

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 7, 2010

8:34 a.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Lesil McGuire  
Senator John Coghill

**MEMBERS ABSENT**

Senator Dennis Egan

**COMMITTEE CALENDAR**

SENATE BILL NO. 303

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and to managers or managing members of limited liability companies, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

- MOVED CSSB 303(JUD) OUT OF COMMITTEE

SENATE BILL NO. 222

"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 CSSB 222(JUD) OUT OF COMMITTEE

SENATE BILL NO. 249

"An Act relating to official action by electronic transmission, to records, and to public records."

- HEARD AND HELD 4/5/10 meeting

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 386(FIN)

"An Act establishing a uniform format and procedure for citations for certain violations of state law; relating to the form, issuance, and disposition of citations for certain violations; relating to certain crimes and penalties for noncompliance with citations; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 292

"An Act relating to the registration and operation of pawnbrokers and to the exemption for pawnbrokers under the Alaska Small Loans Act; and providing for an effective date."

- MOVED SB 292(JUD) OUT OF COMMITTEE 4/5/10 meeting

**PREVIOUS COMMITTEE ACTION**

BILL: SB 303

SHORT TITLE: WORKERS' COMPENSATION AND CONTRACTORS

SPONSOR(S): LABOR & COMMERCE

03/08/10	(S)	READ THE FIRST TIME - REFERRALS
03/08/10	(S)	L&C, JUD
03/25/10	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/25/10	(S)	Heard & Held
03/25/10	(S)	MINUTE(L&C)
04/01/10	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/01/10	(S)	Moved SB 303 Out of Committee
04/01/10	(S)	MINUTE(L&C)
04/02/10	(S)	L&C RPT 3DP 1NR
04/02/10	(S)	DP: PASKVAN, DAVIS, THOMAS
04/02/10	(S)	NR: MEYER
04/05/10	(S)	JUD AT 11:00 AM BUTROVICH 205
04/05/10	(S)	CITATIONS
04/07/10	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 222

SHORT TITLE: SEX OFFENSES; OFFENDER REGIS.; SENTENCING

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	JUD, FIN
01/25/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/25/10	(S)	Heard & Held
01/25/10	(S)	MINUTE(JUD)

02/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/15/10 (S) Heard & Held  
 02/15/10 (S) MINUTE(JUD)  
 04/05/10 (S) JUD AT 11:00 AM BUTROVICH 205  
 04/05/10 (S) WORKERS' COMPENSATION AND CONTRACTORS  
 04/07/10 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 249

SHORT TITLE: PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS

SPONSOR(s): ELLIS

02/01/10 (S) READ THE FIRST TIME - REFERRALS  
 02/01/10 (S) STA, JUD  
 03/23/10 (S) STA RPT 5DP  
 03/23/10 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,  
 KOOKESH  
 03/23/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
 03/23/10 (S) Moved SB 249 Out of Committee  
 03/23/10 (S) MINUTE(STA)  
 03/31/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/31/10 (S) Heard & Held  
 03/31/10 (S) MINUTE(JUD)  
 04/02/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/02/10 (S) Heard & Held  
 04/02/10 (S) MINUTE(JUD)

BILL: HB 386

SHORT TITLE: CITATIONS

SPONSOR(s): HAWKER

02/23/10 (H) READ THE FIRST TIME - REFERRALS  
 02/23/10 (H) JUD, FIN  
 03/17/10 (H) JUD AT 1:00 PM CAPITOL 120  
 03/17/10 (H) Moved CSHB 386(JUD) Out of Committee  
 03/17/10 (H) MINUTE(JUD)  
 03/19/10 (H) JUD RPT CS(JUD) 1DP 6NR  
 03/19/10 (H) DP: GRUENBERG  
 03/19/10 (H) NR: LYNN, HERRON, DAHLSTROM, HOLMES,  
 GATTO, RAMRAS  
 03/29/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/29/10 (H) Moved CSHB 386(FIN) Out of Committee  
 03/29/10 (H) MINUTE(FIN)  
 03/30/10 (H) FIN RPT CS(FIN) 9DP 1NR  
 03/30/10 (H) DP: FAIRCLOUGH, N.FOSTER, THOMAS, GARA,  
 DOOGAN, JOULE, KELLY, STOLTZE, HAWKER  
 03/30/10 (H) NR: SALMON  
 03/31/10 (H) TRANSMITTED TO (S)

03/31/10 (H) VERSION: CSHB 386(FIN)  
04/01/10 (S) READ THE FIRST TIME - REFERRALS  
04/01/10 (S) JUD  
04/05/10 (S) JUD AT 11:00 AM BUTROVICH 205  
04/05/10 (S) Bills Previously Heard/Scheduled  
04/07/10 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 292

SHORT TITLE: PAWNBROKERS

SPONSOR(s): SENATOR(s) HUGGINS

02/24/10 (S) READ THE FIRST TIME - REFERRALS  
02/24/10 (S) L&C, JUD  
03/18/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/18/10 (S) Moved CSSB 292(L&C) Out of Committee  
03/18/10 (S) MINUTE(L&C)  
03/22/10 (S) L&C RPT CS 3DP NEW TITLE  
03/22/10 (S) DP: PASKVAN, DAVIS, BUNDE  
03/22/10 (S) FIN REFERRAL ADDED AFTER JUD  
03/29/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/29/10 (S) Heard & Held  
03/29/10 (S) MINUTE(JUD)  
04/02/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/02/10 (S) Heard & Held  
04/02/10 (S) MINUTE(JUD)  
04/06/10 (S) JUD RPT CS 2DP 1NR NEW TITLE  
04/06/10 (S) DP: FRENCH, WIELECHOWSKI  
04/06/10 (S) NR: COGHILL  
04/07/10 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

SENATOR JOE PASKVAN

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 303.

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 386.

JULIE LUCKY, staff

to Representative Hawker

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Explained provisions in HB 386.

KAT PETERSON, Lieutenant  
Division of Alaska State Troopers  
Department of Public Safety

**POSITION STATEMENT:** Provided information related to HB 386.

DAVID MR. BROWER, Assistant Attorney General  
Criminal Division  
Department of Law

**POSITION STATEMENT:** Provided supporting information related to HB 386 as a drafting attorney.

SUSAN MCLEAN, Director  
Criminal Division  
Department of Law  
Anchorage, AK

**POSITION STATEMENT:** Provided information related to SB 222.

DEREK DEGRAAF, Sergeant  
Alaska State Troopers  
Department of Public Safety

**POSITION STATEMENT:** Testified in support of SB 222 as currently amended.

#### **ACTION NARRATIVE**

[8:34:35 AM](#)

**CHAIR HOLLIS FRENCH** reconvened the 4/5/10 Senate Judiciary Standing Committee meeting at 8:34 a.m. on 4/7/10. Present at the call to order were Senators Coghill, Wielechowski, McGuire and French.

#### **SB 303-WORKERS' COMPENSATION AND CONTRACTORS**

[8:35:01 AM](#)

**CHAIR FRENCH** announced the consideration of SB 303 and noted that there was a committee substitute (CS) for the committee to consider. Public testimony was taken and closed at the previous hearing.

Senator McGuire joined the committee.

**SENATOR WIELECHOWSKI** moved to adopt the work draft CS for SB 303, labeled 26-LS1089\S, as the working document. There being no objection, version S was before the committee.

SENATOR JOE PASKVAN recapped that SB 303 is designed to restore the structure of the workers' compensation statutes to the policy that was intended at statehood, which is that "if you break it you pay for it." That policy worked well until 2004 when it was changed to give immunity to project owners, general contractors, or others who, even with criminal negligence, injured or killed an employee of the subcontractor. "I would submit that that's bad public policy," he stated.

SENATOR PASKVAN related that Sections 1, 2, and 4 contain changes that would re-implement the previous, more protective law. Section 3 adds new subsections [AS 23.30.045(g) and (h)]. Subsection (g) says that a subcontractor who is hired as an independent contractor by the contractor and who has no employees during the term of the contract is liable for and shall secure the payment of compensation under the workers' compensation statute and shall produce a certificate of workers' compensation insurance coverage for the project. Subsection (h) says that if a subcontractor fails to do that and it results in a premium that is billed to the contractor. The subcontractor is liable for that additional premium plus any associated penalties. This is good social policy in the workers' compensation context, he said.

[8:37:58 AM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 303, version S, from committee with individual recommendations and attached fiscal note(s).

SENATOR COGHILL objected to make an observation. He said he's beginning to understand the need for this bill, but he wants to talk to the sponsor about the requirement for an individual subcontractor to buy the insurance because it looks like it's an economic levelizer rather than a compensation problem.

He related that what appealed initially was the fairness standard and the idea that if you break it you should fix it. His understanding is that now the owner of a project is subject to the workers' compensation laws, which is not sufficient in some circumstances. This bill makes the owner liable, but it leaves the main contractor under workers' compensation and without having to bear the same responsibility as the owner so the fairness standard only goes part way, he said. "I don't understand why we're not going the whole way, but I don't know enough about the system to put an amendment in to say we should do that because then the whole reason for workers' comp kind of starts dissipating," he said.

[8:40:08 AM](#)

He said the testimony from Tesoro indicated that they would become significantly liable while some contractors who they work with wouldn't bear that same liability so it's not clear that this will reach the fairness that the sponsor sought. Nevertheless, I'm willing to continue the dialog so I'll therefore remove my objection, he concluded.

CHAIR FRENCH announced that without objection, CSSB 303(JUD) moved from the Senate Judiciary Standing Committee.

### **HB 386-CITATIONS**

[8:41:08 AM](#)

CHAIR FRENCH announced the consideration of HB 386. [CSHB 386(FIN) was before the committee.]

REPRESENTATIVE MIKE HAWKER, sponsor of HB 386, said he introduced the bill at the request of the Department of Public Safety (DPS). It empowers DPS to prescribe a uniform format for citations as well as a standardized process for people to deal with the citations they have received. DPS believes that this would reduce costs and increase operating efficiency, particularly as the use of electronic technology increases. Although the bill addresses a lot of different sections of statute, many of the changes are conforming.

[8:43:17 AM](#)

JULIE LUCKY, staff to Representative Mike Hawker, said she would go through the prepared overview that is in the packets, which addresses 10 of the 65 sections in the bill. Section 21 sets out the requirements for the standard citation format. It requires the commissioner of DPS to prescribe a standard format and to adopt regulations to do so. It also sets out, in a new section of law, certain things that need to happen with citations.

Section 22 has technical changes to put the language in active voice and on page 6, line 7, the phrase "has reasonable and probable cause to believe" has been replaced with the words "reasonably believes." This new language mirrors other places in statute where somebody has to make a judgment, but it's not a probable cause where there is an actual violation.

CHAIR FRENCH opined that it's a good change. Joining "reasonable cause" and "probable cause" in the same sentence is confusing because they are two different standards. He asked if they

learned in other committees that "reasonable belief" is probably an appropriate field-screening standard for an officer.

MS. LUCKY answered yes, and it seemed like a reasonable change.

Section 23 removes a provision from AS 12.25.190 that says a person can request a hearing that is earlier than five days after a citation was issued. She related her understanding that if someone did need an earlier hearing, there is still a method to request that. This section also deletes language that refers to deadlines, which is no longer needed because of the approval of standard deadlines, she said.

Section 24 is included in the bill because of the Voting Safety Act. It looks very similar to Section 23, but it has an effective date. If the Voting Safety Act sunsets, this will become law, she said.

[8:47:57 AM](#)

Section 25 amends AS 12.25.195(a). It adds the clarifying language, "does not contest the citation" and inserts a 30-day deadline for paying the fine for a scheduled offense.

Section 26 addresses the form for citations. She pointed out that there is a requirement that the citation be in writing. Most of the other changes in this section are technical in nature. Section 27 amends AS 12.25.210(a) and talks about record keeping requirements for peace officers. It says that if the issuing agency fails to file the citation in a timely fashion, that is not a basis for dismissal of the citation.

Sections 28 and 29 make technical changes to include other agencies, not just peace officers in these statutes.

[8:51:00 AM](#)

Sections 30 and 31 are the penalty sections that outline what happens to someone who doesn't pay their bail or follow the requirements outlined by the citation. She noted that concern had been expressed that this might make some of these offenses a higher misdemeanor crime, but that is not the case. "Department of Law assures me that we are not making a misdemeanor where there wasn't one before," she said. Section 30 amends AS 12.25.230(a) and specifically says that a person who fails to appear to answer their citation is guilty of a class A misdemeanor. Section 31 repeals and reenacts AS 12.25.230(b) and specifically says that a person who fails to appear to pay their

fine or to appear in response to their citation for a scheduled offense is guilty of a class B misdemeanor.

MS. LUCKY said the aforementioned sections contain the "meat" of the bill. "The majority of the bill is just conforming to those changes and deadlines."

CHAIR FRENCH summarized that Sections 30 and 31 provide penalties for someone who essentially does not deal with the citation they were issued.

MS. LUCKY agreed.

CHAIR FRENCH asked her to give examples of scheduled and unscheduled offenses.

MS. LUCKY explained that a scheduled offense is an offense for which there is a scheduled fine. For example, if you park in the wrong place the fine is X dollars. An unscheduled offense is an offense that does not have a schedule of fines.

CHAIR FRENCH asked if speeding is an unscheduled offense.

MS. LUCKY deferred to the Department of Public Safety.

8:54:01 AM

KAT PETERSON, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), informed the committee that speeding is a scheduled offense; a bale amount can be provided on the citation itself. Unscheduled offenses are those that require a mandatory court appearance to find out the bail. These include minor consuming, minor operating a vehicle after consuming alcohol, and tampering with official traffic control devices.

CHAIR FRENCH asked about possession of marijuana.

LIEUTENANT PETERSON replied that is a criminal offence. The unscheduled offenses she mentioned are mandatory infractions and there aren't a lot of those still on the books that don't have bail on the schedule until you get into the criminal offenses like driving while your license is suspended. She added that speeding over 20 miles per hour in a school zone is a mandatory infraction that requires a court appearance.

CHAIR FRENCH recapped that if a person doesn't show up to pay a fine for a scheduled offense, they are guilty of a class B

misdemeanor. Those offenses would include speeding or driving with a headlight or taillight out. But if a person doesn't show up for a minor consuming, minor operating a vehicle after consuming alcohol, or tampering with an official traffic control device, the person is guilty of a class A misdemeanor.

LIEUTENANT PETERSON agreed.

[8:56:44 AM](#)

SENATOR COGHILL recalled a deliberate policy call that was made in the House that gave fire departments the ability to issue a citation for CO<sub>2</sub> emissions, but no penalty was attached. Noting that the Fairbanks Northstar Borough is currently debating whether or not particulates from a furnace should be an offense and if it should have a class A misdemeanor attached, he questioned how the broadened authority under this bill would reach into the police or some local area and affect a local ordinance.

MS. LUCKY said the bill does contain the language, "or specifically provided by law" but she is unsure whether or not that would include an ordinance. She offered to check with legislative legal to find out.

SENATOR COGHILL said he wouldn't hold the bill up but he knows that various communities are for a variety of reasons going to make these policy calls to issue citations. What they're really saying is they want to be able to apply pressure to change certain behaviors, but they don't want to assess a fine.

MS. LUCKY said she doesn't believe it would be an issue because a fine of zero is allowed, but she would double check.

[9:00:04 AM](#)

CHAIR FRENCH asked Lieutenant Peterson what the maximum penalty is for a minor in possession or consuming alcohol for the first or second offense.

LIEUTENANT PETERSON explained that it's an infraction for the first and second offense. The maximum penalty is a \$300 fine, but most people receive a \$100 fine.

CHAIR FRENCH asked if there is any mandatory community service.

LIEUTENANT PETERSON replied she hasn't seen that.

CHAIR FRENCH said he bought this up because he's puzzling over whether or not this ratchets up the penalty too much. If this were to become law, someone who is under age 21 and misses their court hearing would face a year in jail instead of owing a \$300 fine. That's the same penalty that's applied to somebody who is charge with domestic violence or DWI and misses their court hearing. People need to deal with their citations, but generally failure to appear is penalized at the same level as the charge, he said. If the charge is a misdemeanor and you miss court it's a misdemeanor and if the charge is a felony and you miss court it's a felony. Under this bill, people who miss court on a speeding ticket would face jail time.

LIEUTENANT PETERSON said most misdemeanor charges result in a fine rather than jail time. She also pointed out that most of the behaviors that are on a scheduled fine are processed through the permanent fund dividend (PFD) and they aren't changed to a class A or class B misdemeanor.

CHAIR FRENCH asked if she's saying that if you miss court you'll be found guilty and assessed a fine that will be garnished from your PFD, but you probably won't get charged with failure to appear.

LIEUTENANT PETERSON replied that's what's currently happening.

9:03:04 AM

SENATOR WIELECHOWSKI asked if there had been and discussion about removing the language "has reasonable and probable cause to believe" from page 6, lines 7-8.

CHAIR FRENCH explained that it eliminates the confusion of joining the standard of reasonable cause and the standard of probable cause in the same sentence. The phrase "reasonable beliefs" replaces that language and the Department of Law may want to talk about why that is significant, he said.

DAVID BROWER, Assistant Attorney General, Criminal Division, Department of Law, addressing the questions about changing AS 12.25.230(a) to a class A misdemeanor and AS 12.25.230(b) to a class B misdemeanor, clarified that there are several misdemeanors that are specific and AS 12.25.230 was a specific misdemeanor. You could get up to a year in jail under subsections (a) and (b) and a fine of \$1000. That wasn't an A misdemeanor because an A misdemeanor has a higher fine, he said.

CHAIR FRENCH said it's called a special class misdemeanor.

MR. BROWER agreed. He explained that failure to appear is an unclassified misdemeanor because it doesn't have a particular fine. It's neither an A misdemeanor nor a B misdemeanor so the proposed change in .230 to an A misdemeanor in subsection (a) and a B misdemeanor in subsection (b) actually lowers the penalty. Current law says that someone who has a bailable offense can pay their fine, but if and they don't appear the citation is converted into a summons. That's impossible, he said, because a summons has to indicate the crime for which the person is summoned for and a citation wouldn't have that because failing to appear is a different crime. But a person wouldn't automatically get charged with failure to appear, because that has to come from the prosecutor.

Addressing the question about reasonable cause and probable cause, he explained that in the law there are terms of art like "probable cause" and "reasonable suspicion" and sometimes they get mixed up in statute and have to be changed. He provided an example. In this statute, where there's reasonable cause and probable cause, it's giving the police the discretion to arrest someone, but the primary goal isn't to make an arrest unless the officer reasonably believes that the person is a danger or has probable cause to believe the person is a danger. He continued to say:

If you have probable cause to believe a crime was committed, you can look at certain elements and see if those elements are present. If you have probable cause to believe someone is a danger, I think it turns on a reasonable belief because there is no crime with danger and what would probable cause be. I think it was too confusing, but I don't think that the change will have any practical effect.

SENATOR WIELECHOWSKI said he thought he heard him say that reasonable cause is a lower standard than probable cause.

MR. BROWER replied reasonable cause isn't really a standard, but reasonably believes would be a standard.

CHAIR FRENCH said reasonable suspicion is the field context for a pat and frisk.

MR. BROWER said reasonable suspicion and probable cause are terms that are used for police and courts to determine whether an officer had a reasonable suspicion to believe that some type

of crime was happening. Probable cause requires that the elements of the crime are actually met by certain facts that the officer knows. In this case, the officer has probable cause to cite the person for the violation and can make an arrest if the person refuses to take the citation or refuses to identify him or herself. The officer can also make an arrest if he or she makes the determination that the person is a danger.

SENATOR WIELECHOWSKI said it seems that this makes it easier for officers to arrest someone.

MR. BROWER replied that's not the case because the officer already has the authority to arrest someone in that situation because they have probable cause.

SENATOR WIELECHOWSKI reread the language and agreed that in this situation it's purely the officer's discretion to either issue the citation or take the person to the court.

MR. BROWER said that's right and the language in the section that had reasonable cause and probable cause was essentially taking that discretion away and requiring the officer to arrest someone.

[9:09:58 AM](#)

CHAIR FRENCH asked Ms. Lucky where the bill goes after it leaves this committee.

MS. LUCKY said this is the last committee of referral. She informed the committee that this phrase doesn't appear anywhere else in statute, but AS 47.12.245 However, there is another section of statute 47.12.245 regarding delinquent minors talks about when a peace officer should and should not make an arrest. In that statute, a peace officer can make an arrest anytime he or she reasonably believes the minor is a fugitive from justice or has probable cause to believe the minor has violated a condition of the minor's release or probation. This illustrates the point DOL is talking about where you have probable cause that a violation has occurred; where you have elements of a crime or a reasonable belief and the peace officer has to make a determination about the state of affairs or state of mind of the person they are citing.

CHAIR FRENCH announced he would hold HB 386 for further consideration.

**SB 222-SEX OFFENSES; OFFENDER REGIS.; SENTENCING**

9:11:40 AM

CHAIR FRENCH announced the consideration of SB 222.

At ease from 9:11 a.m. to 9:13 a.m.

SB 222 was heard previously and a committee substitute (CS), labeled 26-GS2859\E, was adopted during the April 5, 2010 hearing. Chair French noted that he has three amendments that are the result of negotiations between his office and the Department of Law.

9:13:54 AM

CHAIR FRENCH moved Amendment 1, labeled 26-GS2859\E.1, and objected to provide an explanation.

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR FRENCH  
CSSB 222(JUD), Draft Version "E"

Page 8, line 11:

Delete "associated with the account;"

Insert "and physical location associated with the account; and"

Page 8, lines 12 - 13:

Delete all material.

Re-number the following paragraphs accordingly.

Page 8, line 15:

Delete ";"

Insert "."

Page 8, lines 16 - 19:

Delete all material.

CHAIR FRENCH explained that the amendment deals with the new provision that gives subpoena power to the attorney general in cases involving the use of an Internet service account in the exploitation of children. Previous testimony indicated that these administrative subpoenas might be challenged because of the type of personal information they would collect. He read the section with the amendment included and asked Ms. McLean if it comports with her understanding of the amendment.

SUSAN MCLEAN, Director, Criminal Division, Department of Law (DOL), said yes.

CHAIR FRENCH asked if the Department of Law supports the amendment.

MS. MCLEAN answered yes.

CHAIR FRENCH removed his objection to Amendment 1.

SENATOR MCGUIRE asked Ms. McLean to provide the thought for deleting a requirement to disclose "local and long distance telephone connection records, including records of session times and durations for the account."

MS. MCLEAN explained that DOL asked the Office of Special Prosecutions and Appeals for an opinion on where within the realm of personal privacy DOL could go without running afoul of the statute or the Alaska Constitution. Their opinion was that local and long distance telephone records, including records of sessions and times and durations for the account, would include unrelated personal telephone calls and that would present difficulties if someone challenged on that ground. It was overly broad.

[9:18:03 AM](#)

SENATOR MCGUIRE said she appreciates the prosecution's opinion about what they can support, but she'd also like to hear from the investigative unit to know if it might be a missing link not to be able to associate the length of time someone is on the Internet with a particular connection.

CHAIR FRENCH reminded the committee that this is just the first step. This relates to the administrative subpoena that lets the officer identify the suspect. A search warrant would have to be obtained subsequent to that. He asked Sergeant DeGraaf to provide his perspective.

DEREK DEGRAAF, Sergeant, Alaska State Troopers, Department of Public Safety, said not having the record of the phone numbers associated with the account won't affect their ability to do their job. The primary information that they want is the name and physical address that the IP address comes back to. Obtaining a phone number or information about bank accounts is secondary.

SERGEANT DEGRAAF explained that having those other records would help determine who else may or may not be using the computer. this would be helpful because they have to be able to put a person behind the keyboard. Those secondary records can help provide clarification, but if removing those items helps bring everybody to the same page we'd go along with that and support the bill with those items removed, he said.

[9:21:29 AM](#)

SENATOR WIELECHOWSKI pointed out that this section only applies to the subpoena power of the attorney general and many people would be rightly concerned about giving the attorney general vast power to go ahead without any judicial review. An attorney general is free to ask a court to issue a warrant for this information, but to give the attorney general unfettered subpoena power to get this information is what this amendment is directed at. I support the amendment, he concluded.

CHAIR FRENCH said it's a balance because the attorney general has to have a reasonable cause to believe that the Internet service account has been used in the exploitation or attempted exploitation of children. This is a good place to start and see what kind of challenges we get. We'll stand those challenges, we'll win them and go from there, he said.

Finding no further objection, he announced that Amendment 1 is adopted.

[9:22:59 AM](#)

SENATOR FRENCH moved to adopt Amendment 2, labeled 26-GS2859\E.2, and objected for discussion purposes.

#### AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR FRENCH  
CSSB 222(JUD), Draft Version "E"

Page 6, following line 30:

Insert a new bill section to read:

"\* **Sec. 16.** AS 12.62.130 is amended to read:

**Sec. 12.62.130. Reporting of uniform crime information.** A criminal justice agency shall submit to the department, at the time, in the manner, and in the form specified by the department, data regarding crimes committed within that agency's jurisdiction. **At a minimum, the department shall require a criminal justice agency to report each felony sex offense**

committed in the agency's jurisdiction. The department may withhold grant funding to a criminal justice agency that fails to report data as required by this section. The department shall compile, and provide to the governor and the attorney general, an annual report concerning the number and nature of criminal offenses committed, the disposition of the offenses, and any other data the commissioner finds appropriate relating to the method, frequency, cause, and prevention of crime. In this section, "sex offense" has the meaning given in AS 12.63.100."

Renumber the following bill sections accordingly.

Page 9, lines 6 - 11:  
Delete all material.

Renumber the following bill sections accordingly.

Page 9, line 31:  
Delete "Sections 17 and 19"  
Insert "Sections 18 and 19"

CHAIR FRENCH said this provision came about as a result of the hearing last summer regarding reporting by smaller police departments across the state of felony sex offenses committed in their jurisdiction. Colonel Holloway reported that DPS wasn't getting much data and therefore didn't know the actual level of sex offense activity in these smaller areas. This provision corrects that. He noted that his aide passed him a note that said that this is a rewrite by the Department of Public Safety of that earlier provision.

MS. MCLEAN said this rewrite moves the proposed mechanism for insuring compliance from Title 44 to Title 12. The reason for this is that AS 12.62.130 applies to what kind of criminal justice information DPS is required to collect and it mandates that the local agencies comply with the department's request. This also puts the onus on local agencies to comply when they're asked and it requires the sex offense language to be mandatory. If the local agencies don't comply, they may lose grant funding that they get through DPS.

CHAIR FRENCH removed his objection to Amendment 2. Finding no further objection, he announced that Amendment 1 is adopted.

[9:25:02 AM](#)

SENATOR FRENCH moved to adopt Amendment 3, labeled 26-GS2859\E.3, and objected for discussion purposes.

**AMENDMENT 3**

OFFERED IN THE SENATE SENATOR FRENCH  
CSSB 222(JUD), Draft Version "E"

Page 1, line 2, following "pornography,":  
Insert "**failure to register as a sex offender,**"

Page 2, following line 11:  
Insert a new bill section to read:  
"**\* Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

**Sec. 11.56.840. Failure to register as a sex offender or child kidnapper in the second degree.**

(a) A person commits the crime of failure to register as a sex offender or child kidnapper in the second degree if the person

(1) is required to register under AS 12.63.010;

(2) knows that the person is required to register under AS 12.63.010; and

(3) with criminal negligence fails to

(A) register;

(B) file written notice of

(i) change of residence;

(ii) change of mailing address;

(iii) establishment of an electronic or messaging address or any change to an electronic or messaging address; or

(iv) establishment of an Internet communication identifier or any change to an Internet communication identifier;

(C) file the annual or quarterly written verification; or

(D) supply accurate and complete information required to be submitted under this paragraph.

(b) In a prosecution for failure to register as a sex offender in the second degree under (a) of this section, it is an affirmative defense that

(1) unforeseeable circumstances, outside the control of the person, prevented the person from registering under (a)(3)(A) of this section or filing or supplying the written notices, verification, and other information required under (a)(3)(B) - (D) of this section; and

(2) the person contacted the Department of Public Safety orally and in writing immediately upon being able to perform the requirements described in this section.

(c) Failure to register as a sex offender or child kidnapper in the second degree is a class A misdemeanor."

Renumber the following bill sections accordingly.

Page 9, line 29:

Delete "Sections 1 - 16"

Insert "Sections 1 - 17"

Page 9, line 31:

Delete "Sections 17 and 19"

Insert "Sections 18 and 20"

CHAIR FRENCH said this amendment relates to what Ms. McLean has repeatedly described as "the former Section 3." The CS removed that section and this amendment puts it back in the bill. It pertains to the mental state that the Department of Law has to prove in order to convict a person of failure to register as a sex offender. He related that after Ms. McLean testified yesterday, he read the Moffitt case and concurs with her view that removing that section would leave the state in a nearly impossible position when trying to prove failure to appear under the Moffitt decision.

He said he continues to believe that there has to be some mental element, but this puts it as low as possible at criminal negligence. This leaves DOL in the best position while still maintaining some mental element regarding what they have to prove about what's in the mind of the offender. He noted that the same standard would be used in the failure to appear provision of the bail bill.

MS. MCLEAN said DOL asked for this because it's very helpful to have the Legislature specify mental states. She then clarified that although she talked about the Moffitt case during the

previous hearing, the most recent decision is Solomon v. State. That case was decided March 26 and it clearly said that the mental state of negligence survives constitutional challenges.

SENATOR WIELECHOWSKI asked what the current standard is because he thought it was a strict liability standard.

MS. MCLEAN said this was a compromise. She pointed out that DOL has always felt that they could defend a strict liability standard with regard to failure to register as a sex offender and has always recognized that the mental state that they had to prove is that the person knew that they were required to register as a sex offender. This means showing some sort of documentation that proves that the person had notice of their duty to register, and having that notice they didn't do so. They felt that was sufficient and there has never been a challenge to sex offender registration on those grounds, she said. But given the Moffitt decision, they're trying to have foresight about possible challenges and they're saying that it exists because there is no specified mental state in either of those [failure to appear] statutes.

[9:28:05 AM](#)

CHAIR FRENCH clarified that Moffitt pertains to failure to appear in court, but failure to appear and failure to register are similar ideas.

SENATOR WIELECHOWSKI asked for a brief explanation of the standard that the Moffitt court held.

MS. MCLEAN said it's an interesting intellectual pursuit because the Alaska statutes say that if a statute doesn't specify a mental state, the general rule is that the mental state is knowing as to circumstances and reckless as to conduct. Up until the Moffitt decision, DOL's understanding of failure to appear was that the state had to prove that the person knew that they had to appear and the state would do that by paperwork the person signed or recordings of the judge telling the person they had to appear. DOL believed that they satisfied the reckless mental state by showing that the person was aware of the court date and disregarded it. The Moffitt decision was a surprise because it said the state had to disprove the excuses a person might have for not appearing and that's not possible.

CHAIR FRENCH summarized that the Moffitt decision basically said that the state had to prove that at some date after the

defendant walked out of court he or she formed a decision not to go to court. "That just struck me as being impossible," he said.

SENATOR WIELECHOWSKI questioned what would be wrong with the strict liability standard and if it would violate Moffitt to say that a person who is court ordered to register as a sex offender and does not do so is guilty of failing to register, regardless of any reason or excuse.

CHAIR FRENCH said DOL likes that, but he was uncomfortable with it because it leaves a little room - at criminal negligence or below - for a series of horrific incidents that would leave a person unable to register.

9:30:40 AM

SENATOR WIELECHOWSKI asked for the technical definition of criminal negligence.

MS. MCLEAN provided the following:

The technical definition of criminal negligence is the person was unaware of a fact of which the person would have been aware and that the failure to be aware of it was a gross deviation from the standard of conduct that a reasonable person would observe in the situation. And, if the reason you're not aware is because you were intoxicated, you're aware.

SENATOR WIELECHOWSKI posed a hypothetical situation where a person moved to a new community and forgot to register. Noting that they're guilty under current law of strict liability, he asked if that's criminal negligence.

MS. MCLEAN said no, that's strict liability. She reiterated that strict liability is what DOL has been proving and that hasn't been challenged, but after the Moffitt decision they became concerned and wanted to codify what they believe the law is and that's strict liability. This amendment was a compromise, she said.

SENATOR WIELECHOWSKI asked if it would be criminal negligence if a person were to move to another community and forget to register.

MS. MCLEAN replied she believes it's clearly criminal negligence, but just forgetting is an excuse under the Moffitt

standard and it's an excuse the state has to disprove as part of its case.

SENATOR WIELECHOWSKI expressed discomfort with the amendment.

CHAIR FRENCH said he believes that failure to register as a sex offender is something that should be punished, but he's a little uncomfortable with strict liability. That being said, he would accept the will of the committee.

[9:33:09 AM](#)

SENATOR COGHILL asked how strict liability would play out practically. He observed that Alaska has the highest standard for many laws, but there's discretion on application.

CHAIR FRENCH acknowledged that the Department of Law always has discretion not to bring a charge, but strict liability basically leaves you with absolutely no excuse whatsoever. It doesn't matter if you've been in a debilitating car accident or your mother was shot last night, under strict liability you're guilty.

MS. MCLEAN pointed out that Section 3 in the original bill provided that the excuse was an affirmative defense. That is that the court has to listen to the defense and the jury gets to decide. Strict liability says that you lose that defense and the jury doesn't get to consider it.

She said that in the original bill and before DOL wrote in the negligent mental state in this amendment, they said you have to prove a mental state with regard to failure to register. The mental state you have to prove is that the person knew they had to register. We accept that burden; it's the same burden as beyond a reasonable doubt, she said. If the person has an excuse, their affirmative defense is to present their excuses and then the burden shifts back to the state to disprove beyond a reasonable doubt that the excuses are valid. That's how we would want to do it and Senator French has another idea, she said.

SENATOR WIELECHOWSKI said he needs to read Moffitt a little more, but he's not comfortable with the amendment at this time.

At ease from 9:36 a.m. to 9:37 a.m.

[9:37:10 AM](#)

CHAIR FRENCH withdrew Amendment 3.

At ease from 9:37 a.m. to 9:38 a.m.

[9:38:59 AM](#)

CHAIR FRENCH moved to adopt conceptual Amendment 4.

**CONCEPTUAL AMENDMENT 4**

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 222(JUD), Draft Version "E"

Reinsert Section 3 of SB 222, Version "A"

Insert a new section that would be parallel to Section 21 as it appears in CSHB 298(JUD), Version "R" that reads as follows:

The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental state required to be proven by the prosecution is the "knowing" requirement in paragraph (2) of that subsection. No other culpable mental state needs to be proven for the other elements of that offense.

CHAIR FRENCH announced that without objection, conceptual Amendment 4 was adopted.

[9:40:36 AM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 222, version E, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 222(JUD) moved from the Senate Judiciary Standing Committee.

[9:40:59 AM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 9:40 a.m.