

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 23, 2009

1:26 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

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 & HELD

HOUSE JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

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
 03/02/09 (H) Heard & Held
 03/02/09 (H) MINUTE(JUD)
 03/23/09 (H) JUD AT 8:00 AM CAPITOL 120
 03/23/09 (H) MINUTE(JUD)
 03/23/09 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 3

SHORT TITLE: CONST. AM: NO GAMING WITHOUT VOTER APPROVAL
 SPONSOR(S): REPRESENTATIVE(S) CRAWFORD, DAHLSTROM

01/20/09 (H) PREFILE RELEASED 1/9/09
 01/20/09 (H) READ THE FIRST TIME - REFERRALS
 01/20/09 (H) STA, JUD, FIN
 02/12/09 (H) STA AT 8:00 AM CAPITOL 106
 02/12/09 (H) Heard & Held
 02/12/09 (H) MINUTE(STA)
 03/17/09 (H) STA AT 8:00 AM CAPITOL 106
 03/17/09 (H) Moved Out of Committee
 03/17/09 (H) MINUTE(STA)
 03/18/09 (H) STA RPT 6DP 1NR
 03/18/09 (H) DP: GATTO, SEATON, WILSON, PETERSEN,
 JOHNSON, LYNN
 03/18/09 (H) NR: GRUENBERG
 03/23/09 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MARGARET PUGH
 Juneau, Alaska

POSITION STATEMENT: Speaking as a former commissioner for the Department of Corrections (DOC), testified in opposition to HB 9.

MAKO HAGGERTY
 Homer, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

MARY J. TOUTONGHI
 Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

JOHN DAVID THACKER, Pastor
Prince of Peace Mennonite Church
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

VICTOR FISCHER
Anchorage, Alaska

POSITION STATEMENT: Speaking as a delegate of the Alaska Constitutional Convention, a former Representative of the Alaska Territorial Legislature, and a former Senator of the Alaska State Legislature, testified in opposition to HB 9.

PATRICIA KENNISH
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

DIANE BENSON
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

ERIKA KAHILL, Attorney at Law
Anchorage, Alaska

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

BRENDAN O. KELLEY
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

AVERIL LERMAN
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

JEAN CRACIUN
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 9.

HUGH BROWN III
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 9.

PAUL GROSSI, Staff
Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 3 on behalf of one of the joint prime sponsors, Representative Crawford.

ACTION NARRATIVE

[1:26:48 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:26 p.m. Representatives Ramras, Holmes, Coghill, Gatto, Lynn, and Gruenberg were present at the call to order.

HB 9 - CAPITAL PUNISHMENT

[1:27:10 PM](#)

CHAIR RAMRAS announced that the first 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 was adopted as the work draft on 2/23/09.]

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MARGARET PUGH, relaying that she is a former commissioner of the Department of Corrections (DOC) and had served as superintendant at two of the DOC's facilities, said she is opposed to HB 9 and to the death penalty for many reasons, several of which, she noted, have already been articulated during the committee's prior hearings on the bill. The DOC has a proven track record

upon which the citizens of Alaska can rely, of protecting the public from violent offenders and suitably confining such offenders. At present, she opined, the DOC has many needs and requires a lot of funding for many things, but spending money on implementing a death penalty should not be one of them. She said she believes that for the State to kill people will, in its own way, perpetuate a societal culture of violence.

MS. PUGH remarked:

We say that we're opposed to violence, we pass laws to demonstrate our disapproval of violence against one another, and yet the statistics would show that the United States of America has a higher percentage of violent crime than other westernized nations. To me, sociologically, ... I believe that shows that we in fact do have a culture of violence in our nation, and [that if] you put on top of that societal structure, the State - the government - standing there with the ultimate threat of violence - that of death - I think our nation and our State would be much better served to stand up now, again, and say, "No, we're opposed to violence against the people, we disapprove of violence, we disapprove of the State setting such an example."

MS. PUGH - in response to a question regarding the Alaska State Constitution's mandate that criminal administration be based upon the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation - offered her belief that by keeping correctional facilities safe and secure, all of those points can be satisfied at once, and that they are not mutually exclusive. She noted that the Alaska State Constitution does not prioritize any one of those points above the others. Over the years, with the trend of incarcerating mentally ill in the correctional system, both in Alaska and in the rest of the nation, a treatment component has to be present, she opined, because correctional officers are not mental-health professionals.

MS. PUGH, in response to another question, offered her understanding that there are cases in which the deoxyribonucleic acid (DNA) evidence has ruled out certain prisoners on death row as perpetrators of particular crimes, but the rules in those jurisdictions have not allowed them to receive a "re-hearing," and so those people are still in prison. In response to other

questions, she recounted aspects of what prison life is like for prisoners, surmised that it is not a lifestyle that anybody would willingly choose, and acknowledged that perhaps there are some perpetrators who should be incarcerated for the rest of their lives because they are so dangerous.

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MS. PUGH, in response to comments and a question, relayed that the DOC uses a classification system that measures and rates security and custody concerns raised as a result of a particular prisoner being incarcerated; this system considers things such as a person's past crimes, his/her mental health, treatment needs, as well as other issues. Furthermore, although different DOC facilities have different levels of security, all must be capable of securely holding even the most serious of offenders. In response to another question, she pointed out that it is the DOC's job to manage its prison population and keep it safe, and that it does so by providing the appropriate security and custody for particular prisoners. For example, some prisoners spend years in solitary confinement because they pose a threat to the rest of the prison population, and some prisoners are kept secluded because the rest of the prison population poses a threat to them. The DOC, she opined, does a good job of managing its prison population.

MS. PUGH relayed that it is a common belief among correctional industry staff that prisoners facing the death penalty pose an even greater threat to staff and other inmates because they have nothing left to lose. She offered her understanding that the DOC's fiscal note for HB 9 reflects a recognition that it will have to increase security and custody measures in the facility with the "death house" should capital punishment be reinstated in Alaska. Staff at that facility would need to receive specific training, and would need to deal with being tasked with killing another human being; many states with a death penalty provide traumatic-incident debriefing to correctional facility staff and other inmates involved in executions. She said that if she were still commissioner and had to be involved in the execution of someone, she would be traumatized beyond belief.

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MAKO HAGGERTY said he opposes HB 9 and opposes the death penalty with all of his being. He pointed out that even the sponsor statement acknowledges that the death penalty would not act as a deterrent, and characterized that as "absolutely true by all

statistics." Why have a death penalty if it won't serve as a deterrent, he questioned, particularly given how very expensive it is. He said he doesn't believe that the state could afford a death penalty, and that he finds it be morally reprehensible and constituting cruel and unusual punishment - it is, after all, just another form of murder, albeit State-sanctioned murder. In conclusion, he asked the committee not to make him a party to murder, again saying that he opposes HB 9.

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MARY J. TOUTONGHI said she is in opposition to HB 9, and concurs with Mr. Haggerty that it is morally reprehensible and financially irresponsible. She shared her belief that [reinstating a death penalty] would serve no positive function, and again said that she is opposed to [the bill].

[1:55:14 PM](#)

JOHN DAVID THACKER, Pastor, Prince of Peace Mennonite Church, said that on behalf of his congregation and all Mennonites in Alaska, "we oppose HB 9 and the death penalty." He went on to say:

We believe that following Jesus requires us to make peace, to love our enemies, to seek reconciliation, to practice forgiveness. We have chosen life over death, and we ask you to do the same. The Mennonite Church USA has adopted many resolutions calling upon its members to work for the abolition of the death penalty. In this effort, we join with millions of other Christians in this nation who have also called upon our government to abolish the death penalty. This list includes Catholics, Lutherans, Methodists, Quakers, Brethren, Baptists, Episcopalians, Orthodox, Moravians, Presbyterians, Reformed, and many more.

We believe that capital punishment is ineffective, inequitable, irreversible, and inhumane. True restorative justice works to rehabilitate the offender, to address the needs of the victims, and to restore the community. An execution cannot rehabilitate. It cannot make the victims whole, and it cannot heal our communities. We are deeply grateful that the state of Alaska has refused to kill its own citizens. We urge the members of this

committee to preserve Alaska as a state free of the death penalty.

[1:57:21 PM](#)

VICTOR FISCHER relayed that over the past several years, he's spoken before thousands of young people about statehood, the Alaska State Constitution, what he and the other delegates strove to achieve, how Alaska has moved forward, how life has been better, and how Alaska's institutions have worked effectively, essentially giving these young people a positive view of where they are and the opportunities ahead, relaying that change is still ahead, that change can be for the better, that values are extremely important, that they must live by the values that they get from their family and community, and that they need to strive for a better life, a better community, and a better Alaska. He said he's essentially tried to instill in these young people a feeling that the future can be approached in a positive, optimistic manner. He said he is saddened, therefore, to have to speak about the death penalty, but it's something that his conscience requires that he do.

MR. FISCHER remarked:

Our state has managed to survive for 50 years without the death penalty. I was a co-sponsor of the bill, in the 1957 [Alaska State Legislature], to abolish the death penalty; Warren Taylor of Fairbanks was the principal sponsor. I don't have the time or inclination right now to tell you about his marvelous oration where he talked about the individual cases of people who were condemned to death and were hanged in Alaska prior to statehood. He was very effective, and we have not ... had the death penalty, and [it just] ... seems to me that the state has not suffered, the people of Alaska have not been worse off.

MR. FISCHER added:

I'll take a few minutes to give you my background, and how I arrived at my ... hate of ... State-managed capital punishment. ... My father was an American foreign correspondent; he worked all over the world. As a kid, I lived in Germany. I was in Germany during the time that Hitler was coming to power. I was in Berlin when Hitler took over power. In Germany, after that occurred, we had State-sanctioned killing. It

was political killing, it was ethnic killing, it was killing of disabled people, of Jews and gypsies, of Protestant ministers, of ... whoever did not go along with Hitler, whomever he despised - there was State-sanction killing.

In the years thereafter, in my youth, my father's work was in Moscow, Russia. I remember as a kid first seeing ... this marvelous land of the future where equality was painted all over, freedom of individual and community and so on, and then I saw the reality, then, when the Stalin terror began. ... I don't want to go into this at too great a length, [but] let me just tell you that parents of my best friends were arrested and killed - executed - by the State. Parents of my classmates were arrested, executed, sent off to the gulag to die. And I have stacks of information on that. One of my classmates had a very well-known father, and he was tried; he confessed to all sorts of crimes, of which he was innocent, but he confessed, and he got a bullet in the back of his ... [head/neck].

I've had this abhorrence of state-sponsored killing ever since - it just ... sort of permeated me; I hated that situation, I was glad to get away from it again. And, let me just as an aside say, I was in the U.S. Army during World War II, spent three years, was overseas; I did not shoot to kill anyone but was trained to kill, I was ready to kill. It was a killing that during the war was for a great cause, to make the world better, to protect the world - it was not killing individuals, not shooting at individuals for vengeance, for retribution, to make my community feel better - this was war against evil.

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MR. FISCHER continued:

... I keep coming back [to the] ... question, will Alaska be better for having the death penalty? Will Alaska be better, will we better [the] community, will our future be better? [With regard to] the questions of justice, I was listening to the discussion this morning, and the thing that bothered me was the process that was raised; [for example], jury selection

- the jury of peers would be made up of people who believe in the death penalty - the 50 percent or more who do not believe in [the] death penalty would be excluded from [the jury] ... in the penalty case. Is that the jury of peers? It just bothers the hell out of me.

Mention has been made time and again, beginning with the sponsor statement, about heinous crimes, [but] there is no definition anywhere [regarding] what a heinous crime is, the aggravating considerations of various sort, but it doesn't really provide a guideline. I think we'll be back to the same ... basic issues that bothered us back in 1957, when there was a question of, is it more of a heinous crime or less of a heinous crime when a black commits it against a black, or ... black against a white, or white against a black, or white Native against Native, or whatever? These are not objective judgments.

There are issues of hysteria. There are times when something horrendous happens. ... To me, the most heinous crime imaginable, to me, was what if my young daughter were raped ... and/or killed. That would be heinous. And, at the time, I thought more than once that if that happened, I would go for my gun and kill, and I wouldn't give a damn whether there was a death penalty at the end, [or] life in imprisonment, no more than the kids who were involved in Columbine or any other issue think in terms of death penalty. And nothing is solved in the end. I mean I could get personal satisfaction, but I don't want the State killing for me.

MR. FISCHER went on to say:

I come back to the question, does the state need this? Is it necessary for us to have the death penalty except to give us certain satisfaction? ... I love this state, as you well know; I am concerned about the [state's] image. We have had articles and headlines for months now about other states, for a number of reasons, including cost, which to me is irrelevant, saying that they're moving toward abolishing the death penalty. The current issue of The Economist has an article [titled "Rethinking the death penalty" with opening sentences reading in part]: "AN EYE for an

eye, or at any rate a death for a death, is the type of justice that most states still embrace. Only 14 of the 50 states have banned capital punishment"

The civilized world, as has been mentioned, has eliminated capital punishment. Do we want to join with Texas, compete with Texas, on per capita ... State-killing? Do we want to join China and other repressive regimes? I don't think so. ... Alaska has been seen as a shining star in the United States. People have dreamed of Alaska, coming to Alaska, they've just seen that Alaska was special. In [the] last couple of years, our reputation has been besmirched. There's been all this nonsense about the bridge to nowhere, ... the corruption, and various other things that have made headlines around the country. And I just don't want to have another headline that says, "Alaska reinstates capital punishment", as other states, by the dozen, are considering abolishing the death penalty and are actually doing so.

MR. FISCHER concluded:

... I want to ask you: Is this really necessary? Will this really make Alaska a better place? Thank you, Mr. Chairman, for the opportunity to speak to you from my heart.

[2:12:44 PM](#)

REPRESENTATIVE GATTO questioned whether a headline such as, "Convicted felon kills yet again" would discourage people from visiting Alaska.

MR. FISCHER opined that although such a headline isn't one that Alaskans need, it isn't going to affect tourism. He queried:

Convicted felon? Is it somebody who's been convicted and released after 20 years and then kills? No, that wouldn't be relevant in this discussion. We're talking ... basically about conviction [and] imprisonment for life versus [the] death penalty. If we start putting all felons to death, then we would never have a headline, "Felon kills again". But that's not the issue, I don't think.

REPRESENTATIVE COGHILL relayed that he has been trying to consider what is truly just, particularly given that murder victims don't get all the advantages granted to those accused of their murders. He characterized the murder of someone as a huge injustice, and opined that under a just scenario, a person who kills someone would be required to give up his/her life. He asked whether the current system can deliver that kind of justice.

MR. FISCHER said that his definition of justice doesn't lead to the death penalty. There are murders occurring all over Alaska. Does this mean that the State must kill, kill, kill, and kill again? Where would one draw the line? Is killing a couple of kids worse than killing a couple of adults? How about those who "accidentally" shoot a friend? That friend is as much a murder victim as any other person who's been murdered. What is an accident? How does one know it was an accident? He concluded, "I think once we start on that slope, I think we're in trouble."

2:19:50 PM

REPRESENTATIVE GRUENBERG asked whether, just because one person kills another, that makes it right to execute that person. Do two wrongs make a right?

MR. FISCHER said not in his view. There's a big difference between someone who kills someone out of revenge for the death of a family member, and State government - in this case, the State of Alaska - killing someone. There are other means of punishing the guilty party, of getting justice. He opined that having to serve 40-50 years in prison would be a worse punishment than the death penalty. In response to a question regarding the Alaska Constitutional Convention, he surmised that the issue of capital punishment did not come up because delegates considered such an issue to be a matter for the legislature to deal with. In response to another question, he said that he is not aware of any other state constitution that addresses the issue of the death penalty.

MR. FISCHER, in response to a question, explained that back when the death penalty was imposed during territorial days, some innocent people were put to death even though it was known that they were innocent, and all of those put to death were racial or ethnic minorities. One thing that he and Warren Taylor discussed, Mr. Fischer relayed, and that was brought up during the floor debate, was the unethical aspect of the government carrying out state-sanctioned killing of people. Mr. Fischer

noted that Warren Taylor had participated in capital punishment trials, both as prosecutor and as defense attorney.

MR. FISCHER, in response to comments and a question, offered his understanding that many Alaska Natives feel disaffected and feel that there is discrimination, and are therefore troubled. He surmised that with regard to rural justice, there are still issues that need to be resolved, and that the religious community could do a lot to address such issues.

2:32:09 PM

PATRICIA KENNISH indicated that she would be speaking against HB 9 - the death penalty. She said:

I believe the premeditated taking of a life is murder, whether done by an individual or by the State. Done by the State, it becomes the model of an acceptable means of resolving an issue, and, then, judging by comments I heard earlier, a matter of expediency. To suggest that it is justified because of the suffering of victimized families reflects the desire for revenge. We have only to look around the world to see how revenge has torn communities and countries apart and resulted in continuous bloodshed. I would hope that the State would provide justice for victims and society but have no part in the taking of lives. Thank you.

2:33:12 PM

DIANE BENSON first relayed that she often speaks on the issue of justice for victims of crime in Indian country, mostly nationally. She then said:

My grandfather was murdered in Sitka, during territorial times, in front of relatives and friends, and the man who murdered him was acquitted by an all-white jury. During this period, two Tlingit men found the bodies of a white family; they were then arrested for the murders and sent to prison. So let's fast-forward to recent years - several murders of Native men and women go unresolved. As the granddaughter of a murdered grandfather, I am angry over the injustice. Justice is healing, and would help my family, but killing, sanctioned by the State, is still killing.

It is not healing, and I can tell you it is not healing to me.

Furthermore, no matter the emotional strings this bill tugs on, it does not resolve the historic and continual bias found in a more-than-imperfect Alaska judicial system. ... No matter the effort, we still find that those who are with means and connections are unlikely to do the time or even an appropriate punishment for the same crime as the more impoverished. So I ask, how can we speak to putting such power in the hands of a system that is yet so flawed? Let me elaborate. The fact remains that the field is not level. Rural Alaska is shortchanged on law enforcement, sufficient corrections, and a fair court process. Adequate funds do not reach rural Alaska.

Furthermore, if a person does not speak English adequately enough, they are disadvantaged in this system. A person who comes from a Native culture that does not believe in confrontation, and therefore pleads nolo contendere, is susceptible in this system. I know an elder who recently passed [away] who was listed unfairly as a sex offender because he did not want to speak contrarily. Being accused carries a burden of shame that cause some of our more traditional Native people to simply acquiesce; even though innocent, they would rather take the punishment than defend themselves, and rather than risk a perceived insult to another family.

Now, I know it may not be understood by you, but that is something that happens, and it happens more in a system that is ill-funded and that is too often culturally insensitive or merely overburdened. ... Those who have the least means to hire sharp attorneys will more likely be the ones put to death with this bill, [whereas] a person of money who murders will put up a costly fight and will be more likely to avoid such a sentence. And it is ... [because of] that, [that] it is not a fair system.

MS. BENSON continued:

I had the privilege of touring several of our correctional facilities and meeting with inmates and

superintendants, and it was made clear to me that most of those behind of bars, besides being made up of disproportionate numbers of Alaska Natives and other minorities, are the poor. Just in practical terms regarding this bill: We are not strict enough on truth and fairness, nor is our judicial system funded enough to ensure that the law will be fairly applied. In addition, the cost may exceed our budget. The bill is also costly on another level: ... imagine an overworked public defender having to face the stress that their limitations contributed to the death of another human being.

Who are we willing to trust to conduct the killing? How do imagine that we as a society are a humane society when we choose this path. ... How do we reconcile our view that life is sacred yet put the power of killing in the hands of our own State? Can you live with that? You see, I cannot. I as a family member of murdered family members cannot. I, knowing from experience that too often those who are guilty go unpunished for heinous crimes, and too often those who are not may be excessively or erroneously punished, ... cannot accept that we have the wherewithal to conduct such a practice and benefit by it, neither in the betterment of our society nor in the development of our spirit as human beings.

[2:39:11 PM](#)

ERIKA KAHILL, Attorney at Law, after relaying that she is a criminal defense lawyer, said she opposes the death penalty because it will inevitably result in the killing of the wrongfully convicted. Over 3,500 people have been sentenced to death, and given that nobody's perfect, the system is not flawless, and even forensic science is not flawless, it is unimaginable that none of those 3,500 death sentences resulted from wrongful convictions, and the consequence of such mistakes is the killing of innocent people.

[2:40:16 PM](#)

BRENDAN O. KELLEY relayed that he'd recently moved to Alaska from Missouri, a state that still has a death penalty, and that he'd worked as a criminal defense attorney in the public defender system for five years. He elaborated:

In the system down there, there are specific offices that handle [only] death penalty ... cases. That creates a tremendous strain on the system itself. You have people ..., [even] the best attorneys, who can only handle very few cases, and if this system would be implemented, an attorney would be forced to spend nearly every waking moment of their time on a death penalty case in fairness to the system, and that leaves every other case that they're assigned, every other case in the system, in the lurch.

If this bill passes, there will be long-term ramifications, not only to the public defender, [but also] to the attorney general [and] ... Department of Corrections, all of which is unnecessary, in my opinion, [even] setting aside any moral qualms against the death penalty, which I certainly have. The problem that I see, in looking at the bill and seeing what I've seen in Missouri, is that there's always a strive for it to be perfect, there's always a strive ... to rule out any possibility of a wrongful conviction but we know - we know from evidence, we know from researching cases - that people wrongfully confess, all the time, and are wrongfully convicted.

People in Illinois wrongfully confess and were convicted and exonerated. That's one of the things that I think I saw in [a forthcoming] amendment. ... The bottom line is that there is no answer that is going to [ensure] ... that a wrongful conviction cannot happen, and I think in that system, the government ... [is in] no position to put anyone to death.

MR. KELLEY, in response to a question, pointed out that the problem with the death penalty is that death is final - someone who's been executed cannot be exonerated.

[2:44:58 PM](#)

AVERIL LERMAN, noting that she's had a chance to read the forthcoming amendments, said they appear to constitute a laudable effort by the committee to ensure that only those who are "actually, definitely, absolutely, certainly guilty" get charged with capital murder. She explained however, that she doesn't believe that that's possible. Referring to one of the forthcoming amendments - that which would require that the death

penalty not be sought unless there is biological evidence or DNA evidence linking the defendant to the murder, or a videotaped voluntary confession by the defendant to the murder, or a video recording conclusively linking the defendant to the murder - she pointed out that there is a big distinction between "biological evidence" and "DNA evidence", and that much of the biological evidence that doesn't involve DNA evidence has been completely discredited scientifically, such as bite mark evidence, blood splatter evidence, some kinds of hair analyses, as well as other kinds of biological evidence. Moreover, although DNA evidence has not yet been discredited, even with it one cannot be sure of what one is getting.

MS. LERMAN said she'd arranged for the committee to receive three New York Times articles - "REPORT CRITICIZES SCIENTIFIC TESTING AT F.B.I. CRIME LAB", "New Doubt Cast on Testing in Houston Police Crime Lab", and "Science Found Wanting in Nation's Crime Labs" - regarding the scandals that have discredited hundreds of convictions, articles based on Federal Bureau of Investigation (FBI) expertise, information from the Texas crime laboratory ("lab") scandal, and the National Academy of Sciences (NAS) report on forensic science in America. She said that although people long for certainty, and although perhaps there are some people who are so evil that they don't deserve to live among others, the problem remains that human beings won't be "like god" in identifying those people, even with DNA evidence, as illustrated by the aforementioned crime lab scandals.

MS. LERMAN, referring to another of the forthcoming amendments - that which pertains to what's been referred to as reciprocal discovery - offered her belief that such an amendment is likely to be found unconstitutional by the Alaska Supreme Court based on both Scott v. State, 519 P.2d 774 (Alaska 1974), and State v. Summerville, 948 P.2d 469 (Alaska 1997). In response to a question about the forthcoming amendment regarding requiring that the death penalty not be sought unless there is biological evidence or DNA evidence linking the defendant to the murder, or a videotaped voluntary confession by the defendant to the murder, or a video recording conclusively linking the defendant to the murder, she pointed out that the term "conclusively" isn't a term of art used in criminal law, and so there is no precedent set for what it means. Furthermore, the term "links" is very broad term. She surmised that this provision of the amendment was designed for a case currently before the courts in which there is a video recording of a man using a murdered woman's automated teller machine (ATM) card. Although in that

instance such a recording could be said to conclusively link the man to the murder, the same might not be true for a video recording that shows a particular person was at a gas station, for example, several hours before a murder occurred there.

[2:49:29 PM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska) - in response to a question about the forthcoming amendment requiring that the death penalty not be sought unless there is biological evidence or DNA evidence linking the defendant to the murder, or a videotaped voluntary confession by the defendant to the murder, or a video recording conclusively linking the defendant to the murder - pointed out that of the 220 wrongful convictions that were overturned through the use of DNA evidence, 25 percent involved some form of false confession. It is important, therefore, to remember that having a voluntary, videotaped confession is not an assurance that the person making the confession is really the perpetrator. Furthermore, statistics show that false confessions are second only to false eyewitness identification in being responsible for wrongful convictions.

MR. MITTMAN elaborated:

Let me give you an example of one case. A gentleman by the name of Eddie Joe Lloyd served 17 years in Michigan for ... murder and rape. It was determined that he didn't commit it because DNA testing proved his innocence, and led to his release in 2002. I think what's important to note is that the judge ... at his sentencing ... bemoaned that the court's hands were tied since he could only sentence Lloyd to life imprisonment rather than what he believed was the only, quote, "justifiable sentence," which was, quote, "termination by extreme constriction" i.e. hanging. So we see here a case [of] an individual, where everyone knew he was, quote unquote, "guilty of the most heinous crime," including the judge, and it turns out [Lloyd] ... was innocent.

As to the, quote unquote, "videotaped confession," ... as we all know, Manhattan district attorney Robert Morgenthau is well-known throughout the country as a very successful, very principled prosecutor who's recently announced his retirement. In 2002, [that district attorney's office] ... went to a judge and

asked [him] to dismiss charges against five men that had been prosecuted in the Central Park jogger case. In this case, there were taped confessions of these young men who admitted to committing the crime when in fact they were innocent, as again was proven by DNA.

MR. MITTMAN said these are some of the issues raised with regard to the so-called "irrefutable evidence" standard. In closing, he offered his belief that the Founding Fathers knew that men were imperfect and so set up a system that dealt with the imperfections. If HB 9 were to be passed in the belief that some sort of perfect system could be set up, what's being forgotten is that it won't address the imperfections of human beings, and no one should be left with the false impression that it could.

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JEAN CRACIUN relayed that a 2008 statewide study of 400 registered voters conducted by Alaskans Against the Death Penalty (AADP) illustrates that 57 percent of those polled oppose the death penalty, with Alaska Natives and people who live in rural Alaska comprising the highest percentage of those who oppose it. The study also illustrates that 83 percent of those polled were willing to agree that sometimes innocent people are convicted and sent to jail, and that 56 percent of those polled were willing to disagree that the government would never execute an innocent person.

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HUGH BROWN III said that as a person who has worked with people living with disabilities, with mental illness, or on the margins of society, he thinks that HB 9 is inappropriate. House Bill 9, he predicted, will cause a lot of people to question [the legislature's] leadership, particularly given that the statistics and the facts illustrate that people do get convicted wrongfully, and that the system is imperfect. "We should not be in the business of killing folk," he remarked, and questioned what type of message would be sent by doing so. In conclusion, he said that he is in strong opposition to HB 9, both personally and on behalf of the various marginalized citizens of the state, and urged the committee to oppose the bill and stop it from moving forward.

CHAIR RAMRAS closed public testimony, and relayed that that HB 9 [Version E] would be set aside.

HJR 3 - CONST. AM: NO GAMING WITHOUT VOTER APPROVAL

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CHAIR RAMRAS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 3, Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

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PAUL GROSSI, Staff, Representative Harry Crawford, Alaska State Legislature, explained on behalf of Representative Crawford, one of HJR 3's joint prime sponsors, that HJR 3 is proposing an amendment to the Alaska State Constitution such that if approved by the voters, the Alaska State Constitution would then require a vote of the people before any gambling for profit would be allowed to take place in Alaska. He relayed that similar legislation passed the House during the prior legislature. In response to a question, he surmised that any forthcoming testimony would focus on the negative impacts of gambling, and the virtues of allowing the people to vote on whether they wanted for-profit gambling to occur in Alaska.

REPRESENTATIVE LYNN noted that public testimony on HJR 3 was heard in the House State Affairs Standing Committee.

CHAIR RAMRAS relayed that HJR 3 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:59 p.m.