ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 13, 2011
1:34 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- MOVED CSSB 86(JUD) OUT OF COMMITTEE

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

SENATE BILL NO. 89
"An Act clarifying that a legislator or legislative employee is allowed to accept certain compassionate gifts; allowing legislators and legislative employees to use legislative mailing lists for campaign purposes and nonlegislative purposes; allowing legislators and legislative employees who are representing persons in an administrative hearing to contact hearing officers and attempt to influence the outcome of the hearing if they are professionals licensed in the state, and allowing legislators and legislative employees who are not professionals licensed in the state to contact hearing officers for the purpose of influencing the outcome of the hearing in certain instances; allowing legislators and legislative employees, in certain circumstances, to participate in partisan political activity while on state travel; prohibiting a public member of the Select Committee on Legislative Ethics from disclosing confidential information without authorization; clarifying the ethics disclosure requirements for tickets to or gifts in connection with charity events; amending disclosure deadlines under the Legislative Ethics Act; relating to requests to refrain from disclosure under the Legislative Ethics Act; and establishing a seat for an alternate public member on the Select Committee on Legislative Ethics and clarifying the requirements related to participation by alternate members in the proceedings of the committee."

- SCHEDULED BUT NOT HEARD

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)
04/11/11	(S)	Heard & Held
04/11/11	(S)	MINUTE(JUD)
04/13/11	(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)
04/11/11	(S)	Heard & Held
04/11/11	(S)	MINUTE(JUD)
04/13/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CINDY SMITH, staff to Senator French
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Explained the changes to SB 86 and HB 127.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law (DOL)
Juneau, AK
POSITION STATEMENT: Responded to questions and provided information on SB 86 and HB 127.

RICK SVOBODNY, Deputy Attorney General
Criminal Division
Department of Law (DOL)
Juneau, AK
POSITION STATEMENT: Provided information about HB 127.

SERGEANT DEREK DEGRAAF
Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, AK
POSITION STATEMENT: Answered questions related to HB 127.

DAVID BRENNER, Staff
Representative Pete Peterson
Alaska State Legislature

Juneau, AK
POSITION STATEMENT: Presented a proposed amendment to HB 127.

ACTION NARRATIVE

1:34:33 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. Senator McGuire arrived soon thereafter.

SB 86-PROTECTION OF VULNERABLE ADULTS/MINORS

1:35:06 PM
CHAIR FRENCH announced the consideration of SB 86 and asked for a motion to adopt the new committee substitute (CS), version T.

SENATOR WIELECHOWSKI moved [to adopt CS for SB 86, labeled 27-GS1722\T as the working document].

CHAIR FRENCH objected for discussion purposes.

1:35:41 PM
CINDY SMITH, staff to Senator French, reminded the committee of the concern that Ms. Henriksen raised at the previous hearing about mis-listed span sites. The drafter was consulted and the following changes were made:

> Page 2, lines 18 and 23: the span site was narrowed to AS 13.26.207 - 13.26.209.
>
> Page 6, lines 11 and 30: the span sites were narrowed to AS 13.26.207 - 13.26.209.
>
> Page 6, [paragraph 2]: an incorrect reference to AS [13.26.185], the former guardianship provision, was deleted.
>
> Page 7, lines 2,3,7,8,15, and 16: the span sites were narrowed to AS 13.26.207 - 13.26.209.
>
> Page 8, lines 15, 16, and 22: the span sites were narrowed to AS 13.26.207 - 13.26.209.

MS. SMITH noted that Ms. Henriksen, Mr. Sterling and others concur with the changes.

CHAIR FRENCH found no further committee discussion and asked for a motion.

1:37:53 PM
SENATOR WIELECHOWSKI moved to report CS for SB 86, version T, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH [removed his objection] and announced that hearing and seeing no objection, CSSB 86(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:38 p.m. to 1:39 p.m.

HB 127-OMNIBUS CRIME BILL

1:39:55 PM
CHAIR FRENCH announced the consideration of HB 127 and asked for a motion to adopt the version E committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt version E [SCS CSHB 127, labeled 27-GH1840\E,] as the working document.

CHAIR FRENCH objected for discussion purposes.

1:40:40 PM
CINDY SMITH, Staff to Senator French, said version E makes the following changes: It deleted Section 3 of the previous version I, which increased the penalty for enticement of a minor on the first offense.

CHAIR FRENCH said the deleted section basically stepped up the penalty for the crime of online enticement; a class C felony became a B felony and a class B felony became an A felony. Anyone who has committed a sex offense in the past and commits online enticement would be charged with a class A felony. He said he initially had qualms about increasing the class C felony to the B felony level, but he changed his mind after Commissioner Masters and Attorney General Burns brought narratives of recent cases that have been charged under the C felony. These are serious crimes and it's an area of problem in the state. He added that he continues to have concern that increasing the penalty might not result in more offenders being caught, but in this instance it's worthwhile to increase the penalty.

1:42:58 PM

CHAIR FRENCH moved Conceptual Amendment 1 as follows:

> Reinsert Section 3 of version I SCS for CSHB 127 and make other conforming changes throughout the bill as necessary. This would increase the penalty for online enticement from a class C felony to a class B felony.

SENATOR WIELECHOWSKI asked for confirmation that this adds a section to version E.

CHAIR FRENCH replied that's the idea.

SENATOR COGHILL asked if the amendment reinserts from version I the language on page 2, lines 23-24.

CHAIR FRENCH answered yes, as a new section.

MS. SMITH added that there would be conforming changes in the sentencing section.

CHAIR FRENCH announced that without objection Conceptual Amendment 1 was adopted.

MS. SMITH said the second change deleted Sections 5 and 19 of version I, pertaining to unlawful exploitation of a minor. This was done because of the strong sense that the provisions in exploitation of a minor had become overly broad. She noted that the idea is to rework that section over the Interim to ensure that the increased penalties actually comport with the level of the particular crime.

CHAIR FRENCH added that AS 11.41.455 relating to unlawful exploitation of a minor has been on the books for a long time and he's found it difficult to work with. This statute covers a broad range of conduct and it needs to be reshaped from time to time to reflect new provisions that have been put on the books. He said he decided to work on this over the summer and DOL has agreed to collaborate.

MS. SMITH said the third change added language in Sections 3-6 to create penalties for police officers that engage in sex with a person that is in custody. It follows the existing provisions for correctional officers. There are also conforming changes in the sentencing section of the bill.

CHAIR FRENCH added that Sections 3, 4, and 5 of version E tell police officers that having sex with people who are in their

custody is not allowed. There is no question of consent. This is in reaction to a recent case in Anchorage and it lets police officers know that this behavior is absolutely out of bounds. The language was crafted in conjunction with the DOL and it's meant to pick up police officers who are on duty and have people in custody or apparent custody or in the police station. It's a new provision.

1:47:58 PM
SENATOR PASKVAN directed attention to page 3, line 11, and asked the thought process for using the terminology "reckless disregard."

CHAIR FRENCH asked the DOL to describe the mental element.

1:48:16 PM
ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL) said she assumes that the drafter meant that the offender is acting recklessly with regard to the fact that the person is in custody. That means the police officer knows the risk that the person is in custody and he or she consciously disregards that fact.

CHAIR FRENCH asked if the reason for putting in the word "disregard" is because the police officer is essentially pushing aside the knowledge that he or she would otherwise have.

MS. CARPENETI said the phrase "knowing in custody" would work but the phrase "reckless disregard" is a tic under "knowing." It's that the offender is aware of the risk that the person is in custody and puts aside or disregards that risk, essentially saying they don't care.

1:49:22 PM
CHAIR FRENCH asked if this is customary language for prosecutors.

MS. CARPENETI replied it's a very common culpable mental state that is used all the time.

SENATOR PASKVAN questioned why it isn't a simple negligence standard because [reckless disregard] seems to require greater proof that the officer knows that the person is in custody. If the officer has the person confined and is negligent as to whether the person is in custody or apparent custody [a simple negligence standard] would seem to be sufficient.

MS. CARPENETI said simple negligence generally is not used in criminal statutes, but criminal negligence could be used.

SENATOR PASKVAN wondered why it would have to be a gross deviation as opposed to an absolute prohibition.

MS. CARPENETI suggested the drafter answer that question. She then stated for the record that when DOL was talking about custody or apparent custody of the offender, the intent was that the courts would interpret these terms as similar to the state of custody for a person who may or may not be under arrest and he or she feels unable to leave the presence of the police officer.

1:51:25 PM
CHAIR FRENCH pointed out that page 2, line 27, uses a knowing standard for the first prong of this violation; page 3, line 2, uses a knowing standard for the second prong of this violation; and [page 3], line 6, uses a knowing standard for having sex with someone who has been committed to the custody of the Department of Health and [Social] Services. Reckless disregard makes it easier for the prosecution because it's an easier mental element to prove.

SENATOR WIELECHOWSKI asked if in the recent case in Anchorage the women would have been considered to be in custody or apparent custody of the offender.

MS. CARPENETI recalled that in one instance the offender offered the victim a ride home from a shelter and instead took her to a police station. Under those circumstances the victim would feel she was in custody and unable to leave.

CHAIR FRENCH said the others were DWI processings and the victims were clearly in custody.

SENATOR PASKVAN stated a preference for an absolute prohibition as opposed to allowing an officer the discretion to say the person wasn't in custody or apparent custody.

MS. CARPENETI said she appreciates the point but she agrees with the chair; this is a lesser standard than the other crimes in third degree sexual assault.

SENATOR PASKVAN said he would hope that a higher standard would be imposed on law enforcement officers and the prohibition should therefore be absolute.

1:55:35 PM

MS. CARPENETI said this is more likely to come up when an officer is off duty and for that reason there probably should be a culpable mental state in regard to that circumstance.

Senator McGuire joined the committee.

SENATOR PASKVAN cited an example of an officer engaging in unacceptable behavior after helping a female and clearly establishing that she wasn't in custody and opined that this language seems to say that the officer is engaged in acceptable behavior on the job.

CHAIR FRENCH disagreed. He said he understands and respects the nuance in regard to the mental element, but this language absolutely does not suggest that it's okay to have sex with someone who is in custody. This language makes it a crime for police officers to engage in that behavior.

1:58:20 PM

SENATOR COGHILL suggested members keep in mind that in addition to the criminal aspect there is also a Police Standards Council that considers conduct and other issues that can bring a person's entire career into question.

CHAIR FRENCH responded that if there haven't already been briefings statewide in this regard, they will be forthcoming. Officers will be directed to walk clearly on the right side of the line.

SENATOR PASKVAN said if the intent is to send a clear social message that law enforcement officers, in the course and scope of their employment, do not engage in sexual behavior, then it should be said that way. It's irrespective of whether or not the officer invites someone into the vehicle for outwardly innocent purposes.

MS. CARPENETI said her recollection is that the [former police officer] was on duty when he picked up one victim. She added that she believes that this language covers both on-duty police officers and police officers who are not on duty and are behaving in a certain way toward individuals in the custody of the agency.

SENATOR PASKVAN said he's trying to understand the extent of the prohibition.

2:00:53 PM
SENATOR WIELECHOWSKI noted that page 3, line 9, says "while employed in the state" and he reads that to mean even if the person is not on duty.

SENATOR MCGUIRE stated agreement.

CHAIR FRENCH said that's right; a police officer is an officer around the clock. Although, he added, there has to be the element of custody or apparent custody. The last clause is meant pick up the instance where one officer brought a person to a police station and another officer found the person there.

CHAIR FRENCH suggested the committee move on but continue to consider whether or not to refine the mental element.

2:01:54 PM
MS. SMITH said the fifth change that's reflected in version E is the addition of new Section 24. It directs the DOL to submit a report by April 1, 2012, to the Legislature concerning the number of arraignments that were heard within 24 hours of arrest and the number that took longer.

CHAIR FRENCH added that this acknowledges the unease about moving to the 48-hour window for arraignments. The report will let the Legislature know within a year whether 48 hours has become the de facto rule or if it's working as expected and the majority take place within 24 hours.

MS. CARPENETI said the DOL believes this is a good idea but would like an additional sentence asking the Department of Corrections and the Court System to cooperate in this report because that's where a lot of the information resides.

CHAIR FRENCH moved Conceptual Amendment 2.

> Add language to Section 24 saying that the Department of Corrections (DOC) and the Court System shall assist the Department of Law (DOL) in compiling the report.

2:05:04 PM
SENATOR WIELECHOWSKI objected to suggest it say the governor.

MS. CARPENETI pointed out that the governor isn't in charge of the Court System.

SENATOR COGHILL stated a preference for naming the three.

CHAIR FRENCH restated the motion for Conceptual Amendment 2. Finding no objection, he announced that [Conceptual] Amendment 2 was adopted.

2:06:02 PM
MS. SMITH added that additional small conforming amendments appear throughout the sentencing section.

CHAIR FRENCH directed attention to Section 21 relating to the provision that the Legislature adopted last year giving administrative subpoena power to the attorney general to obtain identifying records from an Internet service provider (ISP). Page 11, lines 15-18, set out the identifying information that the ISP will provide. DOL issued about 25 of these subpoenas last year and the expectation is that that number will climb to 100 this year. The bill that came to the committee this year extended the administrative subpoena power to an attorney general designee. Today both the attorney general and the commissioner of the Department of Public Safety (DPS) advocated strongly in favor of extending that subpoena power only to the deputy attorney general of the criminal division of DOL. He said he agreed to bring the idea to the committee.

2:09:02 PM
SENATOR WIELECHOWSKI recalled that when this power was given to the attorney general concern, there was concern about granting this power to a political appointee who is in the executive branch. As part of an independent judiciary, judges typically issue these subpoenas so this was done in a very limited and deliberate manner. "I see no reason to change that," he stated. This might not rise to the level of search and seizure, but Article 1, Section 14, is informative. It says:

> The right of the people to be secure in their persons, houses and other property, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

SENATOR WIELECHOWSKI said this is close to a warrantless search and it's a slippery slope to extend this authority to anyone other than the attorney general.

SENATOR MCGUIRE said she'd like to hear from the DOL as to the basis for making the change. Last year she supported the provision as part of cracking down on Internet child predation, but it was a compromise for the attorney general to oversee the subpoena because it's something that would typically go before a judge. It would be a big step for this committee to erode that further, she stated.

2:12:26 PM
MS. CARPENETI said the bill that passed last year didn't address some of the concerns that DOL initially brought forward. She explained that the reason that DOL asked for the [administrative] subpoena power for the attorney general was to speed the process for collecting account information from the ISP. She clarified that a person's house is not searched based on the information from the ISP; the account information is presented to a judge in order to obtain a search warrant for the account holder's house. The provision last year provided two ways to serve the subpoena; one method of service was by certified mail and the other was delivery by a uniformed police officer. That isn't expedient in a fast moving area of the law where people move computers and addresses very quickly.

The other concern that wasn't adequately addressed last year was delegation. Having just one individual who can sign these administrative subpoenas slows the process because the attorney general travels a lot and even when he's in town and in the same office building it can be difficult to track him down. Signing authority for these subpoenas should fall to the most responsible person within the DOL, but the deputy attorney general for the criminal division is also extremely responsible and probably knows more about criminal law and subpoenas and search warrants and probable cause issues than the attorney general himself.

2:15:29 PM
RICK SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law (DOL) said he came forward to clarify the question of search and seizure. He explained that the identity information that an Internet service provider (ISP) holds is not the type of confidential information that the Alaska Constitution set out for search warrants, although it is information that people don't generally think is available to the public. Information from an ISP is in the same area as cashing a check and the U.S. Supreme Court has said that a person gives up any right of privacy once they pass a check and it becomes part of the public record. If there is a criminal

case, there will be a requirement to get a search warrant. The information obtained from the ISP only identifies where the particular computer is located. It's the information on that computer that will be needed for a prosecution. The police will need to go to a judicial officer and show probable cause before they can get a search warrant to actually enter somebody's property or take a piece of property like a hard drive on a computer. He said he wanted to make sure the committee understood that issue.

2:17:45 PM
SENATOR PASKVAN asked how many ISP searches did not result in a search warrant being issued by a judge.

MR. SVOBODNY said he didn't have an answer, but the real issue is timeliness. That was the basis for DOL initially saying the administrative subpoena authority should extend to an attorney general designee. He added that the DOL would like to use technology like faxes and emails which would be ahead of where the court is as far as the issuance of search warrants.

SENATOR PASKVAN questioned whether there would be any timesaving whatsoever if the officer still had to do the work to establish probable cause before getting a search warrant from a judge. In any event, there are more judges than an attorney general and a deputy attorney general so it seems that the numbers problem would be solved by looking to the judiciary, he stated.

MR. SVOBODNY said that's a question for Commissioner Masters, but his experience in getting search warrants is that they take a lot of time. In part that's because judges are used to a presentation that is different than this type of subpoena. He noted that when he was a DA he always preferred for an officer to go to the court to testify under oath. That's not necessary, he said, but affidavits take time too.

2:21:56 PM
SENATOR WIELECHOWSKI asked what the accountability would be under this provision if an attorney general or their designee issued subpoenas without good reason. For example, the attorney general issuing subpoenas for an IP address because he didn't like certain emails going to the governor.

MR. SVOBODNY said in order for an action to get to court a search warrant is needed to do the investigation. The subpoena to get the IP address would be part of the process of the

application for the search warrant and would therefore always be available for review by the person charged with the crime.

CHAIR FRENCH clarified for the record that the subpoena is being issued in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 128. He added that these subpoenas were first authorized last year and he wants to keep them tightly focused because criminal cases are built on them.

2:24:47 PM
JOE MASTERS, Commissioner Department of Public Safety (DPS), explained that the current process requires two search warrants. The first search warrant is to discover the location of the computer where the activity took place. That information is used to apply for a second search warrant that authorizes the actual search of the property or computer. The new system authorizes an administrative subpoena for the first step.

SENATOR PASKVAN asked about the potential for a one-step judicial process; the judge authorizes getting the location from the ISP and subsequent search of the computer.

COMMISSIONER MASTERS replied it's often more complicated. For example, the ISP location could be an Internet café and it could belong to the owner of the Internet café or someone who is frequenting the Internet café.

CHAIR FRENCH commented that the public defenders would have a field day with a search warrant that asked to know who owns an account and permission to search wherever they might be found.

COMMISSIONER MASTERS noted that Sergeant DeGraaf and Sergeant Wilson were available online to answer specific questions.

SENATOR COGHILL said he'd like to hear from Sergeant DeGraaf on how often it would work to get a single search warrant for the two elements.

2:29:28 PM
SERGEANT DEREK DEGRAAF, Alaska State Troopers, Department of Public Safety (DPS), said he didn't believe that approach would work and warned that in most circumstances it would cause legal issues.

SENATOR COGHILL asked if other proof is needed to establish probable cause to get the first search warrant for an ISP.

SERGEANT DEGRAAF explained that the initial probable cause is based on an investigator connecting to the suspect through his IP address and downloading child pornography from that computer. Once law enforcement connects to the suspect's computer they download some of the files and verify that those meet the Alaska statutes for the possession and or distribution of child pornography. The police approach the court with that information.

SENATOR COGHILL asked about working with the courts to make the probable cause process for these Internet cases a little more straightforward. The proposed attorney general solution appears to further complicate the process.

CHAIR FRENCH responded that it's not supposed to be easy to get a search warrant, but he believes that the administrative subpoena strikes a balance to help nail down who the child pornography belongs to. He asked the members if anyone wanted to propose an amendment.

SENATOR COGHILL asked if DOL was asking for a specific designee.

CHAIR FRENCH replied they'd like to insert "or deputy attorney general for the criminal division" following "attorney general" on page 11, line 9. Conforming language would be necessary. He asked if any member wanted to offer the amendment.

2:35:31 PM
SENATOR MCGUIRE moved Amendment 3.

> Page 11, line 9, following "general"
> Insert "or deputy attorney general for the criminal division"
> [Make conforming changes accordingly.]

SENATOR MCGUIRE said she has a healthy respect for the right to privacy and she believes this process upholds that right. It doesn't change the important step of demonstrating probable cause before a judge in order to get a search warrant. The reason for the administrative subpoena is timeliness; in these cases in particular the evidence can disappear quickly. She expressed confidence in delegating this authority to the deputy attorney general for the criminal division. That is a licensed attorney who has sworn an oath and is accountable to the public, the Legislature, and the attorney general.

2:39:03 PM

SENATOR WIELECHOWSKI said it was a big step last year to grant administrative subpoena authority to the attorney general and to extend that authority further is to head down the proverbial slippery slope. "We're already very close to the border, if not having crossed it already, on violating Article I Section 14 of the constitution," he stated.

2:40:25 PM
SENATOR PASKVAN said part of the debate is whether to abandon the two-branch concept and have just one branch of government do both the search warrant and the prosecution. Acknowledging that there would be anomalies, he said he wasn't convinced at this point that a judge couldn't, with sufficient evidence, execute just one search warrant for everything that needs to be done. The concept of cloaking an attorney general, who is in a prosecutorial role, in a judge's role is troubling, he stated.

2:42:28 PM
SENATOR COGHILL said he has some of the same discomfort, but he would support the amendment. There is still the requirement to go before a court, but the information that is gathered from these administrative subpoenas is more a law enforcement issue than a court issue, he stated.

2:43:50 PM
A roll call vote was taken on proposed Amendment 3. Senators McGuire and Coghill voted in favor of Amendment 3 and Senators Wielechowski, Paskvan and French voted against it. Therefore, Amendment 3 failed by a vote of 2-3.

2:44:26 PM
CHAIR FRENCH noted that proposed Amendment 4 was by Senator Wielechowski.

SENATOR WIELECHOWSKI moved [Conceptual] Amendment 4, labeled 27-LS8004\A.1. He explained that this gives judges statutory authority to prohibit a sex offender from living within 500 feet of school grounds as a condition of parole or probation. This troubling issue came up in Anchorage this past summer and the reflex reaction was to ban all sex offenders from living near schools regardless of circumstances. Other states have done that and the evidence indicates that it hasn't worked very well. Blanket prohibitions can worsened the situation because it confines sex offenders to certain areas of a community. Giving judges the authority to make individual determinations is a reasonable balanced approach to resolve this issue.

[CONCEPTUAL] AMENDMENT 4

Page ___, line ___:
Insert "**and relating to conditions of probation in criminal cases involving sex offenses;**"

Page ___, line ___:
Insert a new bill section to read:
"* **Sec. ___.** AS 12.55.100(e) is amended to read:
(e) In addition to other conditions imposed on the defendant, while on probation and as a condition of probation
(1) for a sex offense, as described in AS 12.63.100, the defendant
(A) shall be required to submit to regular periodic polygraph examinations;
(B) may be required to provide each electronic mail address, instant messaging address, and other Internet communication identifier that the defendant uses to the defendant's probation officer; the probation officer shall forward those addresses and identifiers to the Alaska state troopers and to the local law enforcement agency;
(2) if the defendant was convicted of a violation of AS 11.41.434 - 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the defendant may be required to refrain from
(A) using or creating an Internet site;
(B) communicating with children under 16 years of age; [OR]
(C) possessing or using a computer**; or**
(D) residing within 500 feet of school grounds; in this subparagraph, "school grounds" has the meaning given in AS 11.71.900."

Renumber the following bill sections accordingly

CHAIR FRENCH objected for discussion purposes and stated that he appreciates the amendment and the fact that it doesn't make a blanket prohibition. It strikes a nice balance.

SENATOR MCGUIRE echoed support for the amendment. The judge is able to craft the right balance as he or she puts the sex offender back into society. The list of discretionary tools that a judge might use for sex offenders could be added to in the future, she said.

CHAIR FRENCH removed his objection and announced that without further objection Amendment 4 was adopted.

2:48:39 PM
CHAIR FRENCH asked Mr. Brenner to explain the proposed Amendment 5.

2:49:08 PM
DAVID BRENNER, Staff to Representative Pete Peterson, said the proposed amendment makes the installation of a keystroke logger or using wireless means to log keystrokes on a computer illegal when there is no right to access. It's currently illegal to obtain personal information via software or spyware but it's not illegal to obtain information as it's entered into the computer. It shouldn't matter how information is stolen from the computer because the victim's privacy is violated in any case. The law should recognize this.

2:50:08 PM
CHAIR FRENCH moved proposed Amendment 5, labeled 27-LS8004\A.2, and objected for discussion purposes.

[CONCEPTUAL] AMENDMENT 5

Page ___, line ___, following "**information;**":
Insert "**making the installation, enabling, or use of keystroke loggers or other devices criminal use of a computer;**"

Page ___, following line ___:
Insert a new bill section to read:
"*** Sec. ___.** AS 11.46.740(a) is amended to read:
(a) A person commits the offense of criminal use of a computer if, having no right to do so or any reasonable ground to believe the person has such a right, the person knowingly
(1) accesses, causes to be accessed, or exceeds the person's authorized access to a computer, computer system, computer program, computer network, or any part of a computer system or network, and, as a result of or in the course of that access,
(A) [(1)] obtains information concerning a person;
(B) [(2)] introduces false information into a computer, computer system, computer program, or computer network with the intent to

damage or enhance the data record or the financial reputation of a person;

(C) [(3)] introduces false information into a computer, computer system, computer program, or computer network and, with criminal negligence, damages or enhances the data record or the financial reputation of a person;

(D) [(4)] obtains proprietary information of another person;

(E) [(5)] obtains information that is only available to the public for a fee;

(F) [(6)] introduces instructions, a computer program, or other information that tampers with, disrupts, disables, or destroys a computer, computer system, computer program, computer network, or any part of a computer system or network; or

(G) [(7)] encrypts or decrypts data**; or**

(2) installs, enables, or uses a keystroke logger or other device or program that has the ability to record another person's keystrokes or entries on a computer; or

(3) uses a keystroke logger or other device or program to intercept or record another person's keystrokes or entries on a computer when those entries are transmitted wirelessly or by other non-wired means."

Renumber the following bill sections accordingly.

SENATOR WIELECHOWSKI asked if there was a definition for computer and if it would include a smart phone.

MR. BRENNER said he wasn't sure, but it's under the criminal use of a computer in current statute.

CHAIR FRENCH said this adds a new provision to the existing AS 11.46.740(a) relating to the variety of ways for using a computer for criminal purposes. He asked Mr. Brenner if he knew of any recent prosecutions involving keystroke loggers.

MR. BRENNER replied the Anchorage Police Department (APD) has had some complaints about keystroke loggers, but it isn't a crime so it wasn't pursued. He noted that law enforcement and Alaska Cabaret, Hotel, Restaurant & Retailer's Association (CHARR) sent letters of support. The business community recognizes that this is a growing problem.

CHAIR FRENCH asked if the DOL had seen this language.

MR. BRENNER replied he worked with Ms. Carpeneti on the language and to his knowledge the DOL had no objection.

SENATOR WIELECHOWSKI related that he found the definition of "computer" in AS 11.46.990 and it seems fairly broad.

2:52:44 PM
CHAIR FRENCH removed his objection and announced that without further objection Amendment 5 was adopted.

2:53:06 PM
CHAIR FRENCH closed public testimony on HB 127 and announced the committee would stand in recess to the call of the chair awaiting a CS that incorporated the foregoing amendments.

2:53:56 PM
CHAIR FRENCH recessed the meeting to the call of the chair. [The committee did not meet again that day.]