequities within its criminal justice system. Until that time, the question legislators must face is whether it is proper to execute minorities in disproportionate numbers compared to their population.

MR. SMITH, in response to a question, said that the TCC is concerned about the disproportionate penalties imposed upon on minorities.

CHAIR RAMRAS expressed his hope that racial injustices will become a thing of the past.

[2:26:45 PM](#)

DEBORAH BLOOM said she is heartened to learn that only two legislators have signed on as sponsors/cosponsors of HB 9. After relaying that she has had family members who've been murdered and was once raped in her own home, opined that she is therefore familiar with the criminal justice system in Alaska, adding that she is absolutely opposed to the death penalty. Until it can be said that there are "perfect prosecutions," that there is no need for appeals courts, and that there are no innocent people [being incarcerated], there is no need for a death penalty, because an execution can't be undone. She said that she has proof of a criminal prosecution in which the police fabricated evidence to show the jury and thereby committed perjury; this illustrates that Alaska does not have perfect prosecutions. If the death penalty is reinstated, she indicated, then the State should also make prosecutors liable for any wrongfully executed persons - they should themselves be charged with the crime of "intentional murder" since it was

their intention to seek the death penalty. Given all the problems already existing in the criminal justice system, Alaska should not have a death penalty, she concluded.

2:30:57 PM

DON ROBERTS, JR., said, "I speak against this, ... it's simply wrong." He characterized the arguments for making [executions] fast or cheap or racially fair by executing more white people as just side issues which don't make sense to him. It is simply wrong, he reiterated, regardless of any steps taken to fix inherent problems. The sponsor statement speaks of justice, he noted, and said he can't help but wonder whether "that's really a cup that you'd want to drink from at the same time; I see too much in ... our state that is unjust and wrong, and people just in positions that they shouldn't be." To take a life is simply the wrong thing to do, he concluded. In response to a question, he said that although he would want vengeance against someone who murdered or raped a loved one of his, that is not justice, and, again, it is simply wrong to kill a human being.

2:35:27 PM

JOHN NOVAK, Assistant District Attorney, 3rd Judicial District (Anchorage), District Attorneys, Department of Law (DOL), characterizing HB 9 as an important bill, relayed that he would be speaking to the argument that a sentence of life imprisonment without possibility of parole is an adequate sentence with which to protect the public. He offered his belief that that is simply not the case - innocent people are still killed by people who are serving life sentences. He then spoke of a case involving Raymond Cheely and Douglas Gustafson, who, in 1990, participated in a drive-by shooting on the Glenn Highway between Eagle River and Anchorage, killing one person - a passenger in another car. Tried separately, both Mr. Cheely and Mr. Gustafson were convicted and each received a sentence in excess of [59] years. However, while in prison, they - along with Mr. Gustafson's brother and sister - plotted to kill George Kerr, a passenger in their vehicle at the time of the shooting who had testified against them. The four conspirators made and sent a bomb to Mr. Kerr, but because he was out of town at the time, the bomb instead killed his father and maimed his mother.

MR. NOVAK indicated that the four conspirators had also made plans to kill the trial judge and the prosecutor in [their original cases], and were convicted of [killing Mr. Kerr's father] in federal court. Mr. Novak asserted that had the death

penalty been available, it would have acted as a deterrent in that situation because once Mr. Cheely and Mr. Gustafson were executed for the original murder, they wouldn't have been able to kill again.

MR. NOVAK then spoke of a case involving Tim Donnelly and Peter Schwin; Mr. Donnelly, while serving time in federal prison for a drug-related murder, murdered another inmate. Another case, he relayed, involves Carl Abuhl, who, while serving a 60-year sentence for a murder he committed in Ketchikan, killed his cellmate. During Mr. Abuhl's subsequent trial, Mr. Novak asserted, Mr. Abuhl confessed to further murders and said that he wanted to be executed. Mr. Novak indicated that the aforementioned cases demonstrate that [convicted murderers], even while serving prison sentences, continue to kill. He went on to say:

Is there a way to protect the innocent people in our community short of capital punishment? I submit that there isn't. I don't think there's going to be a lot of cases where ... [the State is] going to be seeking the death penalty, but in my experience, are there some cases? You bet.

MR. NOVAK shared his belief that when he's spoken to his colleagues about Mr. Gustafson and Mr. Cheely, they'd all recognized the appropriateness of the death penalty in that case. Acknowledging that HB 9 might be improved upon, he opined that there is no appropriate less-harsh alternative to the death penalty in the case of Mr. Gustafson and Mr. Cheely.

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REPRESENTATIVE HOLMES asked Mr. Novak whether he is advocating for HB 9.

MR. NOVAK said that on behalf of the DOL, he is simply pointing out the need for specific deterrence, but is not able to speak to whether the administration supports HB 9 specifically. He added, "What I can tell you is based on my experience in the Department of law: the Department of Law believes it's appropriate in certain cases."

REPRESENTATIVE HOLMES noted that prior testimony indicated that the Department of Law did not take a position on HB 9.

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SUSAN S. McLEAN, Acting Deputy Attorney General, Criminal Division, Department of Law (DOL), to clarify, stated that the administration supports the death penalty in concept but believes that the details with regard to what specific legislation it would support have yet to be worked out.

REPRESENTATIVE LYNN questioned whether the murders committed by the aforementioned people while they were incarcerated could have still been carried out during the usual lengthy appeal process associated with death penalty cases.

MR. NOVAK said "Certainly," adding that in his experience, cases that don't involve the death penalty commonly go on for years and years and years. In Anchorage, he relayed, the time it takes for a [murder] trial to begin is commonly three years from the time a person is charged. He noted that he, himself, is currently working on murder cases that are more 25 years old. The concept that litigation on "non-capital" murder cases stops is just wrong, he concluded - "they go on and they go on and they go on." Throughout all that time, he has to call the family members of murder victims and keep them updated about their ongoing cases.

REPRESENTATIVE LYNN surmised, then, that the aforementioned additional murders could still have been committed even if the death penalty had been in place.

[HB 9, Version E, was held over.]

HB 101 - EXEMPTIONS: LIFE INSURANCE; ANNUITIES

[2:49:54 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 101, "An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

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REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 101, Version 26-LS0176\E, Bailey, 2/19/09, as the work draft. There being no objection, Version E was before the committee.

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AMANDA MORTENSEN, Intern, Representative John Coghill, Alaska State Legislature, explained that HB 101 would exempt the full value of life insurance and annuity [contracts] from attachment by creditors, thereby protecting Alaskan families and their ability to plan for their future. And although HB 101 will not prevent creditors from garnishing a person's other assets in order to satisfy a debt, it would protect the death benefits of a spouse or dependant of the debtor if he/she is not yet deceased. Retirement plans are currently protected under federal law, and HB 101 would offer similar protection to someone who had used an annuity contract in lieu of a retirement plan. With the uncertainty of the social security system, Alaskan families need to be able to legitimately plan for their future.

MS. MORTENSEN - noting that Title 9 pertains to the Code of Civil Procedure, that Chapter 09.38 pertains to the Alaska Exemptions Act, that AS 09.38.025 pertains to exemption of unmatured life insurance and annuity contracts, and that AS 09.38.030 pertains to exemption of earnings and liquid assets - explained that Section 1 of the bill would remove the existing \$10,000 exemption cap on life insurance and annuity contracts, and that Section 2 would remove the words "or payable" from AS 09.38.030(e)(4) in order to clarify a potential ambiguity regarding garnishing a death benefit on an individual who has not yet passed away.

MS. MORTENSEN relayed that as of May 2007, 10 other states exempt life insurance and annuity contracts - 100 percent - from creditors. In conclusion, she noted that Version E also no longer contains the word "unsecured" in the title; this will allow the bill to apply to debts other than just unsecured debts.

2:53:10 PM

REPRESENTATIVE HOLMES expressed interest in hearing more about the concept of including all debts as opposed to just unsecured debts.

REPRESENTATIVE COGHILL, speaking as the sponsor of HB 101, noted that that issue arose in the bill's last committee of referral, and offered his belief that HB 101 is clear with regard to which products will be exempt from garnishment.

[HB 101, Version E, was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:55 p.m.