ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 4, 2012
1:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

CONFIRMATION HEARINGS
Alaska Bar Association

- CANCELED

SENATE BILL NO. 180
"An Act directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures allowing for the use in the construction and maintenance of transportation projects and public facilities and in the construction of projects by public and private entities of gravel or aggregate materials that contain a limited amount of naturally occurring asbestos, and authorizing use on an interim basis of those materials for certain transportation projects and public facilities; relating to certain claims arising out of or in connection with the use of gravel or aggregate materials containing a limited amount of naturally occurring asbestos; and providing for an effective date."

- MOVED CSSB 180(JUD) OUT OF COMMITTEE

SENATE BILL NO. 134
"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- HEARD & HELD

SENATE BILL NO. 218

"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 180
SHORT TITLE: NATURALLY OCCURRING ASBESTOS IN GRAVEL
SPONSOR(s): SENATOR(s) OLSON

01/27/12	(S)	READ THE FIRST TIME - REFERRALS
01/27/12	(S)	TRA, JUD
02/23/12	(S)	TRA AT 1:00 PM BUTROVICH 205
02/23/12	(S)	Moved CSSB 180(TRA) Out of Committee
02/23/12	(S)	MINUTE(TRA)
02/24/12	(S)	TRA RPT CS 3DP NEW TITLE
02/24/12	(S)	DP: KOOKESH, MENARD, THOMAS
02/24/12	(S)	FIN REFERRAL ADDED AFTER JUD
03/12/12	(S)	JUD AT 12:30 AM BELTZ 105 (TSBldg)
03/12/12	(S)	Heard & Held
03/12/12	(S)	MINUTE(JUD)
03/23/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/23/12	(S)	Heard & Held
03/23/12	(S)	MINUTE(JUD)
04/02/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/02/12	(S)	Heard & Held
04/02/12	(S)	MINUTE(JUD)
04/04/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 134
SHORT TITLE: CHILD SUPPORT AWARDS
SPONSOR(s): KOOKESH

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	HSS, JUD
02/06/12	(S)	HSS AT 1:30 PM BELTZ 105 (TSBldg)
02/06/12	(S)	Heard & Held
02/06/12	(S)	MINUTE(HSS)

02/15/12	(S)	HSS AT 1:30 PM BUTROVICH 205
02/15/12	(S)	Moved CSSB 134(HSS) Out of Committee
02/15/12	(S)	MINUTE(HSS)
02/17/12	(S)	HSS RPT CS 2DP 2NR NEW TITLE
02/17/12	(S)	DP: DAVIS, EGAN
02/17/12	(S)	NR: MEYER, DYSON
02/17/12	(S)	FIN REFERRAL ADDED AFTER JUD
03/07/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/07/12	(S)	Heard & Held
03/07/12	(S)	MINUTE(JUD)
04/04/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 218
SHORT TITLE: SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/22/12	(S)	READ THE FIRST TIME - REFERRALS
02/22/12	(S)	JUD, FIN
02/29/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/29/12	(S)	Heard & Held
02/29/12	(S)	MINUTE(JUD)
03/16/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/12	(S)	Scheduled But Not Heard
04/04/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ALLEN BAILEY, representing himself
Anchorage, AK
POSITION STATEMENT: Testified on SB 134 and expressed concern about potentially disregarding 25 years of case law on calculating child support.

RHONDA BUTTERFIELD, representing herself
Anchorage, AK
POSITION STATEMENT: Testified on SB 134 and expressed concern about potentially disregarding 25 years of case law on calculating child support.

MICHAEL SHAFFER, representing himself
Anchorage, AK
POSITION STATEMENT: Testified on SB 134 and expressed concern about potentially disregarding 25 years of case law on calculating child support.

DOROTHEA AGUERO, attorney representing herself
Anchorage, AK

POSITION STATEMENT: Testified on SB 134 and expressed concern about potentially disregarding 25 years of case law on calculating child support.

DORTHY SHOCKLEY, staff
Senator Albert Kookesh
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Provided information on SB 134 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law (DOL)
Juneau, AK
POSITION STATEMENT: Provided a sectional analysis for SB 218.

NANCY MEADE, General Counsel
Alaska Court System
Anchorage, AK
POSITION STATEMENT: Commented on video conferencing witness testimony as it pertains to SB 218.

ACTION NARRATIVE

1:35:34 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 Paskvan, Wielechowski, and Chair French. Senator Coghill arrived soon thereafter.

SB 180-NATURALLY OCCURRING ASBESTOS IN GRAVEL

1:36:06 PM
CHAIR FRENCH announced the consideration of SB 180, "An Act directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures allowing for the use in the construction and maintenance of transportation projects and public facilities and in the construction of projects by public and private entities of gravel or aggregate materials that contain a limited amount of naturally occurring asbestos, and authorizing use on an interim basis of those materials for certain transportation projects and public facilities; relating to certain claims arising out of or in connection with the use of gravel or aggregate materials containing a limited amount of naturally occurring asbestos; and providing for an effective date." He stated that the committee

heard extensive testimony during previous hearings from the Department of Transportation and Public Facilities, the state epidemiologist and the Department of Law (DOL). His view was that the committee did what it could to balance the need for development with the health risks of using naturally occurring asbestos. Finding no further committee discussion, he asked for a motion.

1:36:50 PM
SENATOR WIELECHOWSKI moved to report CS for SB 180, version X, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 180(JUD) moved from the Senate Judiciary Standing Committee.

1:37:03 PM
At ease.

SB 134-CHILD SUPPORT AWARDS

1:38:14 PM
CHAIR FRENCH announced the consideration of SB 134, "An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure." He relayed that he asked the bar association to solicit input on the bill from family law practitioners so the emails and statements that committee members have received from practitioners came at his instigation.

1:39:16 PM
SENATOR COGHILL joined the committee.

ALLEN BAILEY, family law attorney representing himself, Anchorage, AK, said his clients tend to be victims of domestic violence and many are in the lower income bracket. He said he did not have a preference about placing Court Rule 90.3 in statute or not. However, it would be a serious loss to adopt an entirely new method. It would have neither the 25-year history with the courts nor the legislative history and commentary that Civil Rule 90.3 has.

He said the concerns the sponsor's staff raised in a letter commenting on Civil Rule 90.3 could not occur under current law to child support payors in Alaska. He opined that it should not be the duty of the court or CSSD to adjust reality for abusive people they do not have the financial income to support their

irresponsible behaviors. People sometimes undergo financial reversals, but there are ways to deal with that problem under current law. He urged the committee to take time with the bill.

1:45:36 PM
RHONDA BUTTERFIELD, family law attorney representing herself, Anchorage, AK, said 20 percent of her caseload is exclusively child support and 86 percent involves child support issues. She expressed concern that the bill would fundamentally change how child support is calculated and upheave 25 years of case law. She suggested that if the Legislature wants to place the child support rule into statute, it should adopt it in full along with the commentary and case law. The system may have weaknesses, but there are more serious issues than changing to an income share model. For example, the unemployed need temporary relief from their child support obligations. She also pointed out that it would be difficult for people to get relief from child support problems when the Legislature is not in session.

MS. BUTTERFIELD said she believes that the Department of Revenue understated the number of child support orders that would be subject to modification. After listening to an administrative law judge speak on the topic, she understood that CSSD has 58,000 child support cases, yet their fiscal note says only 20,000 would be eligible for modification. Her experience is that most child support orders involve primary physical custody by one parent so all of those cases would be subject to modification. She suggested the committee go slowly and look carefully before taking action on the bill. She said she would submit additional comments in writing.

1:52:46 PM
MICHAEL SHAFFER, family law attorney representing himself, said he represents primarily victims of domestic violence and sexual assault. He echoed the comments of the previous practitioners and described the bill as profoundly flawed. Although the calculation is based on the Washington model, it does not consider the costs directly associated with child rearing. That significant problem will create a tremendous amount of additional litigation between custodial and non-custodial parents. It will make things worse for the custodial parent in primary custody situations as the income disparity increases. This is often the mother. Although Court Rule 90.3 is not perfect, the court acts like a regulatory agency with a rule change process and it has the most expertise in child custody and child support.

MR. SHAFFER opined that every parent who thinks they can reassess their support payment through the new method will apply. His experience is that very few obligor parents pay voluntarily; more often, it is through mandatory garnishments. The bill will have an overall harmful impact to children, particularly those in the care of a low-income custodial parent. It will secondarily be harmful to custodial parents and will benefit non-custodial parents who want to pay less in child support. That is not and should not be the purpose of the law. He urged the committee to move cautiously and solicit input from experts and practitioners in the field before changing the calculation method.

1:59:49 PM
CHAIR FRENCH noted that Mr. Shaffer was careful to clarify that he was representing himself, not his employer.

DOROTHEA AGUERO, family law attorney representing herself, Anchorage, AK, echoed the comments of the previous testifiers. She said a number of practitioners articulated concern at the section meeting yesterday that they had not had the opportunity to provide input on the bill. The impetus for the bill appears to have come from constituent complaints about fairness of the current rule and the concerns articulated in Ms. Shockley's letter to Beth Adams from the Alaska Court System. She agreed with the previous testimony about consulting experts and practitioners in the field before making such sweeping changes.

MS. AGUERO said many of her former clients will want to modify their child support orders if the definition of shared custody is changed. Considering a parent's expenses may require extensive evidentiary hearings, which will burden the court system and cost clients more in attorney's fees. It also appears that lower income parents will actually pay more under the proposed changes. Another concern is that the bill disregards the commentary in Court Rule 90.3 and will result in the potential loss of 25 years of case law. She urged more deliberate thought and input before making any changes.

2:06:18 PM
CHAIR FRENCH closed public testimony.

2:06:29 PM
DORTHY SHOCKLEY, staff to Senator Albert Kookesh, sponsor of SB 134, stated that the bill puts Civil Rule 90.3 into statute and changes the formula for calculating child support. She reviewed the sponsor statement and told the committee that she followed

the entire rule review process four years ago. The court solicited comments, but made limited changes. The statewide teleconference to comment on the changes received little input. She recalled that just five people commented in the allotted half hour. She found the process disappointing and asked how to change it. An attorney who sat on two of the review committees suggested that putting the rule in statute would give people more voice. Another suggestion was to change to a shared income model.

MS. SHOCKLEY directed attention to the updated Legislative Research Report in the packet. Twenty-six states have child support in statute, six states use court rule, and others use a combination. Thirty-seven states use the income share model. Responding to previous questions, she confirmed that the economic table contained in the bill did came from the Washington model. The Department of Labor and Workforce Development (DOLWD) indicated what a table specific to Alaska was not essential because its purpose is to indicate how much a person at various income levels can afford to support a child or children. If the bill passes, nonmonetary considerations and the question of a statute of limitations could be considered. She concluded that the bill addresses the fairness issue and that people do not feel they have a voice.

2:15:18 PM
SENATOR COGHILL asked if the percent of income model could be modified since the income share model did not have case history in Alaska.

MS. SHOCKLEY said the bill initially did not change the calculation. The decision to change to the income share model was based on what most other states are doing. People that have called the sponsor's office support that change. She acknowledged that the fiscal notes were daunting.

2:18:46 PM

CHAIR FRENCH held SB 134 in committee for further consideration.

SB 218-SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

2:18:59 PM
CHAIR FRENCH announced the consideration of SB 218, "An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of

online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date." He asked for a motion to adopt version B committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 218, labeled 27-GS2627\B, as the working document.

2:19:35 PM
ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), provided a sectional analysis.

Sections 1-16 generally raise the threshold amounts for theft in the second, third, and fourth degrees to a higher level. For example, a person commits theft in the second if a person takes property or services valued at $500 or more but less than $25,000. SB 218 would change the threshold amount to $1,500 or more but less than $25,000. Second-degree theft is a class C felony. The threshold values for theft in the third degree would change from $50 or more but less than $500 to $250 or more but less than $1,500. Theft in the third degree is a class A misdemeanor. Current law provides that it is theft in the fourth degree if a person takes property or services valued at $50 or more. The bill raises the threshold amount to $250 or more up to $1,500. Theft in the fourth degree is a class B misdemeanor.

CHAIR FRENCH recalled that class B misdemeanor penalties provide 90 days in jail. He asked the amount of the fine.

MS. CARPENETI said she would look it up. She continued to explain that the bill changes those threshold amounts in other theft-related crimes. She listed concealment of merchandise, removal of identification marks, unlawful possession, issuing a bad check, fraudulent use of an access device, vehicle theft. Section 9 deals with prior convictions. Second, third, and fourth degree theft each has a provision that increases the penalty one level if a person commits a lower level of theft and the person has two prior theft convictions within the previous five years. The bill also changes the values related to the penalty for criminal mischief in the third, fourth, and fifth degrees.

2:22:30 PM

CHAIR FRENCH asked if criminal mischief is generally the destruction of somebody else's property.

MS. CARPENETI said yes. She continued to explain that the changes in the bill would also apply to the crimes of criminal simulation, misapplication of property, and defrauding creditors.

2:24:20 PM
CHAIR FRENCH asked if the department had taken a position on the idea of Senator Coghill's [to increase the threshold values for theft.]

MS. CARPENETI said no.

SENATOR WIELECHOWSKI questioned why DOL had not taken a position.

MS. CARPENETI explained that it would be awkward for DOL to take a position when it was prosecuting people for crimes under the law as currently written.

SENATOR WIELECHOWSKI expressed a desire to hear the administration's position.

2:25:42 PM
CHAIR FRENCH asked Ms. Carpeneti to work on getting a response from the department that was something more than "no position."

MS. CARPENETI referenced an earlier question and relayed that a class B misdemeanor carries a maximum fine of $2,000. A class A misdemeanor carries a maximum fine of $10,000.

CHAIR FRENCH recapped that the penalty for a class B misdemeanor is 90 days in jail and a maximum fine of $2,000. The penalty for a class A misdemeanor is one year in jail and a maximum fine of $10,000. The penalty for a class C felony is 5 years in jail and a maximum fine of $50,000.

2:27:01 PM
MS. CARPENETI added that the penalty for a class B [felony] is 10 years in jail and a maximum fine of $100,000.

Section 17 amends the elements of the crime of distribution of indecent materials to minors. This is in response to a finding by a federal district court judge that this law is constitutionally overbroad. The proposal is to require the state

to prove that the defendant intentionally and knowingly distributed, or possessed with intent to distribute, prohibited material to a person that the defendant knows is a child under age 16 or believes to be a child under age 16.

CHAIR FRENCH asked if the key change is the insertion of the word "intentionally" on page 8, line 8.

MS. CARPENETI replied the key words are "intentionally" and "knows" on page 8, lines 8 and 11. A person intentionally distributes prohibited material and knows it is to a child who is under 16 years of age.

CHAIR FRENCH commented that it is hammering the mental state of the offender.

MS. CARPENETI agreed. She noted that the American Civil Liberties Union (ACLU) had testified on various provisions of the bill, but had not raised concerns about this particular change.

Sections 18-20 contain provisions of SB 186. These statutes need to be change in response to the Blakely and Apprendi decisions. Under the law, a person who is found guilty but mentally ill may not be released from incarceration until the person is determined not to be a danger to him or herself or the public. That may mean that the person would not qualify for mandatory parole, which effectively raises the possible penalty for that person. Under Blakely and Apprendi, the decision of whether a person is guilty but mentally ill must be made by the jury or the court and that finding must be made by proof beyond a reasonable doubt.

Section 21 is a new provision. It allows a witness in a competency hearing to testify by contemporaneous two-way video teleconference if the court finds that the witness would have to travel to the hearing by air and that the procedure is fair to the parties. Although the confrontation clause generally applies to trial procedures, DOL believes the competency hearing is enough different that it is justifiable. Competency is decided by a judge, the burden of proof is by a preponderance of the evidence, and the burden is placed on the party that raises the issue. That is generally the defendant.

2:31:06 PM
CHAIR FRENCH asked if this had been tried in Alaska.

MS. CARPENETI said no; it is new law that will likely be challenged. However, DOL believes it is on solid ground under the circumstances of competency hearings held in rural areas.

Section 22 changes the general rule about preponderance of the evidence as the burden of proof to reflect the changes since Blakely and Apprendi.

Sections 23 and 24 add provisions to ensure that there is mutual agreement about changing the terms of an Alaska Rules of Criminal Procedure Rule 11 agreement after it has been imposed. If a defendant, as part of a Rule 11 plea agreement, agrees to a particular period of probation, the court may not reduce the period of probation without the consent of the prosecution. [This effectively overrules the decision in State v. Henry, 240 P. 3d 846.] The court still has to apply the Chaney criteria in deciding how much suspended time to impose for the violation of probation, but unless the parties agree, the court cannot reduce the period of probation that was agreed upon for sentencing.

2:33:14 PM
CHAIR FRENCH mentioned the recent U.S. Supreme Court decision that had to do with the assistance of counsel in plea agreements. He did not recall that it touched on changing terms of a plea agreement.

MS. CARPENETI responded that this would reverse the decision in State v. Henry, which allowed the judge in a negotiated plea to reduce the term of probation. She said it is DOL's position that the parties should abide by the terms of a plea bargain and one party should not be able to make a unilateral reduction in the terms.

Section 25 is a conforming amendment to reflect the Blakely and Apprendi decisions. It amends the sentencing law for murder in the first degree to change the burden of proof that the defendant subjected the victim to substantial physical torture or that the defendant was a peace officer who used their authority to facilitate the murder. Current statute provides for a clear and convincing burden on the prosecution and now the state must prove these factors beyond a reasonable doubt.

Section 26 clarifies that if a sentence is imposed that would preclude the defendant from receiving good time, the jury must determine the factual issue. For example, if a person has been convicted of first-degree murder of a peace officer, the jury must determine the factual issue that the victim was a peace

officer beyond a reasonable doubt. In addition, if a court is sentencing a person who is subject to a presumptive range and the prosecution seeks to increase the range by proof of certain aggravating factors, the jury must determine the factual issue by proof beyond a reasonable doubt. She confirmed that this also comes from the Blakely and Apprendi decisions.

Section 27 adds new subsections to AS 12.55.155. Subsection (i) deals with the aggravating factor under AS 12.55.155(c)(10) that the defendant's conduct was the most serious in the definition of that offense. In that circumstance, the court may raise the sentence above the sentencing range for that class of offense. The facts of the offense that might justify the finding have to be found by the jury beyond a reasonable doubt. Then the legal conclusion that that conduct is the most serious in the range of that offense ought to be decided by the judge.

Subsection (j) says that once a factor in aggravation has been found according to law, the court is allowed to sentence the person up to the maximum term of imprisonment. If it is a prior offense, the finding can be made by the judge. Additional factors in aggravation do not need to be determined by the jury, but can be found as mitigating factors by the trial judge by clear and convincing evidence.

CHAIR FRENCH summarized that it is necessary to prove at least one aggravator to the jury beyond a reasonable doubt. Additional aggravators fall under the clear and convincing standard.

MS. CARPENETI clarified that, in this particular case, the first aggravator may not have to be found by the jury, because one of the aggravating factors is five or more prior offenses. The courts have found that those have already been found by a jury beyond a reasonable doubt.

2:38:54 PM
SENATOR COGHILL asked where Blakely applies.

MS. CARPENETI explained that the Blakely and Apprendi decisions say that if a fact could raise the maximum penalty for a crime, the fact finder must make that determination beyond a reasonable doubt. If a prior conviction has already been found by a jury beyond a reasonable doubt, it is not necessary to go to the jury again to make a subsequent finding.

SENATOR COGHILL asked if the Blakely and Apprendi decisions allow the judge to apply aggravators.

MS. CARPENETI said yes; the jury has already made the determination or the court has already found another aggravating factor.

Sections 28 and 29 are conforming to the provisions in Sections 23 and 24 that say the court cannot change the terms of a negotiated plea without the consent of all parties.

Section 30 adds a rule to the Alaska Rules of Criminal Procedure to address the use of testimony by contemporaneous two-way video conference in a trial. It is much more limited than the procedure in the bill for competency hearings, because of the Sixth Amendment right to confront and cross examine witnesses. This rule follows the guidelines in Maryland v. Craig, which approved remote testimony of a child. The requirements are that important public policy must support the use of the remote testimony, the witness is unavailable, and the testimony is subject to cross examination and given under oath. This has been upheld by the U.S. Supreme Court and the Second Circuit Court of Appeals.

2:42:06 PM
CHAIR FRENCH highlighted Justice Scalia's extremely powerful dissent and suggested members read that before taking final action on that aspect of the bill.

MS. CARPENETI pointed out that Alaska's procedure for children, AS 12.45.046, is similar to the procedure that Maryland v. Craig upheld. The Alaska Court of Appeals has also upheld the procedure.

2:43:22 PM
SENATOR PASKVAN referenced the phrase "as if the witness were sitting in the courtroom's witness stand." on page 13, line 30. He asked if that requires the camera literally to be there.

MS. CARPENETI replied the camera has to be where the witness is. To make this as close to face-to-face as possible, the witness has to be able to see everybody in the courtroom and everybody, including the public, has to be able to see the witness. This is not a child proceeding and will probably be used infrequently.

SENATOR PASKVAN read line 29 and commented that multiple screens may be needed.

MS. CARPENETI said it is a good point and she may offer a suggestion.

SENATOR PASKVAN stressed the importance of "getting it right" since it is part of the confrontation clause.

CHAIR FRENCH confirmed that the cases are clear that it is more than just the verbal testimony of a witness. It is the witness's coloring, perspiring, body language and other visual "tells."

2:47:39 PM
MS. CARPENETI said Section 31 notices there is an indirect court rule amendment in Section 26.

Sections 32-34 include applicability provisions, conditional effect of the court rule change, and the effective date of July 1, 2012.

SENATOR PASKVAN referred to Section 30 and asked how defense counsel could submit a document to a remote witness without tipping their hand ahead of time.

MS. CARPENETI said she suspects that the video technician would hand it to the witness at the appropriate time.

SENATOR PASKVAN commented on the potentially confidential nature of these documents.

MS. CARPENETI pointed out that the bill provides that the trial court will establish procedures for taking the testimony. She acknowledged that the court would have to consider how to do this fairly and efficiently.

2:51:56 PM
CHAIR FRENCH noted that Mafia boss Vincent "The Chin" Gigante challenged the judge for allowing two-way video testimony in his trial. The judge ordered it based on his inherent power under federal Criminal Rule 2 and 57(b). He asked if Alaska has similar rules of evidence.

MS. CARPENETI said there are parallels in Alaska law and the court could arguably do it now in its inherent power. However, DOL believes it would be better to have a rule that follows what the U.S. Supreme Court set out.

CHAIR FRENCH asked how she would address the slippery slope argument that allowing remote testimony in one trial will make it more difficult to disallow others.

MS. CARPENETI said the witness has to be unavailable as defined under the civil and criminal court rules. The standard is clear and convincing evidence and the circumstances are limited. She reiterated her expectation that this would not be broadly used.

CHAIR FRENCH said he would like to hear from the Court System on this point to understand the implied financial obligation.

2:54:37 PM
NANCY MEADE, General Counsel, Alaska Court System, stated that the court submitted a zero fiscal note with the understanding that the bill would not impose a requirement to install any video conferencing system. However, the court generally would like to move toward more video conferencing. She stated that the court does not have an opinion on video conferencing permitted under the bill but it does have some capacity for video conferences. She did not know if the court has the specific ability to allow the witness to see three different places at once as this rule would call for, but it is conceivable that some courts will have good high quality video equipment in the future. It may be available in some locations already.

CHAIR FRENCH asked if her position is that it would be the obligation of the state to provide the equipment.

2:56:23 PM
MS. MEADE said she had not given it complete thought but the court is working to increase video capabilities.

CHAIR FRENCH asked the number of superior courtrooms in the state.

MS. MEADE replied there are about 45 court locations, and she would follow up on the specific number of courtrooms.

2:57:44 PM
[CHAIR FRENCH held SB 218 in committee.]

2:57:49 PM
There being no further business to come before the committee, Chair French adjourned the meeting at 2:57 p.m.