

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 8, 2010

1:09 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 8

Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

- MOVED HJR 8 OUT OF COMMITTEE

HOUSE BILL NO. 316

"An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 298

"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule

16, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 298(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 8

SHORT TITLE: CONST. AM: APPROP. LIMIT/MINERAL REVENUE

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/26/09	(H)	READ THE FIRST TIME - REFERRALS
01/26/09	(H)	STA, JUD, FIN
04/02/09	(H)	STA AT 8:00 AM CAPITOL 106
04/02/09	(H)	Heard & Held
04/02/09	(H)	MINUTE(STA)
04/07/09	(H)	STA AT 8:00 AM CAPITOL 106
04/07/09	(H)	Moved Out of Committee
04/07/09	(H)	MINUTE(STA)
04/07/09	(H)	STA RPT 2DP 3DNP 1NR 1AM
04/07/09	(H)	DP: JOHNSON, LYNN
04/07/09	(H)	DNP: SEATON, GRUENBERG, PETERSEN
04/07/09	(H)	NR: GATTO
04/07/09	(H)	AM: WILSON
02/03/10	(H)	JUD AT 1:00 PM CAPITOL 120
02/03/10	(H)	Heard & Held
02/03/10	(H)	MINUTE(JUD)
02/08/10	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 316

SHORT TITLE: POST-CONVICTION DNA TESTING; EVIDENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/27/10	(H)	READ THE FIRST TIME - REFERRALS
01/27/10	(H)	JUD, FIN
02/05/10	(H)	JUD AT 1:00 PM CAPITOL 120
02/05/10	(H)	-- MEETING CANCELED --
02/08/10	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 298

SHORT TITLE: SEX OFFENSES; OFFENDER REGIS.; SENTENCING

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	JUD, FIN
01/25/10	(H)	JUD AT 1:00 PM CAPITOL 120
01/25/10	(H)	Heard & Held

01/25/10	(H)	MINUTE(JUD)
01/27/10	(H)	JUD AT 1:00 PM CAPITOL 120
01/27/10	(H)	Heard & Held
01/27/10	(H)	MINUTE(JUD)
02/01/10	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/10	(H)	Heard & Held
02/01/10	(H)	MINUTE(JUD)
02/08/10	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DEREK MILLER, Staff
 Representative Mike Kelly
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 8, provided a comment on behalf of the sponsor, Representative Kelly.

RICHARD SVOBODNY, Deputy Attorney General
 Central Office
 Criminal Division
 Department of Law (DOL)
 Juneau, Alaska

POSITION STATEMENT: Presented HB 316 on behalf of the administration.

SUE STANCLIFF, Special Assistant
 Office of the Commissioner
 Department of Public Safety (DPS)
 Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed amendments to HB 298.

DEREK DeGRAAF, Sergeant, Supervisor
 Technical Crimes Unit (TCU)
 Alaska Bureau of Investigation (ABI)
 Division of Alaska State Troopers
 Department of Public Safety (DPS)
 Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of proposed amendments to HB 298.

RICHARD SVOBODNY, Deputy Attorney General
 Central Office
 Criminal Division
 Department of Law (DOL)
 Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of proposed amendments to HB 298.

KATHRYN MONFREDA, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of proposed amendments to HB 298.

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

POSITION STATEMENT: Provided comments during discussion of proposed amendments to HB 298.

ACTION NARRATIVE

[1:09:04 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Ramras, Holmes, Dahlstrom, Lynn, and Gruenberg were present at the call to order. Representatives Herron and Gatto arrived as the meeting was in progress.

HJR 8 - CONST. AM: APPROP. LIMIT/MINERAL REVENUE

[1:12:38 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 8, Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

REPRESENTATIVE HOLMES relayed that she is now more comfortable with her understanding of HJR 8.

[1:13:46 PM](#)

DEREK MILLER, Staff, Representative Mike Kelly, Alaska State Legislature, on behalf of the sponsor, Representative Kelly, noted that a question posed during the resolution's previous hearing was whether the proposed calculation would use fiscal

years or calendar years, and offered his belief that that question has been addressed to members' satisfaction.

[1:14:27 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HJR 8 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 8 was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG mentioned that he's reviewed HJR 8 in terms of potential legal and constitutional issues, and that the remarks he would be making on the bill report reflect only his opinion regarding those aspects of the resolution.

The committee took an at-ease from 1:15 p.m. to 1:17 p.m.

HB 316 - POST-CONVICTION DNA TESTING; EVIDENCE

[CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 316, "An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."]

[1:18:02 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), on behalf of the administration, explained that HB 316 does three things to address Alaska's problem of domestic violence (DV) and sexual assault. First, it would create a system for the retention of evidence in certain types of cases, such as homicide cases and sexual assault cases, and the retention of that evidence would be for specific periods of time, both prior to someone being charged with an offense [and after a person is convicted]. For cold cases, evidence should be retained for substantially longer than it is now, and so HB 316 would set some retention standards for serious cases; currently, law enforcement agencies can throw out evidence whenever they want because there are no standards with regard to how long evidence must be retained. He mentioned a situation wherein when the Juneau Police Department recently moved to a new building, [the paperwork for] a case involving the death of a seven-year-old in the 1960s was found behind a filing cabinet, and although he believed that he could have

prosecuted that case, there was no longer any evidence available - it had been discarded.

MR. SVOBODNY relayed that second, HB 316's evidence retention requirements would address post-conviction relief cases wherein those convicted beyond a reasonable doubt, after all their appeals have been exhausted, then seek to come back to court in order to try to convince the court that there is some other reason why their conviction should be set aside. The proposed changes affecting post-conviction relief procedures are necessary because of the advent of deoxyribonucleic acid (DNA) analyses that assist the criminal justice system in making sure that the right person is convicted; whether DNA analyses show that the right person was convicted or that the wrong person was convicted and therefore the right person still needs to be sought out, the proposed changes will affect cases involving homicide, DV, and sexual assault. Third, HB 316 would create a task force to address standards for evidence collection for all law enforcement agencies so as to keep them up to date on new technology/analyses.

[1:22:14 PM](#)

MR. SVOBODNY noted that in the U.S. Supreme Court case, [District Attorney's Office for the Third Judicial District v. Osborne], the media inaccurately stated that Alaska law doesn't address post-conviction DNA testing; Alaska law does do so, but it's via case law rather than via statute. It is generally the DOL's belief that it is better that laws be made by the legislature rather than by the courts, because when done by the courts, it's done on a case-by-case basis only and so could take many cases over the course of decades to fully develop a particular area of law, whereas when the legislature makes laws, it does so as a package, dealing with all the public policy issues at one time. In Osborne, the U.S. Supreme Court determined that laws setting the standards for how cases are dealt with after conviction are better left to the individual states to develop, and HB 316 does just that for Alaska. He mentioned that HB 316 has received a lot input from the DOL, law enforcement agencies, the Public Defender Agency (PDA), and other interested parties.

MR. SVOBODNY, in response to questions, said that the DOL's fiscal note is pretty accurate and reflects that post-conviction-relief cases are occurring now; that in terms of testing DNA samples, HB 316 would be limited to situations involving crimes against people; that the estimates of \$4,000

and \$2,000 for fiscal year 2011 (FY 11) and FY 12, respectively, address costs associated with the aforementioned proposed task force; that in terms of evidence retention, the bill won't cost law enforcement agencies any more than the existing piecemeal approach; that any evidence retention constitutes somewhat of an unfunded mandate currently borne by law enforcement agencies; that the bill outlines timeframes for the retention of evidence; that the proposed task force would establish good evidence-gathering standards for all law enforcement officers; and that although currently a member of the defense bar is not included in the list of those who shall sit on the proposed task force, the establishment of standards for evidence storage won't necessarily require input from the defense bar.

[HB 316 was held over.]

HB 298 - SEX OFFENSES; OFFENDER REGIS.; SENTENCING

[1:36:59 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 298, "An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date." [Before the committee was HB 298 as amended on 2/1/10; left pending from the meeting on 2/1/10 was the motion to adopt Amendment 8 and the motion to adopt Amendment 14.]

REPRESENTATIVE GATTO withdrew Amendment 14, labeled 26-GH2859\A.21, Luckhaupt, 2/1/10, which read:

Page 1, line 2, following "**minor**":

Insert "**relating to sex offenders and child kidnappers**;"

Page 5, following line 6:

Insert a new bill section to read:

"* **Sec. 11.** AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

- (1) impose a [(A)] fine when authorized by law and as provided in AS 12.55.035; [OR (B) REPEALED]
- (2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;
- (3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution under AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;
- (8) suspend imposition of sentence under AS 12.55.085;
- (9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;
- (10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;
- (11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;
- (12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

(13) for a defendant convicted of an offense requiring the defendant to register under AS 12.63, order the defendant to post a sign in the yard of the defendant's residence or on the defendant's door, if the defendant resides in a multifamily residential complex, stating that the resident is a sex offender or child kidnapper."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

[1:39:12 PM](#)

REPRESENTATIVE DAHLSTROM made a motion to adopt Amendment 15, labeled 26-GH2859\A.24, Luckhaupt, 2/3/10, which read:

Page 1, line 5, following "**kidnapper;**":

Insert "**relating to administrative subpoenas for certain records involving exploitation of children;**"

Page 7, following line 31:

Insert a new bill section to read:

"* **Sec. 16.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address associated with the account;

(3) local and long distance telephone connection records, including records of session times and durations for the account;

(4) length of service, including service start date, and types of service used by the account;

(5) the telephone or instrument number or other subscriber number or identifier, including any temporarily assigned network address for the account; and

(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition the district court for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials."

Renumber the following bill sections accordingly.

Page 9, line 5:

Delete "Section 16 of this Act applies"

Insert "Sections 16 and 17 of this Act apply"

REPRESENTATIVE HOLMES objected.

[1:39:37 PM](#)

SUE STANCLIFF, Special Assistant, Office of the Commissioner, Department of Public Safety (DPS), explained that Amendment 15 would add a proposed new AS 44.23.080 to HB 298, establishing the authority to use an administrative subpoena when gathering certain records in cases involving exploitation of child, and outlining what information can be sought, such as the name of the Internet Protocol (IP) address holder and other information related to that IP address.

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

MS. STANCLIFF added that this proposed new section of statute addresses the initial phase of information gathering for an IP address associated with child exploitation.

[1:41:26 PM](#)

DEREK DeGRAAF, Sergeant, Supervisor, Technical Crimes Unit (TCU), Alaska Bureau of Investigation (ABI), Division of Alaska State Troopers, Department of Public Safety (DPS), proffered that the proposed subpoena authority would be a tremendous asset to those investigating child exploitation cases, particularly given that as technology has changed over the past 10-15 years, many of the crimes against children happen on line.

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

MR. DeGRAAF explained that currently, when law enforcement officers receive information about such computer-assisted crimes, they must apply for a search warrant in order to find out the account information linked with a particular IP address, and this takes a tremendous amount of time. [Amendment 15] would substantially reduce the amount of time it would take to acquire the same information, and the information being sought would be very narrow in scope [as outlined in proposed AS 44.23.080(a)(1)-(6)]. He remarked that Amendment 15 is modeled after similar law already adopted in many other states to combat child exploitation.

REPRESENTATIVE DAHLSTROM sought assurance that Amendment 15 would simply allow law enforcement to react more quickly in computer-assisted child exploitation cases.

MR. DeGRAAF said that's correct.

REPRESENTATIVE GRUENBERG characterized Amendment 15 as very comprehensive. Referring to Amendment 15's proposed AS 44.23.080(c), he asked why it references only district court. Unless there is a good reason for such a limitation, he opined, it should also reference superior court.

[1:45:56 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), surmising that the drafter probably just copied language from similar federal law, which references federal district court, opined that the language of Amendment 15 should instead make reference to any court of competent jurisdiction.

REPRESENTATIVE GRUENBERG - noting that AS 12.37.200 and AS 12.37.300 address applications made in conformity with federal law for court orders concerning the use of pen registers and trap devices, and the access, disclosure, and use of communications in electronic storage - surmised that Amendment 15 is intended to provide for a narrow exception to those statutes in cases involving child exploitation or attempted child exploitation, allowing for the use of an administrative subpoena instead of a court order.

MR. SVOBODNY concurred, adding that the same standard of reasonable suspicion would be required.

REPRESENTATIVE GRUENBERG, referring to the 1990 Alaska Court of Appeals case, State v. Chryst, 793 P.2d 538, questioned whether there is also no expectation of privacy - under the right of privacy as outlined in Article I, Section 22, of the Alaska State Constitution - for the types of information outlined in Amendment 15's proposed AS 44.23.080(b)(6), that being bank account numbers and credit card numbers.

MR. SVOBODNY said that although he is unaware of an Alaska Supreme Court case specifically addressing bank information, there is a U.S. Supreme Court case wherein the court held that bank information is not subject to an expectation of privacy.

REPRESENTATIVE GRUENBERG, in response to comments, cautioned against passing something contrary to given law.

MR. SVOBODNY, in response to a question, relayed that he would be comfortable if Amendment 15 were to be amended such that the term, "district court" as used in proposed AS 44.23.080(c) would be changed to the term, "a court of competent jurisdiction". In response to another question, he relayed that he is unaware of any Alaska case that addresses the types of information outlined in Amendment 15's proposed AS 44.23.080(b)(5).

REPRESENTATIVE GRUENBERG relayed that he simply doesn't want to have the proposed statute struck down.

CHAIR RAMRAS expressed a desire to give law enforcement sufficient tools to address child pornography crimes.

MR. DeGRAAF explained that Amendment 15's proposed AS 44.23.080(b)(6) would give law enforcement a better tool so as to be able to ask the right questions early on in an investigation. He mentioned that the type of information outlined in paragraph (6) has helped exonerate people.

MR. SVOBODNY, in response to questions, relayed that the type of subpoena power being authorized by Amendment 15 is not unusual, nor is it as broad as similar subpoena power used with regard to other types of cases; that for some of those other types of cases, the same standard of probable cause is required; that he is not aware of any Alaska laws or cases that allow a warrantless search for bank account numbers or credit card numbers.

REPRESENTATIVE GRUENBERG suggested that more research on this issue be conducted.

[2:07:20 PM](#)

REPRESENTATIVE GRUENBERG, after some clarification, made a motion to conceptually amend Amendment 15 such that the term, "the district court" as used in proposed AS 44.23.080(c) would be changed to the term, "a court of competent jurisdiction". There being no objection, Amendment 15 was so amended.

REPRESENTATIVE HOLMES removed her objection.

CHAIR RAMRAS, noting that there were no further objections, announced that Amendment 15, as amended, was adopted.

[2:09:25 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Amendment 16, labeled 26-GH2859\A.26, Luckhaupt, 2/5/10, which read:

Page 4, line 25:

Delete "and"

Insert "[AND]"

Page 4, line 26, following "(2)":

Insert "the material is harmful to minors; and
(3)"

Page 5, following line 6:

Insert a new bill section to read:

"* **Sec. 11.** AS 11.61.128 is amended by adding a new subsection to read:

(e) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

REPRESENTATIVE HOLMES explained that Amendment 16 addresses [Amendment 1's proposed new Section 5] regarding the distribution of indecent materials to minors; currently, that proposed new section doesn't contain a standard regarding what constitutes indecent materials, and is therefore subject to constitutional challenge. Amendment 16 would define the term

["harmful to minors"], using a tougher standard than that pertaining to the distribution of indecent material to an adult.

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion. She then removed her objection.

CHAIR RAMRAS announced that Amendment 16 was adopted.

[2:11:53 PM](#)

REPRESENTATIVE GRUENBERG, after some clarification, made a motion to adopt Amendment 17, which read [original punctuation provided]:

Page 6, line 29:

Following "engaged in":

Delete "a"

Insert "an ongoing"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

The committee took an at-ease from 2:14 p.m. to 2:15 p.m.

REPRESENTATIVE GRUENBERG explained that Amendment 17 would specify that the proposed aggravating factor in Section 14 pertaining to dating and sexual relationships - proposed AS 12.55.155(c)(18)(D) - could only apply in situations where there is "an ongoing" sexual relationship between victim and perpetrator. Surmising that proposed AS 12.55.155(c)(18)(D) as currently written could apply even if the perpetrator had had sex with the victim many years ago, he offered his belief that that isn't the intent of that provision. In response to a question, he clarified that Amendment 17 only addresses the language in proposed AS 12.55.155(c)(18)(D) pertaining to a sexual relationship, not the language pertaining to a dating relationship.

MR. SVOBODNY mentioned that this proposed aggravating factor was suggested by prosecutors in the Palmer office, who'd spoken about dating relationships and sexual relationships as two different, distinct things. A dating relationship may not involve sex but does still contain an element of trust. He noted that such was the case with the girl who'd recently been stabbed at an Anchorage high school; the boy she was dating told her to close her eyes, and once she did, he stabbed her. In response to a question, he relayed that the DOL does not support Amendment 17.

REPRESENTATIVE HERRON pointed out that a sexual relationship might have ended only a short time prior to the crime, adding that he prefers proposed AS 12.55.155(c)(18)(D) as it's currently written.

REPRESENTATIVE GRUENBERG withdrew Amendment 17.

[2:21:29 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 18, labeled 26-GH2859\A.25, Luckhaupt, 2/5/10, which read:

Page 1, line 14, of Amendment 12, following "trial.":
Insert "The court may also issue any other orders that it considers appropriate in the interests of justice."

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE GRUENBERG explained that Amendment 18 [would amend Amendment 12, as amended - which rewrote Section 16's proposed court rule change - and would allow the court to issue any order that it considers appropriate; Amendment 12, labeled 26-GH2859\A.3, Luckhaupt, 1/26/10, as amended, read:

Page 8, lines 3 - 31:
Delete all material and insert:
"DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:
(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution or law enforcement facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant

may seek to qualify to furnish expert testimony at trial."

REPRESENTATIVE GRUENBERG added that he just wants to make certain that the court knows it has jurisdiction to issue any other orders, though that may already be implied, he acknowledged.

MR. SVOBODNY observed that [Section 16's] proposed court rule change addresses the issue of discovery and that Amendment 18 doesn't appear to do so directly, and indicated that the court already has jurisdiction over this issue.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 18. Representatives Dahlstrom, Herron, Gatto, Lynn, and Ramras voted against it. Therefore, Amendment 18 failed by a vote of 2-5.

The committee took an at-ease from 2:25 p.m. to 2:29 p.m.

[2:29:13 PM](#)

CHAIR RAMRAS turned the committee's attention to Amendment 8 [which had been set aside on 2/1/10 with the motion to adopt it left pending as the result of an objection by Representative Holmes for the purpose of discussion]; Amendment 8, labeled 26-GH2859\A.6, Luckhaupt, 1/26/10, read:

Page 7, lines 1 - 31:

Delete all material and insert:

"* **Sec. 15.** AS 12.63.020(b) is amended to read:

(b) The department shall adopt, by regulation, procedures to notify a sex offender or child kidnapper who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping. As a part of the regulations, the department shall

(1) require the offender or kidnapper to supply proof acceptable to the department of unconditional discharge and the date it occurred; and
(2) if the registration requirement of the offender or kidnapper arises from AS 12.63.100(5)(B), require the offender or kidnapper to register for the

period of time that is required by the state or jurisdiction from which the conviction and duty to register arises.

* Sec. 16. AS 12.63.100(5) is amended to read:

(5) "sex offender or child kidnapper" means a person

(A) convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or

(B) required to register as a sex offender or child kidnapper in another state or jurisdiction for a crime that is not a sex offense or child kidnapping as defined in this section but for which the person is required to register as a sex offender or child kidnapper in another state or jurisdiction;"

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 14"

Page 9, following line 4:

Insert a new subsection to read:

"(b) Sections 15 and 16 of this Act relating to registration of sex offenders and child kidnappers whose duty to register arises from conviction in another state or jurisdiction for a crime that is not defined as a sex offense under AS 12.63.100(6) or a child kidnapping under AS 12.63.100(2) shall register, report, and file as required under AS 12.63.010 if their duty to register in the other state or jurisdiction has not expired on the effective date of this Act regardless of whether the conviction for the crime in the other state or jurisdiction occurred before, on, or after the effective date of this Act."

Reletter the following subsection accordingly.

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

REPRESENTATIVE DAHLSTROM, in response to a request, said she would object for the purpose of discussion.

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 8 such that Amendment 8's proposed change to page 9, following line 4, of the bill would instead read:

"(b) Sections 15 and 16 of this Act relating to registration of sex offenders and child kidnappers whose duty to register arises from conviction in another state or jurisdiction for a crime that is not defined as a sex offense under AS 12.63.100(6) or a child kidnapping under AS 12.63.100(2) shall register, report, and file as required under AS 12.63.010 if their duty to register in the other state or jurisdiction has not expired on the effective date of this Act if the crime in the other state or jurisdiction occurred after the effective date of this Act."

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that the amendment to Amendment 8 would cure a constitutional problem in Amendment 8's proposed applicability section, which, as currently written, could run afoul of Doe v. State, 189 p.3d 999 (Alaska 2008), wherein the Alaska Supreme Court held that the ex post facto provision of Article I, Section 15, of the Alaska State Constitution precludes the State from requiring sex offender registration of those convicted of sex offense crimes committed prior to the enactment of the sex offender registration statute. As currently written, Amendment 8's proposed applicability section would require that sex offenders moving to Alaska from another state who have to register in that other state also have a duty to register in Alaska regardless of whether the underlying crime they were convicted of was committed before, on, or after the effective date of this bill. Under the amendment to Amendment 8, in contrast, such persons would only have to register in Alaska if the underlying crime occurred after the effective date of the bill. He offered his belief that problems would result if the amendment to Amendment 8 were not adopted.

[2:32:30 PM](#)

REPRESENTATIVE HERRON argued that such perpetrators would be required to register in Alaska only because they are required to register in another state, not because they committed a crime in that other state.

REPRESENTATIVE GRUENBERG offered his belief, however, that in any resulting litigation, the court would say that the same principal as in Doe applies. "It doesn't make any difference whether they're convicted in the state of Alaska or the state of Tennessee; the fact is, they were convicted of a crime that occurred before the effective date of this provision," he added.

REPRESENTATIVE HERRON reiterated his argument.

REPRESENTATIVE GRUENBERG, acknowledging that Doe didn't address the laws of another state, surmised that the question would become whether [Doe] would operate to bar Alaska from requiring registration, adding that he believes it would. Just because someone has to register in another state does not absolve one of the ex post facto requirement, and to adopt Amendment 8 without the amendment is asking for a constitutional challenge.

REPRESENTATIVE HERRON opined that taking that chance would be worth it, and again reiterated his argument.

[2:35:05 PM](#)

KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), after relaying that her duties include management of the sex offender registry, offered her belief that Representative Gruenberg may be correct because a crime in another state would be being defined as a sex offense in Alaska and so would be subject to that Alaska Supreme Court decision, and therefore the department would be unable to require registration unless the crime occurred after the effective date of the bill.

MR. SVOBODNY offered his belief that the administration would simply be regulating the people who have to register in another state, and would not be dealing with the issue of punishment, as the court, in Doe, did. He likened that regulating aspect to that which occurs when a third or subsequent DUI becomes a felony rather than remaining a misdemeanor. "It's a fight we're willing to take on," he added.

[2:38:30 PM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), offered his understanding that the Alaska Supreme Court has already ruled and determined that for purposes of Alaska law, registration on a sex offender

registry is considered not regulatory but rather a punishment, and so under that ruling, even though someone is registered in another state, by coming here and being put on the Alaska registry, that administrative action of placing him/her on the registry is, in fact, under Alaska law, a punishment. On those grounds, the ACLU of Alaska believes that the court would again rule that there is an ex post facto issue. "[We] understand that ... the Department of Law takes a different position ... and has asked to litigate this, but we are trying to be as clear as possible in what the state of the law is and why this is problematic," he concluded.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of the amendment to Amendment 8. Representatives Herron, Gatto, Lynn, Dahlstrom, and Ramras voted against it. Therefore, the amendment to Amendment 8 failed by a vote of 2-5.

[2:39:59 PM](#)

CHAIR RAMRAS offered his understanding that Alaska has a two-tier system regarding registration length - either 15 years or life - and that there is a concern that if this two-tier registration system is applied to someone coming from another state who is required to register for less than 15 years, for example, and then he/she then has to register in Alaska for 15 years, that that would essentially constitute an extra penalty.

MR. SVOBODNY concurred. In response to questions, he explained that there are two types of states: those with tiers, like Alaska, and those with risk assessments wherein the person has to register indefinitely until it's been determined that he/she is no longer a risk. In the latter type of state, a person could be convicted of burglary and have to register as a sex offender, but under Alaska law there is no crime of burglary that's equivalent to a sex offense, and so such a person would not have to register in Alaska. If the proposed registration provision were challenged, the DOL would argue that it is merely regulating the sex offenders who move to Alaska - giving the public notice that those people are sex offenders - not punishing them for moving to Alaska. In response to a further question, he relayed that most states take a tiered approach due to the cost associated with an assessment approach and due to the fact that many states are attempting to come into compliance with the federal Adam Walsh Child Protection and Safety Act, which has a three-tier system.

CHAIR RAMRAS asked whether the DOL supports Amendment 8.

MR. SVOBODNY said yes.

REPRESENTATIVE GRUENBERG questioned whether Mr. Svobodny understood that Chair Ramras was referring to the entirety of Amendment 8.

MR. SVOBODNY indicated that he might not have understood that.

The committee took an at-ease from 2:45 p.m. to 2:47 p.m.

MR. SVOBODNY, in response to comments, expressed concern that Amendment 8 stipulates that the registration requirement would be established by the DPS by regulation, "as opposed to just being the law." To clarify his earlier statement, he said he would prefer a different amendment but would accept Amendment 8 as opposed to just leaving the bill as is with regard to this issue. In response to a question, he explained that even as currently written, the bill requires sex offenders who move to Alaska to register in Alaska. The issue that Amendment 8 is meant to address is which tier such a sex offender would fit into.

MS. MONFREDA, in response to a question, relayed that the number of calls from sex offenders in other states questioning whether they would have to register if they moved to Alaska has tripled since the Doe decision came out, to about 500-700 such calls per month.

[2:50:03 PM](#)

REPRESENTATIVE GRUENBERG sought clarification regarding the other amendment that the DOL would prefer over Amendment 8.

MR. SVOBODNY indicated that it was one that would require a person convicted of one offense to have to register for 15 years, and require a person convicted of two or more offenses to have to register for life, and does not specifically include a reference to the crime of child kidnapping because that's already addressed elsewhere in statute.

CHAIR RAMRAS indicated that that's the amendment currently labeled 26-GH2859\A.20, Luckhaupt, 1/28/10.

The committee took an at-ease from 2:51 p.m. to 2:56 p.m.

CHAIR RAMRAS withdrew Amendment 8.

[2:56:50 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 19, labeled 26-GH2859\A.20, Luckhaupt, 1/28/10, which read:

Page 6, following line 31:

Insert a new bill section to read:

"* **Sec. 15.** AS 12.63.020 is amended by adding a new subsection to read:

(c) A person required to register under AS 12.63.010 for a conviction in another jurisdiction that is not similar to an offense in this state shall register for a period described in

(1) (a)(2) of this section if the person has been convicted of only one offense;

(2) (a)(1) of this section if the person has been convicted of two or more offenses for which the person is required to register in another jurisdiction."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

REPRESENTATIVE HOLMES objected.

MS. MONFREDA clarified that she'd misspoke earlier, and that she'd meant to instead relay that the department receives approximately 135 calls per month from sex offenders in other states questioning whether they would have to register if they moved to Alaska. The DPS, she added, supports Amendment 19 because all offenders could then be managed in the same fashion.

MR. SVOBODNY said the DOL supports Amendment 19.

REPRESENTATIVE HOLMES expressed concern that under Amendment 19, there would still be offenders who could raise a constitutional challenge because they would have to register for longer than they had to in the state they moved from. She said she did not

want to set up a system that results in litigation and in such offenders not having to register.

REPRESENTATIVE GATTO offered his belief that the purpose of Amendment 19 is to keep such offenders out of Alaska.

REPRESENTATIVE GRUENBERG, in response to a question, offered his understanding that his amendment to Amendment 8 is not necessary for Amendment 19 because Alaska law has a general applicability provision which says that statutes only apply to crimes committed after the effective date of those statutes. He said he agrees with Representative Holmes, however, regarding a potential constitutional problem, and suggested that inserting the language of Amendment 8 that says, [**required to register as a sex offender or child kidnapper in another state or jurisdiction for a crime that is not a sex offense or child kidnapping as defined in this section but for which the person is required to register as a sex offender or child kidnapper in another state or jurisdiction**] into Amendment 19 would cure that potential constitutional problem.

REPRESENTATIVE GRUENBERG then withdrew his suggestion, surmising that it wouldn't be applicable.

The committee took an at-ease from 3:03 p.m. to 3:05 p.m.

REPRESENTATIVE HOLMES indicated that she still thinks that Amendment 19 has a constitutional problem, but she doesn't have an easy solution, and so she would be maintaining her objection.

[3:05:59 PM](#)

A roll call vote was taken. Representatives Lynn, Dahlstrom, Herron, Ramras, and Gatto voted in favor of Amendment 19. Representatives Gruenberg and Holmes voted against it. Therefore, Amendment 19 was adopted by a vote of 5-2.

CHAIR RAMRAS indicated his understanding that [the provision addressed by Amendment 19] would only apply to sex offenders who move to Alaska [on or] after the effective date.

[3:07:35 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 298, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB

298(JUD) was reported from the House Judiciary Standing Committee.

[3:08:09 PM](#)

ADJOURNMENT

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