

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 4, 2013

1:11 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Charisse Millett  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Gabrielle LeDoux

**COMMITTEE CALENDAR**

CS FOR SENATE JOINT RESOLUTION NO. 2(JUD)  
Commending and supporting actions taken by the Office of the Governor, the attorney general, and the commissioner of natural resources to protect the state from federal government incursion into the care and management of state resources and to promote the economic prosperity of the state; and urging the United States Congress and the President of the United States to limit federal government overreach into management of state resources.

- MOVED HCS CSSJR 2(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 6  
Urging the United States Congress not to relinquish to the office of the President of the United States the legislative duty to safeguard our most fundamental right; and urging the President of the United States to refrain from any further efforts to restrict ownership of firearms.

- MOVED HCS SJR 6(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 83  
"An Act relating to certain federal statutes, regulations, presidential executive orders, and secretarial orders; relating to the duties of the attorney general; and providing for an effective date."

- MOVED CSHB 83(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 105

"An Act relating to theft and property offenses; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 81

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 104

"An Act relating to election practices and procedures; relating to public records; relating to the election of an advisory school board in a regional educational attendance area; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 2

SHORT TITLE: LIMIT FEDERAL INTERVENTION IN STATE

SPONSOR(S): SENATOR(S) DYSON

01/16/13	(S)	READ THE FIRST TIME - REFERRALS
01/16/13	(S)	JUD
01/28/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/28/13	(S)	Heard & Held
01/28/13	(S)	MINUTE(JUD)
02/01/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/01/13	(S)	Moved CSSJR 2(JUD) Out of Committee
02/01/13	(S)	MINUTE(JUD)
02/04/13	(S)	JUD RPT CS 2DP 1NR SAME TITLE
02/04/13	(S)	DP: COGHILL, DYSON
02/04/13	(S)	NR: OLSON
02/11/13	(S)	TRANSMITTED TO (H)
02/11/13	(S)	VERSION: CSSJR 2(JUD)
02/13/13	(H)	READ THE FIRST TIME - REFERRALS
02/13/13	(H)	JUD
03/04/13	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SJR 6

SHORT TITLE: OPPOSE EXECUTIVE ORDERS ON GUN CONTROL

SPONSOR(S): SENATOR(S) DYSON

01/25/13 (S) READ THE FIRST TIME - REFERRALS  
01/25/13 (S) JUD  
02/04/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/04/13 (S) Heard & Held  
02/04/13 (S) MINUTE(JUD)  
02/08/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/08/13 (S) Moved SJR 6 Out of Committee  
02/08/13 (S) MINUTE(JUD)  
02/11/13 (S) JUD RPT 3DP  
02/11/13 (S) DP: COGHILL, WIELECHOWSKI, DYSON  
02/20/13 (S) TRANSMITTED TO (H)  
02/20/13 (S) VERSION: SJR 6  
02/22/13 (H) READ THE FIRST TIME - REFERRALS  
02/22/13 (H) JUD  
03/04/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 83

SHORT TITLE: FEDERAL REGULATIONS & EXECUTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) KELLER

01/22/13 (H) READ THE FIRST TIME - REFERRALS  
01/22/13 (H) JUD  
02/08/13 (H) JUD AT 1:00 PM CAPITOL 120  
02/08/13 (H) Heard & Held  
02/08/13 (H) MINUTE(JUD)  
02/18/13 (H) JUD AT 1:00 PM CAPITOL 120  
02/18/13 (H) Scheduled But Not Heard  
02/25/13 (H) JUD AT 1:00 PM CAPITOL 120  
02/25/13 (H) Scheduled But Not Heard  
02/27/13 (H) JUD AT 1:00 PM CAPITOL 120  
02/27/13 (H) Heard & Held  
02/27/13 (H) MINUTE(JUD)  
03/04/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 105

SHORT TITLE: PROPERTY CRIMES

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

02/06/13 (H) READ THE FIRST TIME - REFERRALS  
02/06/13 (H) JUD  
03/04/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 81

SHORT TITLE: 2013 REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/22/13 (H) READ THE FIRST TIME - REFERRALS  
01/22/13 (H) JUD  
03/01/13 (H) JUD AT 1:00 PM CAPITOL 120  
03/01/13 (H) Heard & Held  
03/01/13 (H) MINUTE(JUD)  
03/04/13 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SJR 2.

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SJR 6.

CHARLES KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SJR 6, responded to comments and a question on behalf of the sponsor, Senator Dyson.

JIM POUND, Staff  
Representative Wes Keller  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 83, explained some of the changes included in the proposed committee substitute (CS), Version C, on behalf of the sponsor, Representative Keller.

DAVID JONES, Senior Assistant Attorney General  
Opinions, Appeals, & Ethics Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of HB 83.

JANE W. PIERSON, Staff  
Representative Steve Thompson  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented HB 105 on behalf of the sponsor, Representative Thompson.

THOMAS W. STENSON, Legal Director  
American Civil Liberties Union of Alaska (ACLU of Alaska)  
Foundation  
Anchorage, Alaska

**POSITION STATEMENT:** Provided a comment during discussion of HB 105.

DOUGLAS MOODY, Deputy Public Defender  
Criminal Division  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 105.

CHRIS NETTLES (ph), Business Owner;  
National Federation of Independent Business (NFIB)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified against HB 105.

NANCY MEADE, General Counsel  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 105.

#### **ACTION NARRATIVE**

[1:11:50 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:11 p.m. Representatives Keller, Pruitt, Gruenberg, and Foster were present at the call to order. Representatives Lynn and Millett arrived as the meeting was in progress. Representative LeDoux was excused.

#### **SJR 2 - LIMIT FEDERAL INTERVENTION IN STATE**

[1:13:10 PM](#)

CHAIR KELLER announced that the first order of business would be CS FOR SENATE JOINT RESOLUTION NO. 2(JUD), Commending and supporting actions taken by the Office of the Governor, the attorney general, and the commissioner of natural resources to protect the state from federal government incursion into the care and management of state resources and to promote the economic prosperity of the state; and urging the United States Congress and the President of the United States to limit federal government overreach into management of state resources.

[1:13:26 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, sponsor, said of CSSJR 2(JUD), "It's basically saying to the feds, 'We can manage our own area and please don't keep extending your reach and interfering with our stewardship of our land and slowing down ... development.'" Paraphrasing from a February 21, 2012, article written by the Senate majority press secretary, he offered his understanding that U.S. Senator Lisa Murkowski has also spoken on the issue of federal overreach.

REPRESENTATIVE GRUENBERG referred to the language on page 1, lines 11-12, of CSSJR 2(JUD) that reads, "challenged the federal government in court for its misuse of the Endangered Species Act", and suggested that the word, "interpretation" be used instead of the word "misuse"; the language would then read, "challenged the federal government in court for its interpretation of the Endangered Species Act". He offered his understanding that a court of appeals has recently ruled in favor of the federal government and against the state in a case involving polar bears.

SENATOR DYSON said he would not object to such a change, and acknowledged that it might improve the resolution.

CHAIR KELLER closed public testimony on SJR 2.

[1:17:42 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to replace the word, "misuse" on page 1, line 12, with the word, "interpretation". There being no objection, Amendment 1 was adopted.

[1:18:07 PM](#)

REPRESENTATIVE PRUITT moved to report CSSJR 2(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSJR 2(JUD) was reported from the House Judiciary Standing Committee.

**SJR 6 - OPPOSE EXECUTIVE ORDERS ON GUN CONTROL**

[1:18:40 PM](#)

CHAIR KELLER announced that the next order of business would be SENATE JOINT RESOLUTION NO. 6, Urging the United States Congress not to relinquish to the office of the President of the United States the legislative duty to safeguard our most fundamental right; and urging the President of the United States to refrain from any further efforts to restrict ownership of firearms.

[1:18:46 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, sponsor, indicated that SJR 6 addresses the Second Amendment to the U.S. Constitution and the right of the people to keep and bear arms. He offered his understanding that historically, tyrants and oppressors have done all they could to disarm the population. He then shared stories that he'd heard about. With regard to SJR 6, he remarked, "This is another effort for us to state our views and our concerns," and said he would appreciate the committee's support.

REPRESENTATIVE LYNN characterized SJR 6 as being very timely.

REPRESENTATIVE GRUENBERG referred to the language on page 1, lines 12-13, that read, "on January 16, 2013, President Barack Obama issued 23 Executive Orders". He offered his understanding that the President had instead issued items that fall under the category of executive actions, not executive orders, and asked, therefore, whether the term, "23 Executive Orders" could be replaced with the term, "23 executive actions".

SENATOR DYSON indicated agreement.

[1:27:24 PM](#)

CHARLES KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, on behalf of the sponsor, Senator Dyson, and in response to comments, offered his understanding that executive

orders and executive actions both have the force of law and mean the same thing.

REPRESENTATIVE GRUENBERG referred to the language on page 3, line 12, that read, "and defend those rights by whatever means necessary", and said he didn't want the legislature to be seen as inciting a riot, for example, and asked, therefore, whether the word, "legal" could be inserted before the word, "means"; the language would then instead read, "and defend those rights by whatever legal means necessary".

MR. KOPP indicated disfavor with such a change.

REPRESENTATIVE GRUENBERG argued that he didn't want the legislature to be seen as endorsing violence.

REPRESENTATIVE MILLETT offered her belief that that language wouldn't be so interpreted, and said she likes the language as is.

SENATOR DYSON expressed a preference for keeping that language as is.

REPRESENTATIVE GRUENBERG referred to the language on page 3, line 25, that read, "refrain from any further efforts to restrict firearms ownership", and suggested that either the words, "contrary to law" or the words, "without congressional approval" be added after the word "ownership". That language would then be in keeping with the language on page 3, line 3, that reads, "without the full consent of Congress".

SENATOR DYSON expressed disfavor with such a change.

CHAIR KELLER, after ascertaining that no one else wished to testify, closed public testimony on SJR 6.

[1:31:32 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to delete the word, "Orders" on page 1, line 13, and replace it with the word, "actions". There being no objection, Amendment 1 was adopted.

[1:32:17 PM](#)

REPRESENTATIVE LYNN moved to report SJR 6, as amended, out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, HCS SJR 6(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:33 p.m. to 1:34 p.m.

**HB 83 - FEDERAL REGULATIONS & EXECUTIVE ORDERS**

[1:34:42 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 83, "An Act relating to certain federal statutes, regulations, presidential executive orders, and secretarial orders; relating to the duties of the attorney general; and providing for an effective date."

[1:35:00 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 83, Version 28-LS0328\C, Gardner, 3/4/13, as the working document. There being no objection, Version C was before the committee.

[1:35:26 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, on behalf of the sponsor, Representative Keller, explained that under Version C of HB 83, the legislative findings outlined in Section 1 have been changed; the bill's proposed new subsection (h) to AS 44.23.020 now uses the phrases, "attorney general concludes" and "report the conclusions", instead of the phrases, "attorney general finds" and "report the findings"; and the bill's proposed new AS 44.23.020(h)(3) now contains a proposed new subparagraph (D) that requires the written opinion included in the attorney general's report to also explain litigation the attorney general is a party to or aware of regarding conflicts with a federal statute, [federal] regulation, presidential executive order, or secretarial order.

REPRESENTATIVE GRUENBERG questioned whether the phrase in Version C's proposed new AS 44.23.020(h) that reads, "but also finds" should be changed to the phrase, "but also concludes".

CHAIR KELLER, speaking as the sponsor of HB 83, relayed that he didn't want to limit the number of reports the attorney general provides.

REPRESENTATIVE GRUENBERG agreed. He offered his belief, however, that the more correct word to use in the context of Version C's proposed new AS 44.23.020(h) is "concludes", rather than "finds".

[1:42:01 PM](#)

DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, & Ethics Section, Civil Division (Anchorage), Department of Law (DOL), disagreed. If the intent is to ensure that the attorney general provides a report before waiting until he/she is absolutely certain that a federal statute, [federal] regulation, presidential executive order, or secretarial order is unconstitutional or was not properly adopted, then using the word, "finds" or "believes" or "determines" would be better than using the word, "concludes".

REPRESENTATIVE GRUENBERG indicated that he would be amenable to using the word, "believes".

MR. JONES, in response to a question and comments, said it couldn't hurt to add the term, "presidential executive action" to the list of items the bill is addressing.

MR. POUND, in response to further comments, suggested that HB 83 be changed such that the list of items it's addressing also includes presidential executive actions and secretarial actions.

CHAIR KELLER, offering his understanding that no one else wished to testify, closed public testimony on HB 83.

[1:48:45 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to add the words, "**and actions**" on page 1, line 1, after the term, "**presidential executive orders**", and on page 1, line 2, after the term, "**secretarial orders**".

CHAIR KELLER noted that there were no objections. [Although not formally stated, the committee treated Amendment 1 as having been adopted.]

[1:49:45 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to add the words, "and actions" on page 1, line 10, both after the

term, "presidential executive orders", and after the term, "secretarial orders".

CHAIR KELLER noted that there were no objections. [Although not formally stated, the committee treated Amendment 2 as having been adopted.]

1:56:55 PM

REPRESENTATIVE GRUENBERG - after brief discussion regarding the scope of changes the committee and sponsor wished to make to Version C's proposed new AS 44.23.020(h) - made a motion to adopt Amendment 3, to delete the word, "concludes" on page 2, line 15, and insert the word, "believes"; to delete the word, "finds" on page 2, line 18, and insert the word, "believes"; and to delete the word, "conclusions" on page 2, line 21, and insert the word, "findings". There being no objection, Amendment 3 was adopted.

[During the aforementioned brief discussion, Mr. Jones had indicated that Amendment 3's proposed changes would clarify that subsection (h) is not addressing absolute determinations regarding preemption and constitutionality; in other words, the attorney need not be "absolutely certain" before providing a report to the chairs of the House and Senate Standing Judiciary Committees.]

MR. POUND noted that with the adoption of Amendments 1 and 2, conforming changes should be made elsewhere in the bill with regard to adding presidential executive actions and secretarial actions to the bill's list of items it's addressing.

1:58:20 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 4, to conform the rest of HB 83 with the changes made via Amendments 1 and 2 with regard to adding the words, "and actions" to the bill's list of items it's addressing. There being no objection, Conceptual Amendment 4 was adopted.

1:59:11 PM

REPRESENTATIVE LYNN moved to report the proposed CS for HB 83, Version 28-LS0328\C, Gardner, 3/4/13, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected and asked whether any other technical changes ought to be made to HB 83.

MR. POUND offered his belief that none were needed.

REPRESENTATIVE GRUENBERG removed his objection to the motion.

CHAIR KELLER, noting that there were no further objections, announced that CSHB 83(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:00 p.m. to 2:02 p.m.

### HB 105 - PROPERTY CRIMES

[2:02:52 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 105, "An Act relating to theft and property offenses; and providing for an effective date."

[2:03:24 PM](#)

JANE W. PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, on behalf of the sponsor, Representative Thompson, explained that the purpose of HB 105 is to raise the monetary-threshold amount that distinguishes certain felony-level offenses against property from like misdemeanor-level offenses. A handout included in members' packets from the National Conference of State Legislatures' (NCSL's) report titled, "Principles of Effective State Sentencing and Corrections Policy" says in part:

Review and revision of mandatory minimum sentences for some offenders and update of felony theft thresholds are among the significant ways state legislatures are modernizing criminal codes to reflect current circumstances and needs

MS. PIERSON offered her understanding that to date, 22 other states have adjusted their monetary-threshold amounts [for the crime of theft], and that Alaska's current monetary-threshold amounts for the crimes of theft - outlined in AS 11.46 - were adopted back in 1978 and have not since been adjusted [for inflation]. Making such adjustments for property crimes is common throughout the country, and a handout included in members' packets outlining the monetary-threshold amounts for

all 50 states [and the District of Columbia] illustrates that 29 other [jurisdictions] now have a monetary-threshold amount higher than Alaska's; that 14 other [jurisdictions] have a monetary-threshold amount the same as Alaska's current amount; and that [7 other jurisdictions] have a monetary-threshold amount lower than Alaska's.

MS. PIERSON explained that currently under AS 11.46.130(a), a person who steals something with a value of \$500 or more could be charged with the crime of theft in the second degree - a class C felony - and, if convicted, then suffer the consequences of being a felon for the rest of his/her life. Raising the monetary-threshold amount for the crimes of theft is a policy call for the legislature to make. She then referred to two charts - titled in part, "Criminal Theft Charges" and "Criminal Theft Charge Dispositions" - prepared by the Alaska Court System (ACS) and included in members' packets, and relayed that the ACS was available to address the statistics included therein, which include statistics regarding the crime of theft in the second degree for calendar year 2012.

MS. PEIRSON assured the committee that in raising Alaska's monetary-threshold amount distinguishing felony-level theft crimes from misdemeanor-level theft crimes, the sponsor is not indicating a belief that thieves should go free or not be charged. Nobody likes a thief, and nobody wants to see a thief go unpunished. Property crime victimizes everyone; whether a victim is left feeling violated for having his/her possessions stolen, or whether consumers are left with the financial burden of making up for retail theft - everyone experiences the problems caused by theft. Under HB 105, guilty persons will still face justice, and the court could still require that restitution and fines be paid, and could still be aggressive in sentencing perpetrators to the fullest extent of the law. The sponsor, she relayed, requests that the committee consider HB 105 and its passage.

[2:07:26 PM](#)

MS. PEIRSON went on to explain that Section 1 of HB 105 would amend AS 11.46.130(a) - again, addressing the class C felony crime of theft in the second degree - by raising the monetary-threshold amount from \$500 to \$1,500; conviction of a class C felony could result in a maximum prison sentence of up to five years and a maximum fine of up to \$50,000. Section 2 of HB 105 would amend AS 11.46.140(a) - addressing the class A misdemeanor crime of theft in the third degree - by raising the monetary-

threshold amount from a range of between \$50 and \$500, to a range of between \$250 and \$1,500; conviction of a class A misdemeanor could result in a maximum prison sentence of up to one year and a maximum fine of up to \$10,000. Section 3 of HB 105 would amend AS 11.46.150(a) - addressing the class B misdemeanor crime of theft in the fourth degree - by raising the monetary-threshold amount from less than \$50 to less than \$250; conviction of a class B misdemeanor could result in a maximum prison sentence of up to 90 days and a maximum fine of up to \$2,000.

MS. PIERSON explained that with regard to the proposed new monetary-threshold amounts, Section 4 of HB 105 would make conforming changes to AS 11.46.220(c), addressing the crimes of concealment of merchandize. Section 5 would make conforming changes to AS 11.46.260(b), addressing the crimes of removal of identification marks. Section 6 would make conforming changes to AS 11.46.270(b), addressing the crimes of unlawful possession. Section 7 would make conforming changes to AS 11.46.280(d), addressing the crimes of issuing a bad check. Section 8 would make conforming changes to AS 11.46.285(b), addressing the crimes of fraudulent use of an access device. Section 9 would make conforming changes to AS 11.46.360(a)(2), addressing [one manifestation of] the class C felony crime of vehicle theft in the first degree. Sections 10, 11, and 12, respectively, would make conforming changes to AS 11.46.482(a), to AS 11.46.484(a), and to AS 11.46.486(a) - addressing, respectively, the class C felony crime of criminal mischief in the third degree, the class A misdemeanor crime of criminal mischief in the fourth degree, and the class B misdemeanor crime of criminal mischief in the fifth degree.

MS. PIERSON relayed that Section 13 would make conforming changes to AS 11.46.530(b), addressing the crimes of criminal simulation. Section 14 would make conforming changes to AS 11.46.620(d), addressing the crimes of misapplication of property. Section 15 would make conforming changes to AS 11.46.730(c), addressing the crimes of defrauding creditors. Section 16 would add an applicability provision to Alaska's uncodified law, stipulating that the statutes changed by the provisions of HB 105 would apply to offenses committed on or after the effective date of the Act, that being July 1, 2013, as stipulated via Section 17 of the bill.

[2:13:51 PM](#)

REPRESENTATIVE MILLETT, pointing out that \$500 is a lot of money, questioned the rationale behind telling criminals, via the adoption of HB 105, that they may now steal up to [\$1,499] worth of merchandise before being charged with a felony.

MS. PIERSON - acknowledging that theft is a terrible crime that hurts people in a variety of ways - ventured that with the passage of so much time since Alaska's current monetary-threshold amounts were originally established, it is now appropriate for the legislature to review them, particularly given that they're in the low range compared to what most other [jurisdictions in the country] now provide for. Furthermore, a good percentage of theft crimes are not currently being resolved at the felony level, and thus the changes proposed by the bill could result in Alaska's law being more reflective of current practice. She also acknowledged, though, that a lot of people, particularly retailers, don't view HB 105 favorably.

REPRESENTATIVE MILLETT opined that HB 105 would be sending a message that stealing is okay if the amount is low enough. "A seasoned thief," she ventured, knows the statutory thresholds, and so isn't going to steal something with a value that exceeds a particular threshold.

MS. PIERSON offered her belief that most thieves are not that intelligent and therefore don't weigh the consequences associated with the value of what they are stealing.

REPRESENTATIVE PRUITT disagreed, opining that thieves are indeed aware of the value of what they are stealing. He then referred to Section 4 - addressing the crimes of concealment of merchandise - and questioned why HB 105 is not also proposing a monetary-threshold for concealing merchandise that is a firearm.

[2:19:37 PM](#)

MS. PIERSON explained that there was never a monetary threshold outlined in statute for merchandise that is a firearm to begin with.

CHAIR KELLER mentioned that his son has had property stolen from him, and indicated that his concern with HB 105's proposed changes revolves around the fact that the bill would indeed be sending a message to Alaskans, many of whom have also been the victim of theft and/or know others who have been. Enforcement and investigatory resources for theft crimes are limited, leaving only Alaska's stiff penalties for the crime of theft to

act as a deterrent, and yet the bill is proposing to raise Alaska's monetary-threshold amounts for the crimes of theft.

MS. PIERSON again acknowledged that whether to raise Alaska's current monetary-threshold amounts is a policy call for the legislature to make. In response to questions, she relayed that the bill's proposed changes would apply regardless of whether that which was stolen was personal property or retail merchandise, and indicated that the bill is intended to raise the question of whether Alaska's current monetary-threshold amounts for the crime of theft are still appropriate and in line with those provided for elsewhere in the country. The value of \$500 is a lot different today than it was back in 1978, when Alaska's current monetary-threshold amounts were originally established, she asserted. In response to comments, she added that members' packets now contain statistics regarding the average sentence lengths associated with certain offenses against property.

[2:25:59 PM](#)

THOMAS W. STENSON, Legal Director, American Civil Liberties Union of Alaska (ACLU of Alaska) Foundation, in response to a question, indicated that the changes proposed by HB 105 don't raise any constitutional issues, and mentioned that prosecuting a felony offense is more expensive than prosecuting a misdemeanor offense. He too acknowledged that whether to raise Alaska's current monetary-threshold amounts for theft crimes is a policy call for [the legislature] to make.

[2:27:14 PM](#)

DOUGLAS MOODY, Deputy Public Defender, Criminal Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), indicated a belief that reviewing Alaska's current monetary-threshold amounts for theft crimes is appropriate. He ventured that under HB 105's proposed changes, perhaps more victims of theft crimes would eventually be compensated for their losses if their perpetrators are not convicted of a felony. Referring to [the bill's proposed changes to] the statutes pertaining to the crimes of criminal mischief in the third through fifth degrees, he also pointed out that because costs for transporting goods have risen, the destruction of almost any item in a rural area of the state could nowadays constitute a felony-level crime under Alaska's current monetary-threshold amounts. Pointing out that existing law already addresses repeat offenders, he also ventured that

HB 105's proposed changes would be of benefit to first-time offenders because they would be able to [steal something worth up to \$1,499 before being charged with a felony, and thereby] avoid all the problems associated with a felony conviction.

MR. MOODY, in response to a question regarding how often a felony theft charge gets [pled down] to a misdemeanor theft charge, offered his understanding that it differs in different areas of the state depending on the individual prosecutor. Misdemeanor-level cases tend to get resolved more quickly and cost less, he also noted.

[2:36:38 PM](#)

CHRIS NETTLES (ph), Business Owner; National Federation of Independent Business (NFIB), after mentioning that he owns a business that's been stolen from numerous times without anything ever being resolved, testified in opposition to HB 105's proposed increases to Alaska's monetary-threshold amounts, offering his belief that the bill would increase theft crime in his area.

[2:38:43 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), first relayed that the ACS takes no position on HB 105. Referring to the aforementioned charts provided by the ACS, she mentioned that although they illustrate facts related to theft charges filed and the disposition of theft cases, the charts do not outline how many charges were filed for cases in which the property stolen was valued at between \$500 and \$1,500; such cases would be the only type impacted by HB 105's proposed changes. According to the chart titled in part, "Criminal Theft Charges", during calendar year 2012, about half of the 3611 total theft crimes charged were felony-level thefts, and the crime of theft in the second degree and the crime of theft in the third degree were charged about equally often. According to the chart titled in part, "Criminal Theft Charge Dispositions", during calendar year 2012, there were [513] felony convictions, and [1,208] misdemeanor convictions.

MS. MEADE indicated that one could extrapolate from the statistics in those two charts that approximately one-third of the felony charges resulted in a conviction, and three-fourths of the misdemeanor charges resulted in a conviction. She noted that some felony charges get pled down to misdemeanor charges;

according to the charts, for example, the misdemeanor crime of theft in the third degree was charged only 1146 times in 2012, but there were 1447 dispositions involving that crime, and 952 [cases involving the felony crime] of theft in the second degree were dismissed by the prosecution for a variety of reasons. In conclusion, she also noted that felony cases are addressed by the Alaska Superior Court, whereas misdemeanor cases are addressed by Alaska's district courts, which generally dispose of cases more quickly and less expensively than the Alaska Superior Court.

MS. MEADE, in response to questions and comments, indicated that the initial criminal charges filed determine which court shall address a particular case; that under Rule 11 of the Alaska Rules of Criminal Procedure, prosecutors have discretion to enter into plea agreements, which must be reasonable and provide for supervisory oversight; and that there can be good reasons for entering into a particular plea agreement. In conclusion, she too noted that conviction of a [class A misdemeanor] could result in a maximum prison sentence of up to one year and a maximum fine of up to \$10,000.

CHAIR KELLER relayed that HB 105 would be held over.

The committee took an at-ease from 2:49 p.m. to 2:50 p.m.

#### **HB 81 - 2013 REVISOR'S BILL**

[2:50:54 PM](#)

CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 81, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

REPRESENTATIVE GRUENBERG relayed that after speaking with the Department of Law (DOL) regarding the change proposed by Section 5 of HB 81 - that of adding a missing preposition, "to", thereby correcting a typographical error found in AS 11.51.100(a)(3), which addresses one manifestation of the crime of endangering the welfare of a child in the first degree - he no longer has any concerns with HB 81.

[HB 81 was held over.]

[2:51:16 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.