

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 11, 2011

1:34 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

SENATE BILL NO. 89

"An Act clarifying that a legislator or legislative employee is allowed to accept certain charity events; amending disclosure deadlines under the Legislative Ethics Act; relating compassionate gifts; allowing legislators and legislative employees to use legislative to requests to refrain from disclosure under the Legislative Ethics Act; and establishing mailing lists for campaign purposes and nonlegislative purposes; allowing legislators a seat for an alternate public member on the Select Committee on Legislative Ethics and and legislative employees who are representing persons in an administrative hearing to clarifying the requirements related to participation by alternate members in the contact hearing officers and attempt to influence the outcome of the hearing if they are proceedings of the committee."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 86

"An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending

Rule 9, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 127(FIN)

"An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, and misconduct involving confidential information; relating to probation; relating to the subpoena power of the attorney general in cases involving use of an Internet service account; relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 86

SHORT TITLE: PROTECTION OF VULNERABLE ADULTS/MINORS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/09/11	(S)	READ THE FIRST TIME - REFERRALS
02/09/11	(S)	JUD, FIN
02/21/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/21/11	(S)	Heard & Held
02/21/11	(S)	MINUTE(JUD)
03/18/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/11	(S)	Heard & Held
03/18/11	(S)	MINUTE(JUD)
03/30/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/30/11	(S)	Scheduled But Not Heard
04/06/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/06/11	(S)	Heard & Held
04/06/11	(S)	MINUTE(JUD)
04/11/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 127

SHORT TITLE: OMNIBUS CRIME BILL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/11 (H) READ THE FIRST TIME - REFERRALS
01/26/11 (H) JUD, FIN
02/07/11 (H) JUD AT 1:00 PM CAPITOL 120
02/07/11 (H) Heard & Held
02/07/11 (H) MINUTE(JUD)
02/09/11 (H) JUD AT 1:00 PM CAPITOL 120
02/09/11 (H) Heard & Held
02/09/11 (H) MINUTE(JUD)
02/11/11 (H) JUD AT 1:00 PM CAPITOL 120
02/11/11 (H) Scheduled But Not Heard
02/23/11 (H) JUD AT 1:00 PM CAPITOL 120
02/23/11 (H) Heard & Held
02/23/11 (H) MINUTE(JUD)
02/25/11 (H) JUD AT 1:00 PM CAPITOL 120
02/25/11 (H) Scheduled But Not Heard
02/28/11 (H) JUD AT 1:00 PM CAPITOL 120
02/28/11 (H) Heard & Held; Assigned to a
Subcommittee
02/28/11 (H) MINUTE(JUD)
03/04/11 (H) JUD AT 1:00 PM CAPITOL 120
03/04/11 (H) -- MEETING CANCELED --
03/08/11 (H) JUD AT 11:00 AM CAPITOL 120
03/08/11 (H) Work Session on CS for above Bill
03/11/11 (H) JUD AT 1:00 PM CAPITOL 120
03/11/11 (H) Moved CSHB 127(JUD) Out of Committee
03/11/11 (H) MINUTE(JUD)
03/14/11 (H) JUD RPT CS(JUD) NT 5DP 1NR
03/14/11 (H) DP: LYNN, GRUENBERG, THOMPSON, PRUITT,
GATTO
03/14/11 (H) NR: KELLER
03/22/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/22/11 (H) Heard & Held
03/22/11 (H) MINUTE(FIN)
03/31/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/31/11 (H) Heard & Held
03/31/11 (H) MINUTE(FIN)
04/01/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/01/11 (H) Moved CSHB 127(FIN) Out of Committee
04/01/11 (H) MINUTE(FIN)
04/04/11 (H) FIN RPT CS(FIN) NT 7DP
04/04/11 (H) DP: FAIRCLOUGH, T.WILSON, HAWKER,
COSTELLO, EDGMON, STOLTZE, THOMAS
04/07/11 (H) TRANSMITTED TO (S)
04/07/11 (H) VERSION: CSHB 127(FIN)
04/08/11 (S) READ THE FIRST TIME - REFERRALS
04/08/11 (S) JUD, FIN
04/11/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Civil Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Provided information on SB 86, version X and delivered a sectional analysis of HB 127.

ELIZABETH RUSSO, Supervising Attorney
Public Guardian Section
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 86, version X.

SCOTT STERLING, Supervising Attorney
Elder Fraud and Assistance
Department of Administration (DOA)
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 86, version X.

KELLY HENRIKSEN, Assistant Attorney General
Civil Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Suggested an amendment to SB 86, version X.

SERGEANT DEREK DEGRAAF, Supervisor
Cyber Crimes Investigative Unit
Alaska Bureau of Investigation
Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, AK

POSITION STATEMENT: Testified in support of HB 127.

ACTION NARRATIVE

[1:34:22 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Senators Coghill, Paskvan, Wielechowski, and French were present at the call to order.

SB 86-PROTECTION OF VULNERABLE ADULTS/MINORS

[1:34:46 PM](#)

CHAIR FRENCH announced the consideration of SB 86 and asked for a motion to adopt the new work draft committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt CS for SB 86, version 27-GS1722\X, as the working document.

[1:35:03 PM](#)

CHAIR FRENCH objected for the purpose of an explanation. He directed attention to a memorandum from his office, which outlined the basic changes between the previous version B and the current version X, and noted that each change was carefully examined at the last hearing. First, the CS clarifies the references to the three types of protective orders: 1) ex parte, 2) six-month, and 3) permanent. Some of the language in [Sec. 13.26.209] was redrafted to correspond to similar provisions for modifications in the domestic violence [protective order] statutes. The second change removed the seemingly redundant phrase, "at the earliest opportunity," from the reporting requirements [in AS 47.24.010(e)], because there is a clear 24-hour deadline for [police officers or village public safety officers to notify the department] when a report of harm is received. It's a potentially chargeable offense for police officers who fail to do this. Finally, the CS clarifies that the September effective date applies only to Sections 16 and 20 of the bill.

CHAIR FRENCH removed his objection and announced that without further objection, version X was before the committee. He noted that Elizabeth Russo and Scott Sterling, with the Office of Public Advocacy, and Brenda Mahlatini, with Adult Protective Services, were available to provide information and answer questions.

[1:36:42 PM](#)

ELIZABETH RUSSO, Supervising Attorney, Public Guardian Section, Office of Public Advocacy (OPA), Department of Administration (DOA), stated that SB 86 would be a great help to their clients and people who would become their clients.

[1:37:43 PM](#)

SCOTT STERLING, Supervising Attorney, Elder Fraud and Assistance, Department of Administration (DOA), stated support for the changes reflected in version X, CS for SB 86.

CHAIR FRENCH closed public testimony and announced that further testimony would be by invitation. He asked Ms. Henriksen to discuss the remaining housekeeping issue.

[1:38:24 PM](#)

KELLY HENRIKSEN, Assistant Attorney General, Civil Division, Department of Law (DOL) informed the committee that she represents Health and Social Services (DHSS). Directing attention to the span site on page 6, line 11, she suggested that it would avoid conflict to narrow the citation to include just the new protective order rules, Sec. 13.26.207 - 209. Including the existing AS 13.26.165 would cause confusion because it relates to protective orders for conservatorships, she said.

CHAIR FRENCH recapped the suggestion and noted that the span site appears in a number of other locations after the initial reference on page 6, line 11.

[1:40:27 PM](#)

CHAIR FRENCH offered Conceptual Amendment 1.

Replace the span site citation AS 13.26.165 - 13.26.209 with AS 13.26.207 - 13.26.209 in conformity with the discussion about referring to ex parte, six-month and permanent protective orders.

SENATOR WIELECHOWSKI objected. He noted that page 6, line 16, refers to AS 13.26.185, which is outside the span site. That may or may not be an issue.

MS. HENRIKSEN said that particular provision deals with notice, and she isn't suggesting a change to that citation.

SENATOR WIELECHOWSKI noted additional references to AS 13.26.165 on page 7, including a reference in the definitions section.

CHAIR FRENCH asked Ms. Henriksen if she intended to change the reference on page 7, line 16.

MS. HENRIKSEN answered yes, and added that she would suggest a change anywhere it occurs in AS 13.26.209.

SENATOR WIELECHOWSKI pointed out that the same issue occurs on page 8, line 16, and page 8, line 23.

CHAIR FRENCH asked Ms. Henriksen if she was seeking to change those references.

MS. HENRIKSEN answered yes.

[1:42:49 PM](#)

SENATOR PASKVAN referenced page 8, line 16 that talks about a central registry, and asked if she wanted the Department of Public Safety (DPS) to maintain a central registry of protective orders for any statutes between AS 13.26.165 and 207.

MS. HENRIKSEN answered no.

SENATOR FRENCH cited eight references to AS 13.26.165 on page 6, lines 1 and 31; page 7, lines 3, 4, 8, 16; page 8, lines 16 and 23 and noted that there were potentially others.

[1:43:46 PM](#)

SENATOR WIELECHOWSKI pointed out an additional reference on page 2, lines 18 and 23.

CHAIR FRENCH observed that there were at least 10 references, and potentially more, for the drafter to change.

SENATOR WIELECHOWSKI asked if these deletions would be a simple drafting issue or a substantive change.

MS. HENRIKSEN replied the change is substantive in effect, because it removes substantive provisions from applying to AS 13.26.165.

SENATOR COGHILL noted that the definition of "protective services" includes a reference to AS 13.26.165 under AS 47.24.900(11)(E) on page 19. He asked if the intention was to remove 165 from the petition for protective orders under that definition.

MS. HENRIKSEN said no; Sec. 47.24 deals with the protection of vulnerable adults, and is different than a protective order under the conservatorship statutes.

SENATOR COGHILL pointed out that it can't be a bill-wide amendment, because Title 18 and Title 47 are different than Title 11 in that regard.

SENATOR PASKVAN asked for confirmation that the reference to AS 13.26.165, on page 19, line 18, should be retained.

MS. HENRIKSEN replied it's appropriate to include AS 13.26.165 in the span site in that location.

[1:46:17 PM](#)

SENATOR WIELECHOWSKI suggested the committee get a clean draft before moving the bill.

CHAIR FRENCH said he'd hold that thought until the motion on the conceptual amendment to fix the span sites was complete.

SENATOR COGHILL asked if separate motions would be necessary since the span sites appear in more than Title 13.

[1:47:55 PM](#)

SENATOR WIELECHOWSKI reiterated that he would be more comfortable if the drafter were to prepare a new CS.

CHAIR FRENCH agreed it was appropriate to get a clean CS that incorporates the changes that the committee made.

SENATOR WIELECHOWSKI commented that, at this point, he wasn't sure what the amendment includes.

[1:48:29 PM](#)

CHAIR FRENCH asked Ms. Henriksen to state the basic idea of the amendment.

MS. HENRIKSEN said the basic idea is to consider a change anyplace a span site includes AS 13.26.165 because that section of statute deals just with protective orders in conservatorships. Those are a different type than the new 20-day and six-month protective orders that the bill seeks to address. She offered to walk through the bill.

CHAIR FRENCH said he understood, but he wanted to make sure that the committee members do too.

[1:50:01 PM](#)

SENATOR COGHILL said it would be helpful to understand the context for 209 under Title 13 as opposed to Title 18.

SENATOR COGHILL moved an amendment to Conceptual Amendment 1 to take up amendments for just Sec. 13.26.209 on pages 6 and 7.

CHAIR FRENCH said he'd accept that as a friendly amendment to Conceptual Amendment 1. Finding no objection, he announced that

the committee would consider just the span site changes within Sec. 13.26.209 located on pages 6 and 7. He noted that there was still a motion to change the initial citation from Sec. 13.26.165 to 207.

SENATOR COGHILL said his understanding was that this is a compliance form dealing with protective orders that do not relate primarily to conservatorships.

MS. HENRIKSEN said that's correct.

SENATOR COGHILL said he had no objection.

CHAIR FRENCH asked if there was further discussion or debate on the proposed amendment.

MS. HENRIKSEN added that any changes to Title 18 that include that span site would need to be amended because those only apply to the 20-day or six-month protective orders.

[1:52:21 PM](#)

CHAIR FRENCH acknowledged the suggestion and announced that without further objection, Conceptual Amendment 1, [as amended] was adopted.

CHAIR FRENCH directed attention to Sections 13 and 14 on page 8, that amend Title 18. He asked Ms. Henriksen if the same span site reference, [AS 13.25.165] was inappropriate with respect to the types of protective orders that should be maintained within the central registry.

MS. HENRIKSEN answered yes.

SENATOR COGHILL asked what the title heading is for AS 18.65.540(a) and (b).

[1:53:36 PM](#)

CHAIR FRENCH reviewed the statutes and reported that Sec. 18.65.540 is entitled "Central registry of protective orders." He asked Ms. Henriksen why the protective orders in AS 13.26.165 shouldn't be included in the central registry.

MS. HENRIKSEN replied that is existing law on conservatorships, and it's not clear how "protective order" is defined in AS 13.26.165 in terms of context, but it talks about having a conservator appointed or a single order from the court to have a

trustee changed. It's substantively different than what would be in either the 20-day or six-month protective orders.

CHAIR FRENCH stated that when he read AS 13.26.165 he wondered why the idea of a protective order shouldn't be removed from that section altogether. It doesn't seem to be the right concept for what's happening as opposed to what the bill does in Sec. 207 - 209.

SENATOR COGHILL said that was his thought as well.

CHAIR FRENCH asked if, in part, it's because violation of some protective orders don't rise to the level of a crime.

MS. HENRIKSEN said she believes so, but it's doesn't necessarily involve a third party committing fraud against someone who is the subject of a petition. It's much broader than that, and would change the intent of these particular changes to Sec. 13.26, she said.

[1:56:08 PM](#)

SENATOR PASKVAN asked if the idea is to keep someone's name out of the central registry if the protective order is related to becoming a trustee or conservator as compared to the protective orders issued under AS 13.26.207 - 209.

MS. HENRIKSEN reiterated that the subject, intent and context of the protective order under AS 13.26.165 are completely different. The registry is intended to keeping a bad actor from harming someone who is the subject of a petition, which is similar to a domestic violence protective order.

SENATOR PASKVAN asked if the intent of the registry set out on page 8, lines 16-17, is that law enforcement can know who is potentially violating a court-ordered protective order.

MS. HENRIKSEN said she believes that is the intent.

[1:57:57 PM](#)

CHAIR FRENCH called an at-ease from 1:57 p.m. to 2:01 p.m. to do some research on protective orders.

[2:01:55 PM](#)

CHAIR FRENCH moved Conceptual Amendment 2.

Page 8, lines 16 and 17: Replace the span site AS 13.26.165 - 209 with Sec. 13.26.207 - 209.

Page 8, line [23]: Replace AS 13.26.165 - 208 with Sec. 13.26.207 - 208
Narrow the span site throughout the rest of the bill where appropriate.

2:02:48 PM

MS. HENRIKSEN asked if the motion is to narrow the span site anywhere it occurs.

CHAIR FRENCH replied the intent of the amendment is to change the citation where it's appropriate in order to confine prosecutions to just the new references, Sec. 13.26.207 - 209.

MS. HENRIKSEN asked for confirmation that it wouldn't include the reference on page 19, [lines 18-19].

CHAIR FRENCH said that's correct, it would not include that citation. The amendment would pick up the references that appear in court rule changes. He noted that the court rule changes on pages 22 and 23 look correct.

MS. HENRIKSEN said she would possibly have a conversation with the drafter.

CHAIR FRENCH found no objection and announced that Conceptual Amendment 2 was adopted.

2:04:03 PM

SENATOR WIELECHOWSKI asked for some discussion of the legislative reason, in Section 46 on pages 21-22, for addressing advanced age or extreme youth.

MS. HENRIKSEN deferred to Ms. Carpeneti.

2:04:43 PM

ANNE CARPENETI, Assistant Attorney General, Civil Division, Department of Law (DOL), recalled that the discussion centered on the notion that the very old and the very young are particularly sensitive to time. The provision asks the court to give consideration to a victim's circumstances in every case, and to give special consideration to a very old or very young victim, because of the effect that a continuance or delay of trial would have on a person in those age groups.

SENATOR WIELECHOWSKI asked if the rationale for including a victim of extreme youth is to wait until the individual is old enough to verbalize his or her testimony.

MS. CARPENETI replied the rationale is to take age into account and set the trial earlier rather than later. Time is different for children than for adults and a bad situation has a much stronger effect on a young person, she stated.

SENATOR WIELECHOWSKI said that's what he wanted to hear; a case involving a child in a bad situation would be heard more quickly.

MS. CARPENETI confirmed that is the intent.

[2:07:33 PM](#)

CHAIR FRENCH announced he would hold SB 86 in committee awaiting a new CS that incorporates the conceptual amendments.

HB 127-OMNIBUS CRIME BILL

[2:07:51 PM](#)

CHAIR FRENCH announced the consideration of HB 127, version I, the omnibus crime bill. He noted that the committee previously heard the Senate companion bill.

ANNE CARPENETI, Assistant Attorney General, Civil Division, Department of Law (DOL), provided the following sectional analysis:

Sections 1 and 2 expand the definition of "non-consensual contact" for purposes of the stalking statute. Stalking prohibits a person from putting another person in fear of death or physical injury by following a course of conduct. "Course of conduct" is defined in statute as including various instances of non-consensual contact. This bill adds to the definition to include either following a person with a global positioning device (GPS) or using either hardware or software on a person's phone or computer in their home, workplace, or vehicle.

CHAIR FRENCH recalled that Mr. Svobodny gave the committee a good overview of this provision.

MS. CARPENETI continued:

Section 3 increases the penalty for the crime of online enticement of a minor from a class C felony to a class B felony, if the person is a first-time offender. If the person has already been convicted of a sex offence, the penalty is increased from a class B felony to a class A felony.

CHAIR FRENCH noted that the committee asked about the numbers of prosecutions under the online enticement statute.

MS. CARPENETI informed the committee that for 2008 through 2010, 15 cases of online enticement were referred to the Department of Law (DOL) for prosecution, and 12 were accepted for prosecution.

CHAIR FRENCH said he would defer to the entire committee, but he isn't convinced of the need to raise the status of the crime for first-time offenders. He added that he likes the Department of Law's (DOL) idea with respect to repeat offenders; they should receive increased penalties.

MS. CARPENETI said Sergeant DeGraaf was available to describe some of the cases.

CHAIR FRENCH acknowledged that he could be persuaded to change his mind.

[2:11:19 PM](#)

SENATOR WIELECHOWSKI observed that the language in the new provisions in Section 1 is fairly broad. He asked where it would apply.

MS. CARPENETI explained that it's part of the definition of "non-consensual contact," which is included in the definition of "course of conduct" in the stalking statute. That statute prohibits following a course of conduct that puts a person in fear of death or physical injury. "Course of conduct" is defined as "Two or more instances of non-consensual contact." This bill adds to that definition. She agreed that the language is broad, but it is under current law as well.

SENATOR PASKVAN asked if this would bring in the paparazzi.

MS. CARPENETI said probably not, unless there was some other evidence. It's necessary to prove that the defendant recklessly placed another person in fear of death or physical injury by engaging in a course of conduct that includes non-consensual contact.

SENATOR WIELECHOWSKI asked if the standard for committing the crime is objective or subjective. For example, would he have committed a crime if he used his phone to take a picture of somebody in their car, and they thought subjectively that he was harassing them?

MS. CARPENETI replied it's a more objective standard, and added that stalking cases aren't easy prosecutions.

CHAIR FRENCH said the conduct is highly contextual. Standing outside a person's house holding a rose isn't threatening conduct, unless it comes after an assault, an act of vandalism, or a death threat.

[2:15:05 PM](#)

SENATOR WIELECHOWSKI questioned whether that hypothetical would violate the statute; whereas making a threat of harm and then taking pictures of the person in their car would violate the statute.

MS. CARPENETI replied it's in the context of where this fits in the stalking statute. The intent of these additions is to take new technology into account.

CHAIR FRENCH pointed out that subparagraph (G) on page 2, line 12, could be interpreted broadly; it talks about "placing an object on, or delivering an object to." A prosecutor would have to convince a jury that there was something threatening about that conduct, but very innocuous conduct could be placed in a highly dangerous context by a broad course of conduct.

MS. CARPENETI suggested reading the stalking statute, AS 11.41.270, to understand the starting point.

[2:16:48 PM](#)

MS. CARPENETI continued the sectional analysis.

Section 5 raises the crime of unlawful exploitation of a minor - creating pornography using minors, to a class A felony for all offenders. Currently it's a class B felony for a first-time offender and a class A felony for a convicted sex offender.

Section 6 addresses the crime of endangering the welfare of a child. Current law prohibits a person from leaving a child under age 16 with a person that is required to register as a sex offender, or has been charged for a sex offense. This adds child kidnapper to the list, because most cases of child kidnapping involve sexual abuse. She noted that the House Judiciary Committee made minor drafting changes to clarify that the person is either required to register or is under the charge of these offenses.

SENATOR COGHILL asked how this meshes with charges of kidnapping as a result of child custody disputes.

MS. CARPENETI explained that people who get into disputes about their own children are charged with custodial interference. They are not charged with kidnapping, and don't have to register as either a sex offender or a child kidnapper.

Section 7 deals with sexting - sending an explicit picture of a minor. The House committees changed this provision in a couple of important ways. First, the state is required to prove the culpable mental state that the person sent the image with the intent to annoy or humiliate another person. Second, it would be a class B misdemeanor if the person sends the image and a class A misdemeanor if the person puts the image on an Internet website that is accessible to the public.

[2:19:51 PM](#)

SENATOR WIELECHOWSKI commented that he'd never seen a bill that criminalized "the intent to annoy or humiliate."

CHAIR FRENCH pointed out that the crime of harassment has been on the books for a long time, and it talks about intent to harass or annoy. This new section is intent to annoy or humiliate. He reiterated that intent is difficult to prove.

MS. CARPENETI agreed, and added that the positive result of this culpable mental state is that it avoids the problems that were previously discussed about baby pictures and photographs that parents might send to brag about their children.

SENATOR WIELECHOWSKI asked for an explanation of how the intent works, because a young child wouldn't feel annoyance or humiliation about a photo that was sent or posted.

MS. CARPENETI responded that a charge wouldn't be brought if the prosecution couldn't prove that a person acted with the intent to annoy or humiliate a child.

Section 8 is a conforming amendment to show that the conduct in the prior section is excluded from the harassment prohibition.

[2:21:53 PM](#)

SENATOR COGHILL asked if the intent language had been upheld in other jurisdictions or federal law.

MS. CARPENETI replied she hadn't seen a decision addressing that particular language, but there is some precedent for the term here in Alaska where people have been convicted of intent to annoy or harass another person.

[2:22:27 PM](#)

Section 9 adopts two new crimes: 1) misconduct involving confidential information in the first degree, and 2) misconduct involving confidential information in the second degree. The second degree offense prohibits a person from obtaining information that is defined as confidential by law without the consent of the owner of that information. Confidential information is defined in several places in statute, including child in need of aid (CINA) information, juvenile justice information and information encoded on an access device.

SENATOR WIELECHOWSKI referenced Section 7 and asked if it would be a crime to take an explicit picture of a two-year-old with the intent to annoy or humiliate the parents.

MS. CARPENETI answered no, and directed attention to page 3, lines 28-29. The intent to annoy or humiliate relates back to the person whose picture was taken.

CHAIR FRENCH said the committee would have to consider whether it wanted to make it a crime to annoy a parent by sending an explicit picture of a child.

SENATOR PASKVAN asked if a parent would have standing if their 14-year-old didn't object, but the parent did.

CHAIR FRENCH said he reads the statute to say it's got to annoy or humiliate the person whose picture was sent.

[2:25:04 PM](#)

MS. CARPENETI continued to explain that misconduct involving confidential information in the first degree would make it a crime to commit the second degree offense with the intent to injure, or to use the information to commit a crime, or obtain a benefit to which the person is not entitled.

CHAIR FRENCH asked what this is intended to pick up that the current statute doesn't cover.

MS. CARPENETI replied there are statutes involving identity theft using an access device, and this is about obtaining information when there is no right to do so.

SENATOR WIELECHOWSKI asked how confidential information is defined.

MS. CARPENETI replied it's defined on page 5, starting on line 10. It is information that is classified as confidential by law, and information encoded on an access device that is used without consent.

Section 10 clarifies that for these crimes a person may be prosecuted, under Alaska law, for conduct that occurs outside the state, if the victim is in this state.

CHAIR FRENCH asked if the confidential information addressed in Section 9 would include passwords to protect bank accounts or email accounts.

MS. CARPENETI said she didn't know but she'd find out.

In Section 11, the House Finance Committee added the provisions of HB 175 to correct instances of disagreement between the statutes and Court Rules. Probably the most important is the 48 hour provision. Since statehood, it's been the law to bring a person arrested before a judicial officer without unnecessary delay, and in any event, within 24 hours after arrest. The bail bill that passed last year changed the Court Rules to 48 hours, but the statutes weren't similarly changed. This bill does that in both the arrest statutes and the extradition statutes.

[2:28:51 PM](#)

SENATOR WIELECHOWSKI asked her to discuss the constitutionality in light of the U.S. Supreme Court cases that talk about unreasonable delays.

MS. CARPENETI said Alaska doesn't have an opinion, because the rule has never before been 48 hours, but 48 hours and 72 hours have been upheld by state courts as well as the U.S. Supreme Court. DOL expects that this would be constitutional, particularly since there is still the requirement to bring a person arrested in front of a judicial officer without unnecessary delay.

SENATOR PASKVAN said if this passes he'd like a report a year from now on the number of [appearances] that occurred within 24 hours compared to 48 hours. This would be a check on whether or not the system was getting lazy and people were being held longer than necessary.

MS. CARPENETI told the committee that [since the bail bill passed] Fairbanks has been following the 48 hour Court Rule rather than the statute. In just one instance were people brought in after more than 24 hours, and that was due to an ice storm that shut everything down.

SENATOR PASKVAN said he'd like to think that that type of prompt handling would continue.

MS. CARPENETI pointed out that arraignments are done every day, including weekends and holidays.

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CHAIR FRENCH informed the committee that he discussed a 36-hour timeframe with Ms. Carpeneti to allow law enforcement a full working day to prepare for an arraignment. Part of the problem now is that if someone is arrested at 3:00 a.m., everything has to be ready for the arraignment by the next afternoon, or the person goes free.

MS. CARPENETI said Section 12 reflects the increased penalties for unlawful exploitation of a minor and online enticement of a minor in the sentencing statutes.

Section 13 reflects the change to 48 hours in the extradition statutes.

Sections 14 and 15 correct inconsistencies between statutes and Court Rules. Section 14 changes the penalty in Title 28, for the correctable offense of failure to carry and provide proof of a driver's license, from a class B misdemeanor to an infraction. Section 15 changes the penalty in Title 28, for the correctable offense of failure to carry proof of vehicle insurance, from a class B misdemeanor to an infraction.

Section 16 clarifies that for misdemeanor offenses the appointment of a probation officer for supervised probation is at the discretion of the commissioner of corrections.

Section 17 deals with the inconsistency between burning a vehicle in the Knik River Public Use Area, and burning a vehicle on any other public property in the state. In 2006 the Department of Natural Resources adopted regulations, as directed by statute, and set a \$50 fine for burning a vehicle in the new Knik River Public Use Area. Two years later, the Legislature adopted the crime of arson in the third degree, which made it a

class C felony to burn a vehicle on any public property, except in the Knik River Public Use Area. Section 17 corrects this inconsistency.

2:36:00 PM

SENATOR WIELECHOWSKI asked for the rationale for making the offense addressed in Section 15 an infraction as opposed to a class B misdemeanor.

MS. CARPENETI responded that in the past five years the Legislature adopted the mandatory \$500 fine for the offense, if a person doesn't bring in proof of vehicle insurance.

SENATOR PASKVAN asked what the maximum jail time is for a class B misdemeanor.

MS. CARPENETI replied the maximum penalty for a class B misdemeanor is 90 days and one year for a class A misdemeanor.

SENATOR PASKVAN asked about Section 13 on page 8, the arrest without warrant provision - that talks about imprisonment for a term exceeding one year.

MS. CARPENETI said this deals with arrest without warrant of people who are found to be fugitives from another state. It's addressing the fact that Alaska doesn't extradite people for misdemeanors.

SENATOR PASKVAN asked if someone can be arrested for a class B misdemeanor and held for 48 hours.

MS. CARPENETI said it's unlikely to happen, but sometimes a person that's arrested for a misdemeanor is too intoxicated to be arraigned within 24 hours.

SENATOR PASKVAN mentioned the [Yukon-Charlie Rivers National Preserve] incident and said he's concerned about overzealous law enforcement officers. He added that he's struggling with how long a class B misdemeanant should sit in jail, if there's no penalty.

MS. CARPENETI responded that a person wouldn't be arrested if it's changed to an infraction.

SENATOR PASKVAN pointed out that, right now, it would be a crime for which a person could be arrested and taken to jail.

MS. CARPENETI responded that that's within the discretion of the arresting officer. Most misdemeanors result in a citation, unless the person fails to provide proof of identification or appears to be a danger.

2:40:58 PM

SENATOR WIELECHOWSKI said he's always wary of giving discretion to prosecutors and police officers, when it's a matter of taking away a person's liberties and rights. He said he shares Senator Paskvan's concern and it extends throughout the bill.

CHAIR FRENCH said it's a fair concern.

MS. CARPENETI said Section 18 redrafts the administrative subpoena section that passed last year in Senate Bill 222. It speeds up the method for getting information from an ISP, so that the police can get a warrant to search a particular computer. It also addresses delegation, and what happens to the information if it's not used in a criminal investigation. The provision last year provided that it either be returned to the ISP or destroyed. That's impractical because the ISP already has the information and it's probably not a good idea for government to destroy records. Instead, the information can be sealed or made part of a confidential file that people can't access. She noted that Sergeant DeGraaf was available to discuss that further.

CHAIR FRENCH thanked Ms. Carpeneti and suggested the committee spend the remainder of its time today discussing subpoenas. He asked Sergeant DeGraaf to put himself on the record.

2:44:10 PM

SERGEANT DEREK DEGRAAF, Alaska State Troopers, Department of Public Safety (DPS), said he supervises the cybercrimes investigative unit, and is part of the Internet Crimes Against Children Taskforce for Alaska. Stating support for the bill, he said he'd like to provide a street view of how these changes would work.

Speaking to the provisions on page 2 that raise the penalty for online enticement of a minor a felony level, he said most people are familiar with the online enticement crime because of the "To Catch a Predator" television show. In these cases an investigator goes online and poses as a young person who can be lured by a bad guy to meet for sex. Law enforcement looks at catching these predators as "good saves," because this crime is a precursor to several other much more serious offenses. Without

intervention, that meeting can turn into a situation of sexual abuse of a minor, production of child pornography, or a homicide. Perpetrating this sort of crime takes away a child's innocence, and he or she can never get that back. Kids that are under age 16 are the most vulnerable, because they can't give consent. Unfortunately, law enforcement often learns about this crime only when a parent calls to report what happened to their child. The first-time offender is just as bad as the second-time offender, he said. The television show demonstrates that the same guy will show up more than once.

[2:48:07 PM](#)

Section 7 on pages 3-4: AS 11.61.116 - Sending an explicit image of a minor. Sergeant DeGraaf said law enforcement gets quite a few calls from parents and school officials regarding sexting. Most frequently, a girl takes a provocative picture of herself and sends it to her boyfriend, who eventually passes it along or posts it online. In some instances, this has resulted in the suicide of the person who was photographed. It's important to deal with this right now, because law enforcement doesn't have the authority to do anything about this unless the image rises to the level of child pornography.

Section 9 on pages 4-5: AS 11.76 - Misconduct involving confidential information. A Google search for "credit card skimmer" will show what these new sections address, he said. These \$200 pocket-size devices are available on the Internet, and they're designed to quickly skim confidential information from a credit card. He described a case in Wasilla where the card owner saw the initial skimming and reported it to the police.

SERGEANT DEGROAF said that making the initial skimming a crime will help prevent the sale of personal information. He noted that new radio-frequency identification (RFID) scanner technology makes it possible to gather information from a passport or credit card that is in a pocket or purse, without touching the person. This electronic pick pocketing needs to be stopped here in Alaska, he stated.

CHAIR FRENCH mentioned Senator McGuire's bill from several years ago to narrow the use of RFID technology.

SERGEANT DEGROAF voiced support for extending the window between arrest and arraignment from 24 hours to 48 hours in Section 11. He related that sometimes law enforcement has to time an arrest based on that 24 hour window, even though waiting can, in rare

circumstances, create a public safety problem. For rural troopers weather is generally the biggest factor for fitting within that window.

Section 18 on pages 9-10: AS 44.23.080 - Subpoena power of attorney general in cases involving use of an Internet service account. Sergeant DeGraaf emphasized that the ability to quickly link an IP address to a physical location will help take more child predators off the street. He confirmed that a search warrant will still be required to contact a person and seize their computer or go to their house to conduct a criminal investigation.

SERGEANT DEGRAAF reminded the committee of the staggering number of Alaskans that share or create or distribute child pornography on the Internet, and noted that both the Anchorage Police Department and the Alaska State Troopers have officers who work fulltime trying to catch these people, most of whom are men. He asked the committee for its continued support for this measure.

2:53:30 PM

CHAIR FRENCH recalled that the committee learned last year that the missing link and point of the subpoena was to link an [IP] address with a physical location.

SERGEANT DEGRAAF said that's correct. Right now law enforcement is required to obtain a search warrant in order to locate the physical location of an IP address, and that takes significant time.

CHAIR FRENCH asked him to describe what problems resulted from the bill that passed last year.

SERGEANT DEGRAAF said the largest problem was that only the attorney general could authorize the subpoena and that caused delays. This bill gives that authority to the attorney general or an attorney general designee. A more minor issue was the civil subpoena process compared to a search warrant.

SENATOR WIELECHOWSKI asked if anyplace else in criminal law allows the attorney general or his designee the power to issue a subpoena.

SERGEANT DEGRAAF deferred to Ms. Carpeneti.

CHAIR FRENCH told the committee that a commissioner is authorized to issue a subpoena in a half dozen other instances.

He said he doesn't know if a commissioner's designee can issue a subpoena. The important distinction is whether the information gained by that subpoena is likely to lead to a criminal prosecution.

SENATOR WIELECHOWSKI voiced concern with giving authority to not only the attorney general, but also his designee to search and seize someone's property.

CHAIR FRENCH pointed out that this isn't about seizing anything, but he shares the concern, and is considering narrowing it to the deputy attorney general of the criminal division.

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SENATOR PASKVAN asked what the time difference is between obtaining a subpoena from a superior court judge versus the attorney general.

SERGEANT DEGRAAF explained that if he had probable cause or reasonable suspicion that an IP address was involved with the production or distribution of child pornography images, he'd write a search warrant affidavit. These 15-20 page documents lay out the flow of the investigation and take between 3 and 4 hours to write, review and deliver to the court. It may take another hour for a judge to review the affidavit and sign off on it. Filling out the DOL form for the summons or subpoena might take 10 minutes, and then it's emailed to the DOL for review and signature. The DOL sends the authorization by email and it can be emailed directly to the Internet service provider. He said that when he identifies an Internet address he immediately contacts the ISP asking the provider to start gathering the data, because a search warrant is forthcoming. He estimated that this change would save four to five hours per case.

SENATOR PASKVAN asked why the search warrant affidavit that's submitted to the court couldn't be put into a form that's similar to the document that's submitted to the attorney general.

SERGEANT DEGRAAF replied the court requires a probable cause statement for the search warrant, whereas the administrative subpoena uses reasonable suspicion. The required data for a subpoena is significantly less. The business record that the ISP provides basically translates the IP address to a physical address, and that's when the real investigation begins. At that point, law enforcement develops probable cause and gets a search warrant to enter the house. A number of other states have done

this to better identify and target these bad actors. He added that not every subpoena would end up in a criminal investigation. He first targets registered sex offenders and persons in a position of authority versus the 18-year-old that has child pornography on his computer.

SENATOR PASKVAN asked if the intent of the attorney general subpoena is to then get a search warrant from a judge.

SERGEANT DEGRAAF said yes; when he gets the subpoena back with the physical address, he does a drive by to confirm that the name and address the Internet service provider gave matches the tax records and things like the license of the car in the driveway. A normal police investigation then ensues, and a search warrant is required before entering the residence or business to seize computers for the investigation. Federal law enforcement already follows this protocol.

CHAIR FRENCH pointed out that the universe of what law enforcement gets from the subpoena is set forth on page 9, line 31 through page 10, line 3. It does not include a file, a disc, a computer, or a house.

SENATOR PASKVAN asked if the current three hour process of going through the court results in a subpoena to access [ISP] records and a search warrant.

SERGEANT DEGRAAF said right now it's a two search warrant process.

CHAIR FRENCH thanked Sergeant DeGraaf and announced he would hold HB 127 in committee.

3:03:43 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 3:03 p.m.