

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

February 15, 2012

1:35 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Joe Paskvan  
Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 165

"An Act relating to property exemptions for retirement plans; relating to pleadings, orders, liability, and notices under the Uniform Probate Code; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for life insurance policies; relating to transfers of individual retirement plans; relating to the community property of married persons; and amending Rule 301(a), Alaska Rules of Evidence."

- HEARD & HELD

SENATE BILL NO. 186

"An Act relating to persons found guilty but mentally ill; relating to sentencing procedures for factors that may increase the presumptive range or affect mandatory parole eligibility; relating to the granting of probation; relating to procedures for finding aggravating factors at sentencing; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 165

SHORT TITLE: PRINCIP.& INC/PROBATE/UTMA/RETIREMT/ETC.

SPONSOR(s): JUDICIARY

01/17/12 (S) READ THE FIRST TIME - REFERRALS  
01/17/12 (S) JUD, FIN  
02/01/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/01/12 (S) Heard & Held  
02/01/12 (S) MINUTE(JUD)  
02/15/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 186

SHORT TITLE: SENTENCING/PROBATION/MENTALLY ILL

SPONSOR(s): JUDICIARY

02/01/12 (S) READ THE FIRST TIME - REFERRALS  
02/01/12 (S) JUD, FIN  
02/10/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/10/12 (S) Heard & Held  
02/10/12 (S) MINUTE(JUD)  
02/15/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

DAVID SHAFTEL, Attorney at Law  
Anchorage, AK

**POSITION STATEMENT:** Explained amendments to SB 165.

BETH CHAPMAN, Attorney at Law  
Juneau, AK

**POSITION STATEMENT:** Explained amendments to SB 165.

LESLIE HOUSTON, Director  
Division of Administrative Services  
Department of Corrections (DOC)  
Juneau, AK

**POSITION STATEMENT:** Offered to follow up with information about total numbers of criminal cases in FY11.

ANNE CARPENETI, Attorney V  
Criminal Division  
Department of Law (DOL)  
Juneau, AK

**POSITION STATEMENT:** Commented on proposed amendments to SB 186.

**ACTION NARRATIVE**

[1:35:25 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Coghill, Wielechowski and Chair French. Senators Paskvan and McGuire were excused.

**SB 165-PRINCIP.& INC/PROBATE/UTMA/RETIREMT/ETC.**

1:40:02 PM

CHAIR FRENCH announced the consideration of SB 165. [CSSB 165, labeled 27-LS0819\D was before the committee.]

CHAIR FRENCH moved Amendment 1, labeled 27-LS0819\D.1, and objected for discussion purposes. He asked Mr. Shaftel to explain the amendment.

**A M E N D M E N T 1**

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 165( ), Draft Version "D"

Page 23, lines 10 - 11:

Delete "has the meaning given in AS 13.36.390"

Insert "means a person, including a person for whom a fiduciary or agent is acting, who executes the trust instrument"

1:40:59 PM

DAVID SHAFTEL, Attorney at Law, said his understanding is that this amendment was requested by a representative for an association of insurance companies. It was designed to prevent "stranger-owned" life insurance, and addresses an industry concern about people who invest in life insurance policies on individuals with whom they have no relationship. Mr. Shaftel said the group of trust attorneys that worked on the bill had no objection to the amendment.

CHAIR FRENCH highlighted an email from Brenda Nation who represents the American Council of Life Insurers urging this language. The trade group supports the more narrow definition provided in the amendment. .

1:45:16 PM

SENATOR COGHILL summarized his understanding of the amendment. The term settlor covers a wide range of contractual relationships and the amendment clarifies that for this purpose it means a trustee that has a specific agent requirement.

CHAIR FRENCH agreed that was a good common-sense reading. He asked Mr. Shaftel if there was anything incorrect about that characterization.

MR. SHAFTEL had no objection.

SENATOR WIELECHOWSKI asked if this would have an impact on divorcees.

MR. SHAFTEL replied there is wide variability as to what the parties will negotiate in a divorce setting. If the husband and wife have a policy that is in a life insurance trust, that often ends up being part of the property that the court considers and divides.

SENATOR WIELECHOWSKI asked if an "ex" would still be considered family.

MR. SHAFTEL answered yes.

CHAIR FRENCH withdrew his objection and announced that without further objection Amendment 1 was adopted.

[1:49:34 PM](#)

CHAIR FRENCH moved Amendment 2, labeled 27-LS0819\D.2, and objected for discussion purposes. He asked Mr. Shaftel for an explanation.

#### AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 165( ), Draft Version "D"

Page 14, line 29, through page 15, line 29:

Delete all material.

Insert new bill sections to read:

"\* **Sec. 23.** AS 13.46.190 is amended to read:

**Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the

(1) minor's attainment of 21 years of age with respect to property transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the custodial property to the minor is changed under AS 13.46.195 or 13.46.197;

(2) minor's attainment of 18 years of age with respect to property transferred under AS 13.46.050 or 13.46.060, unless the time of transfer of the custodial property to the minor is changed under AS 13.46.197;

(3) time specified in the transfer under AS 13.46.080 if the time of transfer of the custodial property to the minor is changed under AS 13.46.195 or 13.46.197; or

(4) minor's death.

\* **Sec. 24.** AS 13.46 is amended by adding a new section to read:

**Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian may extend the custodial term under this section to an age older than the age that is specified by this chapter or a transferring document made under AS 13.46.080, subject to the right of the minor to compel immediate distribution under (c) of this section.

(b) To extend the custodial term under (a) of this section, the custodian shall give the minor written notice of the custodian's intent to extend the custodial term. The notice must specify the duration of the extension by indicating the new custodial term and must inform the minor of the minor's right to compel immediate distribution under (c) of this section. The custodian shall give the notice during the later of the following periods:

(1) the six-month period that precedes the last day of the custodial term; or

(2) the six-month period that begins on the minor's 18th birthday.

(c) Rather than permit the extension of the custodial term, the minor may compel immediate distribution of all or part of the custodial property by giving written notice to the custodian

(1) during the six-month period that begins on the day that is the last day of the current custodial term; or

(2) within 90 days after receiving the custodian's notice under (b) of this section.

(d) If a minor does not exercise the minor's right to compel distribution under (c) of this section, the custodial term shall be extended as indicated in the custodian's notice given under (b) of this section, and the minor may not compel the

immediate distribution of custodial property before the end of the custodial term, as extended.

(e) A custodian may extend the custodial term more than once under this section.

(f) In this section, "custodial term" means the period of time provided in or allowed by this chapter during which the custodian is directed to hold custodial property until the property is transferred to the minor.

\* **Sec. 25.** AS 13.46.990(11) is amended to read:

(11) "minor" means an individual who has not attained the age of 18 years, except that when used in reference to the beneficiary for whose benefit custodial property is held or to be held, "minor" means an individual who has not attained the age at which the custodian is required under AS 13.46.190, [AND] 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;"

Page 26, line 30:

Delete "AS 13.46.495(g);"

MR. SHAFTEL stated that this amendment addresses a valid point that Senator McGuire raised during the last hearing. She did not want to restrict the time provisions that allow funds in a Uniform Transfer to Minors Act (UTMA) account to stay in that account. He said the group of trust attorneys agreed with her point and decided not to amend AS 13.46.195.

The amendment adds a new Sec. 13.46.197 to deal with the extension of the custodial term by the custodian. It essentially says that the extension can be any period of time as long as the beneficiary is given notice by the custodian and given the right to decline the extension. If the beneficiary agrees, the UTMA account continues for a specified extended period. There can also be more than one extension.

[1:54:59 PM](#)

CHAIR FRENCH highlighted that the extension is always subject to the right of the beneficiary to object and compel distribution, provided he or she does so at the time that the extension is under consideration.

MR. SHAFTEL said that's correct.

CHAIR FRENCH removed his objection and announced that without further objection Amendment 2 was adopted.

1:55:29 PM

CHAIR FRENCH moved Amendment 3, labeled 27-LS0819\D.3, and objected for discussion purposes. He asked Mr. Shaftel for an explanation.

**AMENDMENT 3**

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 165( ), Draft Version "D"

Page 1, line 3, following "**Code;**":

Insert "**relating to the appointment of trust property;**"

Page 7, following line 5:

Insert new bill sections to read:

"\* **Sec. 6.** AS 13.36.157 is repealed and reenacted to read:

**Sec. 13.36.157. Exercise of power of appointment.**

(a) An authorized trustee with unlimited discretion to invade trust principal may appoint part or all of that principal to a trustee of an appointed trust for, and only for the benefit of, a current beneficiary of the invaded trust to the exclusion of other current beneficiaries. A permissible appointee of a power of appointment held by a beneficiary of the appointed trust is not considered a beneficiary of the appointed trust. The successor and remainder beneficiaries of the appointed trust may be one or more of the successor and remainder beneficiaries of the invaded trust to the exclusion of other successor and remainder beneficiaries.

(b) An authorized trustee exercising the power under (a) of this section may grant a discretionary power of appointment, including a presently exercisable power of appointment, in the appointed trust to one or more of the current beneficiaries of the invaded trust, to the extent that the beneficiary who is granted the power to appoint is authorized to receive the principal outright under the terms of the invaded trust. A permissible appointee is not limited to the beneficiaries of the invaded trust.

(c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust may include present or future members of that class.

(d) An authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust if the current beneficiaries of the appointed trust are the same as the current beneficiaries of the invaded trust and the successor and remainder beneficiaries of the appointed trust are the same as the successor and remainder beneficiaries of the invaded trust. The shares of the current beneficiaries of the appointed trust must be the same as the shares of the current beneficiaries of the invaded trust, and the shares of the successor and remainder beneficiaries of the appointed trust must be the same as the shares of the successor and remainder beneficiaries of the invaded trust.

(e) If the authorized trustee exercises the power under (d) of this section, the appointed trust must include the same standard authorizing the trustee to distribute the income or invade the principal of the appointed trust as the standard in the invaded trust. However, the standard authorizing the trustee to distribute the income or invade the principal of the appointed trust may be changed if the trustee appoints to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

(f) If an authorized trustee exercises the power under (d) and (e) of this section to extend the duration of the appointed trust beyond the duration of the invaded trust for any period after the invaded trust would have otherwise terminated under the provisions of the invaded trust, the appointed trust, in addition to the language required to be included in the appointed trust under (e) of this section, may also provide an additional trustee with unlimited discretion to invade the principal of the appointed trust during the extended duration. The trustee with unlimited discretion continues to be subject to the restrictions in (d) - (h) of this section.

(g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are described by a class, the beneficiaries of the appointed trust include present or future members of that class.

(h) If the authorized trustee exercises the power under (d) - (g) of this section and if the invaded trust grants a power of appointment to a beneficiary of the trust, the appointed trust must

grant this power of appointment in the appointed trust, and the class of permissible appointees shall be the same as in the invaded trust.

\* **Sec. 7.** AS 13.36 is amended by adding new sections to read:

**Sec. 13.36.158. Additional provisions relating to exercise of a power of appointment.** (a) An exercise of the power to invade trust principal under AS 13.36.157 is the exercise of a special power of appointment.

(b) The appointed trust to which an authorized trustee appoints the assets of the invaded trust under AS 13.36.157 may have a duration that is longer than the duration set out in the invaded trust.

(c) If an authorized trustee has unlimited discretion to invade the principal of a trust and if the same trustee or another trustee has a power, not dependent on unlimited discretion, to invade principal under the trust instrument, the authorized trustee having unlimited discretion may exercise the power of appointment under AS 13.36.157(a) - (c).

(d) An authorized trustee may exercise the power to appoint in favor of an appointed trust under AS 13.36.157 whether or not there is a current need to invade principal under the terms of the invaded trust.

(e) An authorized trustee exercising the power under AS 13.36.157 - 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under the prevailing circumstances. The authorized trustee may not exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a contrary intent of the settlor and it cannot be established that the settlor would be likely to have changed this intention under the circumstances existing at the time the trustee exercises the power. The provisions of the invaded trust may not be viewed alone as substantial evidence of a contrary intent of the settlor unless the invaded trust expressly prohibits the exercise of the power in the manner intended by the authorized trustee.

(f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to abridge the right of a trustee to appoint property further in trust under the terms of the governing instrument of a trust, another provision of law, or common law, or as directed by a court having jurisdiction over the trust.

(g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise a power to invade principal. An inference of impropriety may not be made, and liability is not incurred, as a result of an authorized trustee not exercising the power conferred under AS 13.36.157.

(h) A power authorized by AS 13.36.157 may be exercised, subject to the provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the governing instrument. A general prohibition against amending or revoking the invaded trust and a provision that constitutes a spendthrift clause do not preclude the exercise of a power under AS 13.36.157.

(i) An authorized trustee may not exercise a power authorized by AS 13.36.157 to

(1) reduce, limit, or modify a beneficiary's current right to a mandatory distribution of income or principal, a mandatory annuity or unitrust interest, a right to withdraw a percentage of the value of the trust, or a right to withdraw a specified dollar amount, if the mandatory right has come into effect with respect to the beneficiary, but the mandatory right may be reduced, limited, or modified during any extended duration of the trust; however, notwithstanding the other provisions in this paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

(2) decrease or indemnify against a trustee's liability or exonerate a trustee from liability for failure to exercise reasonable care, diligence, and prudence unless the court having jurisdiction over the trust specifies otherwise;

(3) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the power under AS 13.36.157 unless a court having jurisdiction over the trust specifies otherwise;

(4) fix as binding and conclusive the value of an asset for purposes of distribution, allocation, or otherwise; or

(5) jeopardize

(A) the deduction or exclusion originally

claimed with respect to a contribution to the invaded trust that qualified for the annual exclusion under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C. 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

(B) the qualification of a transfer as a direct skip under 26 U.S.C. 2642(c) (Internal Revenue Code);

(C) the election to treat a corporation as a subchapter S corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

(D) another specific tax benefit for which a contribution originally qualified for income, gift, estate, or generation-skipping transfer tax purposes under 26 U.S.C. (Internal Revenue Code).

(j) Before exercising the power under AS 13.36.157, an authorized trustee shall consider the tax implications of the exercise of the power.

(k) An authorized trustee may not exercise a power described in AS 13.36.157 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not independent. A violation voids the entire exercise of the power unless the exercise is modified to correct the violation.

(l) Unless a court having jurisdiction over the trust directs otherwise, an authorized trustee may not exercise a power authorized by AS 13.36.157 to change the provisions regarding the determination of the compensation of a trustee. The commissions or other compensation payable to the trustees of the invaded trust may continue to be paid to the trustees of the appointed trust during the term of the appointed trust and shall be determined in the same manner as for the invaded trust.

(m) A trustee may not receive a payment, a commission, or other compensation for appointing property from the invaded trust to an appointed trust under AS 13.36.157. However, a trustee may be compensated at an hourly rate for the time spent considering and implementing the exercise of a power to appoint.

(n) Unless the invaded trust expressly provides otherwise, the provisions in AS 13.36.157 - 13.36.159

apply to

(1) a trust, whether testamentary or inter vivos, governed by the laws of this state, including a trust whose governing law has been changed to the laws of this state; and

(2) a trust that has a trustee who is an individual domiciled in this state, or a trustee that is an entity having an office in this state, if a majority of the trustees select this state as the location for the primary administration of the trust and the selection is made by an instrument in writing that is signed and acknowledged by a majority of the trustees; the instrument exercising this selection shall be kept with the records of the invaded trust.

(o) A power to pay principal that includes words such as "best interests," "welfare," "comfort," or "happiness" is not considered a limitation or modification of the right to distribute principal.

(p) In this section, "internal revenue code" means the Internal Revenue Code of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is amended from time to time;

**Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the authorized trustee provides otherwise, the appointment of

(1) all of the assets comprising the principal of the invaded trust to an appointed trust includes subsequently discovered assets of the invaded trust and undistributed principal of the invaded trust acquired after the appointment to the appointed trust;

(2) a part but not all of the assets comprising the principal of the invaded trust to an appointed trust may not include subsequently discovered assets belonging to the invaded trust or principal paid to or acquired by the invaded trust after the appointment to the appointed trust; those subsequently discovered assets remain the assets of the invaded trust.

(b) The exercise of the power to appoint to an appointed trust under AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and acknowledged by the authorized trustee. The exercise of the power is effective 30 days after the date of service of the instrument as specified in (d) of this section, unless the persons entitled to notice consent in writing to a sooner effective date.

(c) An authorized trustee may exercise the power

authorized by AS 13.36.157 without the consent of the settlor or a person interested in the invaded trust and without court approval. However, an authorized trustee may seek court approval for the exercise. When seeking court approval, notice shall be sent to all qualified beneficiaries.

(d) A copy of the invaded trust, the appointed trust, and the instrument exercising the power shall be delivered to

(1) the settlor, if living, of the invaded trust;

(2) a person having the right, under the terms of the invaded trust, to remove or replace the authorized trustee exercising the power under AS 13.36.157; and

(3) a qualified beneficiary or a person who may represent and bind the qualified beneficiary under AS 13.06.120.

(e) Notice under (d) of this section to a qualified beneficiary is not required if the settlor has exempted the authorized trustee from providing notification or information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section shall be provided under AS 13.06.110.

(f) The instrument exercising the power must state whether the appointment is of all or part of the assets comprising the principal of the invaded trust and, if a part, the approximate percentage of the value of the principal of the invaded trust that is the subject of the appointment.

(g) A person entitled to notice under (d) of this section may object to the trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written notice of objection on the trustee before the effective date of the exercise of the power. The failure to object does not constitute consent.

(h) The receipt of a copy of the instrument exercising the power does not, before the expiration of the limitation period in AS 13.36.100 with respect to a report disclosing the exercise, affect the right of a qualified beneficiary to object to the exercise of the power under AS 13.36.157 and to request the court to modify or to reverse the exercise.

(i) A copy of the instrument exercising the power shall be kept with the records of the invaded trust.

\* **Sec. 8.** AS 13.36.215 is amended by adding a new

subsection to read:

(b) In AS 13.36.157 - 13.36.159,

(1) "appointed trust" means an irrevocable trust that receives principal from an invaded trust under AS 13.36.157, including a new trust created by the settlor of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

(2) "authorized trustee" means, with regard to an invaded trust, a trustee with the authority to pay trust principal to or for a current beneficiary; in this paragraph, "trustee" does not include a settlor or a beneficiary to whom income or principal must be paid, currently or in the future, or who is or will become eligible to receive a distribution of income or principal in the discretion of the trustee other than by the exercise of a power of appointment held in a nonfiduciary capacity;

(3) "current beneficiary" means a person or, with regard to a class of persons, a person who is or will become a member of the class, to whom a trustee may distribute principal when exercising a power under AS 13.36.157;

(4) "invade" means pay directly to the beneficiary of a trust or apply to the benefit of a beneficiary;

(5) "invaded trust" means an irrevocable inter vivos or testamentary trust the principal of which is appointed under AS 13.36.157;

(6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C) that meets the requirements for a pooled trust under the regulations of this state relating to the Medicaid treatment of trusts;

(7) "principal" means the assets of a trust, including accrued and accumulated income, but excluding income that is currently required to be distributed;

(8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A) that meets the requirements for a special needs trust under the regulations of this state relating to the Medicaid treatment of trusts;

(9) "third-party trust" means a trust that is

(A) established by a third party with the assets of the third party to provide for supplemental needs for a person eligible when the trust is created

or at a future time for needs-based public assistance;  
and

(B) exempt from the provisions of the regulations of this state relating to the Medicaid treatment of trusts;

(10) "unlimited discretion" means the unlimited right to distribute principal that is not modified in any manner."

Renumber the following bill sections accordingly.

Page 27, line 3:

Delete "sec. 31"

Insert "sec. 34"

Page 27, line 5:

Delete "sec. 31"

Insert "sec. 34"

Page 27, following line 13:

Insert a new subsection to read:

"(b) AS 13.36.157, repealed and reenacted by sec. 6 of this Act, AS 13.36.158 and 13.36.159, enacted by sec. 7 of this Act, and AS 13.36.215(5), enacted by sec. 8 of this Act, apply to a trust that exists before, on, or after the effective date of this Act."

Reletter the following subsection accordingly.

Page 27, line 14:

Delete "sec. 28"

Insert "sec. 31"

Page 27, line 20:

Delete "sec. 31"

Insert "sec. 34"

Page 27, line 21:

Delete "sec. 35"

Insert "sec. 38"

MR. SHAFTEL deferred to Ms. Chapman for an explanation.

[1:56:12 PM](#)

BETH CHAPMAN, Attorney at Law, stated that she has practiced in Juneau for the past 24 years, specializing in trusts and estates. She explained that the proposed amendment revises the current statute that codifies a trustee's common law powers to make amendments to trusts in certain circumstances. Alaska was the second state to adopt such a provision, following the New York model. Since then 13 states have adopted similar provisions. Last year the New York Legislature amended their statute, and this provision models that change.

The most significant changes relate to notice to beneficiaries. Under the current statute, a trustee who decides to extend the term of a trust has no statutory requirement to provide notice of that extension to the beneficiaries. This provision requires that notice and that the opportunity to object be given to the beneficiaries. The objection itself will not prevent the extension from going forward, but the beneficiary would have the option to seek a court order regarding the extension or modification.

The other changes relate to when the trustee's authority is limited by a standard. For example, many trusts limit a trustee's authority to making distributions to a beneficiary for health, education, support and maintenance. Under the current law, it's unclear whether that standard could be changed and to what extent the beneficiary's interest in the trust could be limited. This provision provides that when extending the term of the trust the trustee must include the same beneficiaries and the same standard for distributions, unless the trust is being changed to protect a beneficiary's rights to public assistance.

[2:00:53 PM](#)

SENATOR COGHILL asked if there had been court challenges when somebody tried to exercise this unlimited authority.

MS. CHAPMAN replied not to her knowledge.

CHAIR FRENCH asked for a layman's description of the term "power of appointment" as it's used in the bill.

MS. CHAPMAN responded that in this context it means that the trustee has the authority to decide who and how assets are to be received from a trust, subject to the limitations on the authority stated in the trust.

SENATOR COGHILL asked if court challenges made this language necessary.

MS. CHAPMAN replied she was not aware of any challenges. In fact, it will probably minimize challenges because there will be specific notice provisions and time limits for giving the beneficiary the right to object. Also, it lays out the standard for objecting to the trustee's exercise of the authority.

SENATOR COGHILL said his expectation is that plenty of notice is given and that the explanation of the rights and authorities is clear.

MS. CHAPMAN said 30-day notice is required, which is the standard when notices are given in other trusts, such as rights of withdrawals.

CHAIR FRENCH asked if there are trust attorneys that would not support these provisions.

MS. CHAPMAN replied this has been discussed among the estate planning community for years and each year additional states adopt these provisions. This builds flexibility into custodianship accounts thereby reducing the need to go to court, which can be costly. She concluded that this was an improvement to the current statute because it provides more protection for beneficiaries and a "roadmap" for attorneys who may not practice in this area.

[2:05:50 PM](#)

CHAIR FRENCH removed his objection and announced that without further objection, Amendment 3 was adopted

CHAIR FRENCH closed public testimony and held SB 165 in committee.

**SB 186-SENTENCING/PROBATION/MENTALLY ILL**

[2:06:55 PM](#)

CHAIR FRENCH announced the consideration of SB 186. He noted that an amendment from Senator Coghill was discussed during the last hearing but no formal action was taken.

At ease from 2:07:31 p.m. to 2:07:54 p.m.

CHAIR FRENCH asked Senator Coghill to move the amendment and said he would object for discussion purposes.

[2:08:07 PM](#)

SENATOR COGHILL moved Amendment 1, labeled 27-LS0811\I.1.

CHAIR FRENCH objected.

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: SB 186

BY SENATOR COGHILL

Page 1, line 1, following "Act":

Insert "**relating to property crimes;**"

Page 1, following line 6:

Insert new bill sections to read:

**\* Section 1.** AS 11.46.130(a) is amended to read:

(a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is **\$1,500** [\$500] or more but less than \$25,000;

(2) the property is a firearm or explosive;

(3) the property is taken from the person of another;

(4) the property is taken from a vessel and is vessel safety or survival equipment;

(5) the property is taken from an aircraft and the property is aircraft safety or survival equipment;

(6) the value of the property is **\$250** [\$50] or more but less than **\$1,500** [\$500] and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(A) an offense under AS 11.46.120, or an offense under another law or ordinance with similar elements;

(B) a crime set out in this subsection or an offense under another law or ordinance with similar elements;

(C) an offense under AS 11.46.140(a)(1), or an offense under another law or ordinance with similar elements; or

(D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or ordinance with similar elements; or

(7) the property is an access device.

**\* Sec. 2.** AS 11.46.140(a) is amended to read:

(a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$250 [\$50] or more but less than \$1,500 [\$500]; or

(2) [REPEALED

(3)] the value of the property is less than \$250 [\$50] and, within the past five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of theft or concealment of merchandise, or an offense under another law or ordinance with similar elements.

\* **Sec. 3.** AS 11.46.150(a) is amended to read:

(a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$250 [\$50].

\* **Sec. 4.** AS 11.46.220(c) is amended to read:

(c) Concealment of merchandise is

(1) a class C felony if

(A) the merchandise is a firearm;

(B) the value of the merchandise is \$1,500 [\$500] or more; or

(C) the value of the merchandise is \$250 [\$50] or more but less than \$1,500 [\$500] and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(i) the offense of concealment of merchandise under this paragraph or (2)(A) of this subsection, or an offense under another law or ordinance with similar elements; or

(ii) an offense under AS 11.46.120, 11.46.130, or 11.46.140(a)(1), or an offense under another law or ordinance with similar elements;

(2) a class A misdemeanor if

(A) the value of the merchandise is \$250 [\$50] or more but less than \$1,500 [\$500]; or

(B) the value of the merchandise is less than \$250 [\$50] and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions of the offense of concealment of merchandise or theft in any degree, or an offense under another law or ordinance with similar elements;

(3) a class B misdemeanor if the value of the merchandise is less than \$250 [\$50].

\* **Sec. 5.** AS 11.46.260(b) is amended to read:

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is \$1,500 [\$500] or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is \$250 [\$50] or more but less than \$1,500 [\$500];

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than \$250 [\$50].

\* **Sec. 6.** AS 11.46.270(b) is amended to read:

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is \$1,500 [\$500] or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is \$250 [\$50] or more but less than \$1,500 [\$500];

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than \$250 [\$50].

\* **Sec. 7.** AS 11.46.280(d) is amended to read:

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is \$25,000 or more;

(2) a class C felony if the face amount of the check is \$1,500 [\$500] or more but less than \$25,000;

(3) a class A misdemeanor if the face amount of the check is \$250 [\$50] or more but less than \$1,500 [\$500];

(4) a class B misdemeanor if the face amount of the check is less than \$250 [\$50].

\* **Sec. 8.** AS 11.46.285(b) is amended to read:

(b) Fraudulent use of an access device is

(1) a class B felony if the value of the property or services obtained is \$25,000 or more;

(2) a class C felony if the value of the property or services obtained is \$1,500 [\$50] or more but less than \$25,000;

(3) a class A misdemeanor if the value of the property or services obtained is less than \$1,500 [\$50].

\* **Sec. 9.** AS 11.46.295 is amended to read:

**Sec. 11.46.295. Prior convictions.** For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or **11.46.140(a)(2)** [11.46.140(a)(3)], or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed. The court shall consider the date of a prior conviction as occurring on the date that sentence is imposed for the prior offense.

\* **Sec. 10.** AS 11.46.360(a) is amended to read:

(a) A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

(1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;

(2) the propelled vehicle of another and

(A) the vehicle or any other property of another is damaged in a total amount of **\$1,500** [\$500] or more;

(B) the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount of **\$1,500** [\$500] or more; or

(C) the owner is deprived of the use of the vehicle for seven days or more;

(3) the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or

(4) the propelled vehicle of another and, within the preceding seven years, the person was convicted under

(A) this section or AS 11.46.365;

(B) former AS 11.46.482(a)(4) or (5);

(C) former AS 11.46.484(a)(2);

(D) AS 11.46.120 - 11.46.140 of an offense involving the theft of a propelled vehicle; or

(E) a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) - (D) of this paragraph.

\* **Sec. 11.** AS 11.46.482(a) is amended to read:

(a) A person commits the crime of criminal mischief in the third degree if, having no right to do

so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of **\$1,500** [\$500] or more;

(2) the person recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

(3) the person knowingly

(A) defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected;

(B) removes human remains or associated burial artifacts from a cemetery, tomb, grave, or memorial regardless of whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected.

\* **Sec. 12.** AS 11.46.484(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right

(1) with intent to damage property of another, the person damages property of another in an amount of **\$250** [\$50] or more but less than **\$1,500** [\$500];

(2) the person tampers with a fire protection device in a building that is a public place;

(3) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(4) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(5) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work upon a highway under construction.

\* **Sec. 13.** AS 11.46.486(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fifth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

(2) with intent to damage property of another, the person damages property of another in an amount less than \$250 [\$50]; or

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

\* **Sec. 14.** AS 11.46.530(b) is amended to read:

(b) Criminal simulation is

(1) a class C felony if the value of what the object purports to represent is \$1,500 [\$500] or more;

(2) a class A misdemeanor if the value of what the object purports to represent is \$250 [\$50] or more but less than \$1,500 [\$500];

(3) a class B misdemeanor if the value of what the object purports to represent is less than \$250 [\$50].

\* **Sec. 15.** AS 11.46.620(d) is amended to read:

(d) Misapplication of property is

(1) a class C felony if the value of the property misapplied is \$1,500 [\$500] or more;

(2) a class A misdemeanor if the value of the property misapplied is less than \$1,500 [\$500].

\* **Sec. 16.** AS 11.46.730(c) is amended to read:

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss of \$1,500 [\$500] or more as a result to the defendant's conduct, in which case defrauding secured creditors is

(1) a class B felony if the loss is \$25,000 or more;

(2) a class C felony if the loss is \$1,500 [\$500] or more but less than \$25,000."

Page 1, line 7:

Delete "**Section 1**"

Insert "**Sec. 17**"

Renumber the following bill sections accordingly.

Page 5, line 23:  
Delete "sec. 8"  
Insert "sec. 24"

Page 5, line 24:  
Delete "sec. 9"  
Insert "sec. 25"

Page 5, line 29:  
Delete "sec. 1"  
Insert "sec. 17"

Page 5, line 30:  
Delete "sec. 2"  
Insert "sec. 18"  
Delete "sec. 3"  
Insert "sec. 19"

Page 5, line 31:  
Delete "sec. 4"  
Insert "sec. 20"

Page 6, line 1:  
Delete "sec. 7"  
Insert "sec. 23"

Page 6, line 3, following "(b)":  
Insert "AS 11.46.130(a), as amended by sec. 1 of this Act, AS 11.46.140(a), as amended by sec. 2 of this Act, AS 11.46.150(a), as amended by sec. 3 of this Act, AS 11.46.220(c), as amended by sec. 4 of this Act, AS 11.46.260(b), as amended by sec. 5 of this Act, AS 11.46.270(b), as amended by sec. 6 of this Act, AS 11.46.280(d), as amended by sec. 7 of this Act, AS 11.46.285(b), as amended by sec. 8 of this Act, AS 11.46.295, as amended by sec. 9 of this Act, AS 11.46.360(a), as amended by sec. 10 of this Act, AS 11.46.482(a), as amended by sec. 11 of this Act, AS 11.46.484(a), as amended by sec. 12 of this Act, AS 11.46.486(a), as amended by sec. 13 of this Act, AS 11.46.530(b), as amended by sec. 14 of this Act, AS 11.46.620(d), as amended by sec. 15 of this Act, AS 11.46.730(c), as amended by sec. 16 of this Act, and"

Page 6, line 3:

Delete "sec. 6"  
Insert "sec. 22"  
Delete "applies"  
Insert "apply"

Page 6, line 5:

Delete "sec. 8"  
Insert "sec. 24"

Page 6, line 10:

Delete "Sections 8 and 9"  
Insert "Sections 24 and 25"  
Delete "sec. 12"  
Insert "sec. 28"

SENATOR COGHILL explained that the purpose of the amendment was to raise the threshold amounts for property offenses. It addresses theft and its related offenses and it deals with all the associated misdemeanors and felonies. These property crimes have a value threshold that distinguishes first, second, third and fourth degree offenses that are a class C felony or an A or B misdemeanor. The amendment adjusts the value thresholds across the statutes from \$500 to \$1,500 and \$50 to \$250.

He directed attention to a chart of felony thresholds for property theft in the western U.S. that shows that Alaska is the lowest at \$500, whereas Montana and Utah have the highest thresholds at \$1,500. The proposed amendment would bring Alaska more in alignment with those states.

SENATOR COGHILL noted a court system document that shows the numbers of property crime cases filed under AS 11.46 during FY11. There were 911 cases of theft where the property was valued at more than \$500; 807 cases of theft where the property was valued at \$50-\$499; 404 cases of theft where the property was valued under \$50; 171 cases of fraud where the property was valued at \$50-\$24,999; and 738 cases of criminal mischief and property damage where the property was valued at \$50-\$499.

[2:12:54 PM](#)

SENATOR COGHILL said he understands that the lower threshold is used as a hammer to get misdemeanor pleas, but he doesn't believe it's equitable to make someone a felon because they stole a \$700 bike or broke a \$1,000 window.

SENATOR WIELECHOWSKI commented that someone recently mentioned that the laws create disparate treatment between urban and rural

areas. A window that's valued at \$200 in Anchorage may be valued at three or four times that in a rural village. Depending on location, breaking that window can be a misdemeanor or a felony.

He noted that 3,794 property crime cases were filed in FY11 and asked how many total crimes there were.

CHAIR FRENCH asked Doug Moody and Leslie Houston if they had that information.

[2:15:03 PM](#)

LESLIE HOUSTON, Director, Division of Administrative Services, Department of Corrections (DOC), introduced herself and offered to follow up.

CHAIR FRENCH said his inclination was to adopt the amendment and, if necessary, adjust it at a future hearing. He thanked Senator Coghill for bringing the amendment forward, and highlighted that in the last 20 years Alaska's prison population has shifted from mostly violent offenders to mostly nonviolent offenders. To change that will require some policy changes, he said.

SENATOR COGHILL clarified the intent of the amendment was not to lighten up on crime, but to more appropriately match the penalty to the crime.

CHAIR FRENCH confirmed that no one was saying that offenders would not be held accountable.

SENATOR WIELECHOWSKI asked to hear the administration's position on the amendment.

[2:19:03 PM](#)

ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), stated that DOL did not have a position on the amendment, but had no objection. The rationale is understandable, but it does put the department in an awkward position because it is charging and prosecuting people under the current law.

SENATOR WIELECHOWSKI asked if the administration believes that this is good policy.

MS. CARPENETI replied she was not aware if anyone above her had considered the amendment or taken a position on it.

CHAIR FRENCH asked Senator Coghill if he'd reviewed the amendment with police chiefs.

SENATOR COGHILL replied he did in years past and they're understandably not big fans. He added that he did not ask the administration for an endorsement, and he's aware of the difficulty associated with shifting a threshold when DOL is charging and prosecuting under the current law.

CHAIR FRENCH stated that the amendment is before the committee and there's an objection.

At ease from 2:21:40 p.m. to 2:22:03 p.m.

CHAIR FRENCH reconvened the hearing and stated that he wanted to hear from police chiefs and Senator Coghill mentioned talking to members of the other body. He asked Senator Wielechowski if he had ideas about the amendment.

SENATOR WIELECHOWSKI expressed a desire to hear from law enforcement and the administration about whether this is good policy.

MS. CARPENETI offered to try to get an answer.

SENATOR COGHILL said he believes this is a good policy call but he too would like to hear from all sides.

SENATOR COGHILL withdrew Amendment 1 with the understanding that he would bring it back for further debate at a future meeting.

[2:24:11 PM](#)

CHAIR FRENCH moved Amendment 2, labeled 27-LS0811\I.2, and objected for discussion purposes.

#### AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: SB 186

Page 1, line 1, following "Act":

Insert **"relating to assault causing serious bodily injury to a child; relating to a definition of "serious bodily injury to a child";"**

Page 1, following line 6:

Insert new bill sections to read:

**"\* Section 1.** AS 11.41.200(a) is amended to read:

(a) A person commits the crime of assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person;

(3) the person knowingly engages in conduct that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; or

(4) that person recklessly causes serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury;

(5) while being 18 years of age or older, that person

(A) intentionally causes serious bodily injury to a child under 12 years of age or to a child under 16 years of age who is mentally or physically impaired; or

(B) recklessly causes serious bodily injury on one or more than one occasion to a child under 12 years of age or to a child under 16 years of age who is mentally or physically impaired.

\* **Sec. 2.** AS 11.81.900(b) is amended by adding a new paragraph to read:

(65) "serious bodily injury to a child" includes second or third degree burns, a fracture of any bone, a concussion, strangulation, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by striking children with objects, or other physical injury that results in significant physical injury to the child."

Page 1, line 7:

Delete "Section 1"

Insert "Sec. 3"

Renumber the following bill sections accordingly.

Page 5, line 23:

Delete "sec. 8"

Insert "sec. 10"

Page 5, line 24:  
Delete "sec. 9"  
Insert "sec. 11"

Page 5, line 29:  
Delete "sec. 1"  
Insert "sec. 3"

Page 5, line 30:  
Delete "sec. 2"  
Insert "sec. 4"  
Delete "sec. 3"  
Insert "sec. 5"

Page 5, line 31:  
Delete "sec. 4"  
Insert "sec. 6"

Page 6, line 1:  
Delete "sec. 7"  
Insert "sec. 9"

Page 6, lines 3 - 4:  
Delete all material and insert:  
"(b) AS 11.41.200(a), as amended by sec. 1 of this Act, AS 11.81.900(b)(65), as added by sec. 2 of this Act, and AS 12.55.090, as amended by sec. 8 of this Act, apply to offenses occurring on or after the effective date of this Act."

Page 6, line 5:  
Delete "sec. 8"  
Insert "sec. 10"

Page 6, line 10:  
Delete "Sections 8 and 9"  
Insert "Sections 10 and 11"  
Delete "sec. 12"  
Insert "sec. 14"

CHAIR FRENCH explained that the amendment incorporates some recommendations from the Children's Justice Act Task Force to look at ways to strengthen the statutes regarding assault on a child.

[2:25:19 PM](#)

MS. CARPENETI expressed concern with the proposed amendment to Sec. 11.41.200, assault in the first degree. The Office of Special Prosecutions and Appeals (OSPA) said they probably wouldn't use the charge in the proposed Sec. 11.41.200(a)(5)(A) because it would be easier to charge under the current Sec. 11.41.200(a)(2). That is, "with intent to cause serious physical injury to another, the person causes serious physical injury to any person." The new provision proposed in Sec. 11.41.200(a)(5)(B) would also be covered under a crime of assault in the second degree. That crime is already prohibited and it uses definitions that the courts and attorneys are accustomed to. She also mentioned that the definition proposed by the task force for "serious bodily injury" was problematic because it listed a series of examples rather than giving a generic definition.

She said she worked on some suggestions and would make them available at the Chair's discretion. These would include possibly amending the crime of endangering the welfare of a child in the first degree, which is a class C felony under most circumstances. It talks about reckless failure to provide adequate food or liquids to a child that results in protracted impairment of the child's health. These too are terms that DOL uses and have been considered by courts.

[2:30:32 PM](#)

CHAIR FRENCH commented on the apparent disconnect between the Children's Justice Act Task Force representation and DOL's representation, and encouraged Ms. Carpeneti to speak with the task force representatives about where they feel there are weaknesses in the system.

MS. CARPENETI responded that she would be happy to speak to both Jan Rutherford and Mr. Janidlo about specific cases and the underlying reasons that the people who testified thought that the criminal justice system was inadequate.

SENATOR COGHILL asked what the culpable mental state is for proving someone acted "recklessly."

MS. CARPENETI explained that the prosecution has to prove that the person was aware of the risk and consciously disregarded it.

SENATOR COGHILL asked if there is a different culpable state if the victim is a child as opposed to an adult.

MS. CARPENETI replied the culpable mental state is the same under AS 11.41.200(a)(2), whether the victim is an adult or a child.

SENATOR COGHILL said he was concerned that this would make it more difficult to charge somebody who had harmed a child.

MS. CARPENETI clarified that this does not change the culpable mental state.

[2:34:48 PM](#)

CHAIR FRENCH asked Ms. Houston and Mr. Moody if they wanted to comment on the amendment.

DOUGLAS MOODY, Attorney, Public Defender Agency, Department of Administration (DOA), said he didn't have the amendment.

CHAIR FRENCH said he would likely withdraw the proposed amendment to allow time for more background work before taking final action as a committee.

[2:35:49 PM](#)

CHAIR FRENCH withdrew Amendment 2.

SENATOR COGHILL asked if bodily injury to a child would be an aggravator or a primary charge.

CHAIR FRENCH said it's structured in the amendment as a primary charge. He asked Ms. Carpeneti if there was an aggravator dealing with the age of a victim.

MS. CARPENETI replied there is an aggravator that deals with a victim that is particularly vulnerable; that includes age.

SENATOR COGHILL opined that this would create a level of proof that may not have to be the same level as an aggravator.

CHAIR FRENCH clarified that aggravators are just like charges.

SENATOR COGHILL asked if there was more discretion.

MS. CARPENETI said that under the Blakely decision, the state would have to prove the aggravator beyond a reasonable doubt to a jury, but in sentencing a judge has discretion to weigh the worth of the aggravator.

[2:37:29 PM](#)

CHAIR FRENCH asked if DOL's case management system is able to sort how often a particular aggravator is used.

MS. CARPENETI offered to follow up with an answer.

CHAIR FRENCH announced he would hold SB 186 in committee.

2:37:49 PM

There being no further business to come before the committee, Chair French adjourned the meeting at 2:37 p.m.