ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 21, 2014
1:14 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Max Gruenberg
Representative Neal Foster

MEMBERS ABSENT

Representative Gabrielle LeDoux
Representative Lance Pruitt
Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 218
"An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee."

- HEARD & HELD

HOUSE BILL NO. 284
"An Act relating to an interstate compact on a balanced federal budget."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 218
SHORT TITLE: PENALTY: ASSAULT ON CORRECTIONAL EMPLOYEE
SPONSOR(s): REPRESENTATIVE(s) CHENAULT, MILLETT, HERRON, LYNN

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) JUD
02/12/14 (H) JUD AT 1:00 PM CAPITOL 120
02/12/14 (H) Heard & Held
02/12/14 (H) MINUTE(JUD)
02/21/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 284
SHORT TITLE: COMPACT FOR A BALANCED BUDGET
SPONSOR(s): REPRESENTATIVE(s) KELLER

01/29/14 (H) READ THE FIRST TIME - REFERRALS
01/29/14 (H) STA, JUD
02/13/14 (H) STA AT 8:00 AM CAPITOL 106
02/13/14 (H) Moved Out of Committee
02/13/14 (H) MINUTE(STA)
02/14/14 (H) STA RPT 6DP 1NR
02/14/14 (H) DP: MILLETT, GATTIS, KELLER, ISAACSON, HUGHES, LYNN
02/14/14 (H) NR: KREISS-TOMKINS
02/21/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ERNEST PRAX, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified during the hearing of HB 218.

MARGARET STOCK, Attorney at Law
Cascadia Cross Border Law Group
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to Amendment 1 to HB 218.

ANN BENSON, Supervising Attorney
Immigration Project
Washington Defender Association
Seattle, Washington
POSITION STATEMENT: Testified in opposition to Amendment 1 of HB 218.

RUSSELL PRITCHETT, Attorney at Law
Pritchett & Jacobson, P.S.
Bellingham, Washington
POSITION STATEMENT: Testified in opposition to HB 218.

ARUNDEL PRITCHETT, Staff Attorney
Alaska Immigration Justice Project
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to Amendment 1 to HB 218.

QUINLAN STEINER, Public Defender
Public Defender Agency
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to Amendment 1 to HB 218.

HEATHER STENSON, Staff Attorney
Alaska Immigration Justice Project
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to Amendment 1 to HB 219.

JASON BAUMETZ, Supervising Staff Attorney
Alaska Immigration Justice Project
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to Amendment 1 to HB 218.

RICHARD ALLEN, Director
Office of Public Advocacy
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Offered remarks on HB 218.

ANNIE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Provided information on HB 218.

ANN BLACK, Assistant Attorney General
Appeals Unit
Office of Special Prosecutions & Appeals (OSPA)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Testified regarding provisions within Amendment 1 and HB 218.

NICK DRANIAS, Director
Constitutional Policy
Policy and Development
Goldwater Institute
Phoenix, Arizona
POSITION STATEMENT: During hearing of HB 284, reviewed the presentation entitled "States Can Fix the Debt."

ACTION NARRATIVE

1:14:00 PM

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:14 P.M., Representatives Lynn, Millett, Gruenberg, and Keller were present at the call to order. Representative Foster arrived as the meeting was in progress and Representative Millett attended via teleconference.

HB 218-PENALTY: ASSAULT ON CORRECTIONAL EMPLOYEE

1:16:44 PM

CHAIR KELLER announced the first order of business would be HOUSE BILL NO. 218, "An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee."

1:17:29 PM

ERNEST PRAX, Staff, Representative Wes Keller, Alaska State Legislature, advised that [on 2/12/14] the House Judiciary Standing Committee heard HB 218 which concerns presumptive sentencing for felony offenses found in AS 12.55.125. The bill amends AS 12.55.155(c), which allows felony sentencing courts to impose sentences above the presumptive range if the defendant has five previous convictions for class A misdemeanors. However, although two crimes that are part of a single criminal episode, such as speeding, driving while intoxicated and then hitting another vehicle count as one prior conviction, there are certain circumstances in which the multiple crimes committed are considered separate convictions. The legislation would add committing a crime against a correctional officer to those considered a separate crime and conviction even though there may have been multiple crimes committed within the criminal one event. Amendment 1, adopted on February 12, 2014, proposes citizenship as a neutral factor when considering presumptive sentencing, he remarked, and it does not allow an individual's citizenship status to be considered as a mitigating factor. He referred to two superior court cases [State v. Silvera and State v. Perez, 309 P.3d 1277 (Alaska Ct. App. 2013), discussed 2/12/14 in committee] which allowed the non-citizen defendants to appeal their sentences based upon being within the presumptive range and the possibility of deportation. The

defendants argued their non-citizen status was a mitigating factor as to why they should be sentenced below the presumptive sentences and their cases were referred to a three-judge panel. The panel considered the defendants' non-citizenship status and ruled [possible deportation] was a good reason to sentence the defendants below the presumptive range, he stated. Amendment 1 disallows using deportation as a mitigating factor.

1:22:01 PM

MARGARET STOCK, Attorney at Law, Cascadia Cross Border Law Group, described her legal expertise in that she is an internationally known expert in the area of immigration and citizenship laws, a member of the Alaska Bar Association, admitted before the United States District Court for the District of Alaska and the 9th Circuit Court of Appeals, and is the 2013 National Immigration Law Professor of the Year. She advised she is testifying personally and in her capacity as an expert. She said she is testifying in opposition to [adopted Amendment 1] which would eliminate the ability of three-judge sentencing panels to take into account potential immigration consequences to a criminal defendant. The United States Supreme Court in Padilla v. State of Kentucky (2010) decided deportation is an extremely harsh consequence, and said:

> The importance of accurate legal advice for noncitizens accused of crimes has never been more important. These changes confirm our view that, as a matter of federal law, deportation is an integral part, indeed sometimes the most important part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.

MS. STOCK pointed out that the court deemed it very important for criminals to receive accurate immigration legal advice regarding immigration consequences. The same can be said for the Alaska State Legislature, which she opined, is not receiving accurate legal information from the memorandum from Richard Svobodny, Deputy Attorney General, dated February 11, 2014. She opined that the memorandum does not properly reflect the state of immigration law as almost every sentence in the memorandum is inaccurate and provides incompetent legal advice. The memorandum fails to mention that the United States Supreme Court contradicts the memorandum; lawyers writing legal memos are required to cite contrary authority in regard to the lawyer's stated position. Furthermore, this legislation affects non-citizens as well as family members who are non-citizens and

naturalized citizens, such as military veterans who naturalize through military service, all of which could face de-naturalization and deportation due to this change to the law. She maintained that the memorandum says without [Amendment 1] citizens are treated differently, which is a violation of equal protection. However, there is no equal protection problem with current law as equal protection does not mean that everyone must be treated exactly the same. The memorandum states: "If the defendants were to receive at least one year's confinement for their offenses, each might be classified as an aggravated felon and so they might be considered deportable." Ms. Stock disputed the use of the term "might" because federal law contains a laundry list of offenses that are aggravated felonies under immigration law and some of them are not felonies under state law and some of them don't require jail sentences. Federal immigration law is "very complicated" and when [an offense] is a misdemeanor under Alaska law but is deemed an aggravated felony under federal immigration law, then defendants must be classified as an aggravated felon; it is not discretionary. In such a situation, the defendant is deprived of all opportunities "for the most part" to contest deportation, unless perhaps he/she would face torture if deported to his/her home country. She pointed out that in Padilla v. State of Kentucky, 559 U.S. 356 (2010), which is binding authority in Alaska, the U.S. Supreme Court thoroughly discusses [deportation] and its harsh consequences. She asserted it has long been a practice in Alaska, even among prosecutors, to adjust a defendant's sentences to avoid the harshest consequences of being a non-citizen. However, the amendment under consideration would treat non-citizens and some citizens in an extraordinarily harsh way and it probably violates federal law. Ms. Stock emphasized that she is opposed to [Amendment 1] and is hopeful the legislature will reconsider and obtain an accurate legal opinion from the Department of Law before moving forward.

1:27:54 PM

CHAIR KELLER announced that the committee does not plan to act on HB 218 today.

1:28:01 PM

ANN BENSON, Supervising Attorney, Immigration Project, Washington Defender Association, related that she is a nationally recognized expert in the conflict between criminal law and immigration law, a long time immigration lawyer, and was a member of the Alaska Bar. She further related that she is

currently [staff supervisor] in an immigration project funded by the Washington State Legislature to provide immigration related expertise to judges, prosecutors, and defense attorneys who deal with non-citizens in the criminal justice system in Washington. She noted that she also regularly consults with people in the Alaska criminal justice system. She said that she concurred with Ms. Stock's testimony; specifically emphasizing the "erroneous" nature of the legal memorandum the committee has been provided. In Padilla, she pointed out that the court specifically recognized it is proper for both criminal courts and prosecutors to factor immigration consequences into their decisions as the doctrine serves the best interest of the state as well as the defendant. Not only did the U.S. Supreme Court recognize criminal courts [factoring immigration consequences into their decisions], but they sanctioned it, she stated. She opined that [Amendment 1] interferes with the judge's ability [to factor in deportation], and thus criminal courts in Alaska will be significantly impacted in their ability to exercise their authority and serve justice. She then pointed out that according to the U.S. Supreme Court and "other legal authority," it is not an equal protection violation. Ms. Benson advised that this [legislation] impacts families in Alaska because when judges consider these factors they consider all of the consequences that result from their decisions. She opined that the appellate court's [decision] did not mandate Alaska courts to impose special sentences for non-citizen defendants, or for anyone, but affirms it is appropriate for a judge to consider the relevant factor [of deportation] in [sentencing]. Drawing from her work within the Washington and Alaska courts, she related that judges factor in matters [such as deportation] daily and it doesn't mean everyone will avoid deportation. She maintains that the U.S. Supreme Court mandated, recognized, sanctioned, specifically authorized, and acknowledged that it is appropriate for courts to do as instructed by the Appellate Court in State v. Silvera in Alaska.

1:33:36 PM

REPRESENTATIVE MILLETT inquired as to whether Ms. Stock is in favor of defendants remaining in state prisons rather than being deported when the defendant has committed an egregious crime, such as murder or rape of a child.

1:34:40 PM

MS. STOCK opined that the memorandum from the Attorney General's office has caused a misunderstanding about the law. Under

federal immigration law there is an "aggravated felony" definition under which Congress created a list of very serious crimes, such as murder, rape, and sexual abuse of a minor, and not so serious crimes that it considers aggravated felonies. In Silvera and Perez, the defendants were convicted of lesser offenses that were possibly defined under federal immigration law as aggravated felonies, although they weren't at the level of murder, rape, or sexual abuse of a minor. She noted there is a laundry list of offenses considered aggravated felonies under federal immigration law and if the definition of one of those offenses is met, the defendant is not eligible for relief from deportation. She highlighted that in the United States if a defendant is convicted of a very serious crime the defendant faces the consequences of the criminal conviction, serves the full amount of jail time, is then released to immigration, and receives a hearing with an immigration judge and possible deportation.

1:37:04 PM

MS. STOCK reiterated that the issue in Alaska is not regarding an immigrant doing one day less in jail, but that Alaska will not recognize [deportation as a factor] and will not reduce a sentence by one day in order that a defendant is allowed to plead his/her case before an immigration judge. Consequently, after convicted [immigrant/non-citizen] Alaskans serve their criminal sentence they are denied the opportunity to argue their case before an immigration judge and face automatic deportation, she opined. She described a possible scenario of a disabled veteran receiving one day off of his sentence by the three-judge panel which then allowed him to plead his case before an immigration judge and argue that he should not be deported. She noted the judge could still order the veteran deported but it would not have been mandatory for the immigration judge to order him deported as it would have been if he had spent the one extra day in jail. She related her impression that [Amendment 1] is not anti-immigrant but rather anti-Alaskan due to the number families it would break up. In fact, she opined that it will have a large negative impact on Native Alaskans who are in mixed families in which one member is an immigrant and one is not. Ms. Stock described another scenario, in which a bread winner husband is convicted of a relatively minor crime, but one that is considered an aggravated felony under immigration law is deported and leaves his wife and children are left destitute in Alaska and have to turn to the state for aid. If the amendment passes, immigrants will not have a chance to [go before a three-judge panel to plead why they should not be deported].

1:39:11 PM

REPRESENTATIVE MILLETT expressed her thanks to Ms. Stock for her explanation and advised the committee to think seriously about Amendment 1.

REPRESENTATIVE GRUENBERG thanked the experts who have testified and advised the committee that Ms. Stock is a recent recipient of a MacArthur Genius Award.

1:40:41 PM

RUSSELL PRITCHETT, Attorney at Law, Pritchett & Jacobson, P.S., informed the committee he has practiced immigration law for approximately 25 years, is an active member of the Washington and Alaska Bar Associations, is admitted to the U.S. District Court for the District of Alaska, and currently practices immigration law in Washington. He advised he is opposed to HB 218 [Amendment 1] because a three-judge panel should be allowed to consider the harsh collateral consequences a deported parent visits upon their U.S. citizen children who remain in the United States. He referred to a 2010 report entitled, In the Child's Best Interest, published by the University of California, Berkley School of Law, which in part found that the deportation of a parent of a U.S. citizen child creates large secondary, social, and economic affects and negatively impacts the physical and mental health of the U.S. citizen children left behind. Most such children suffer significant behavioral changes and experience disruption in schooling, struggle to make good grades, or consider dropping out of school. Furthermore, Ms. Stock testified that often the deported parent is the bread winner in the family and that parent's deportation throws the U.S. citizen children into poverty, which creates a tremendous burden on society as a whole. Mr. Pritchett then reiterated his opposition to HB 218 [Amendment 1].

1:43:09 PM

ARUNDEL PRITCHETT, Staff Attorney, Alaska Immigration Justice Project, advised she is testifying in opposition to [Amendment 1] to HB 218, which precludes immigration consequences from being considered at sentencing. The aforementioned would lead to Alaskans being permanently exiled from the United States and Alaskan families being torn apart. She clarified that she used the term "would" be permanently exiled and not "could" be because a non-citizen convicted of an aggravated felony, which

need not be a felony under state criminal law, as Ms. Stock stated, "will" be deported. She then stressed it is not a discretionary matter under federal immigration law. Noting she often represents crime victims, she expressed concern that victim's rights are included in Alaska's sentencing criteria and under [Amendment 1] could result in non-crime victims being exiled from the United States. She related that it is not uncommon in domestic violence situations for the victim not the abuser to be convicted of a crime following a domestic violence incident. Preventing the consideration of immigration consequences in sentencing could result in the ultimate coup for the abuser of a non-citizen victim as she could not only be wrongfully convicted, she opined, but also ultimately banished from the United States with no hope of ever returning. Ms. Pritchett disagreed with the assertion that consideration of immigration consequences and sentencing unlawfully discriminates against a United States citizen. If the aforementioned is of concern, she suggested that the legislature lower the presumptive minimum sentence for certain crimes from 1 year to 364 days, which would allow a state judge to issue a sentence preventing designation of a conviction as an aggravated felony under federal immigration law while being equally applicable to citizens and non-citizens alike.

1:45:51 PM

QUINLAN STEINER, Public Defender, Public Defender Agency, Department of Administration, stated Amendment 1 undermines the presumptive sentencing scheme put in place by statute and the sentencing principles articulated in the Alaska State Constitution. In essence, Amendment 1 eliminates the consideration of valid sentencing factors, which renders a sentence unfair. The Attorney General's memorandum is incorrect as it asserts the rulings in [Silvera and Perez] were based solely on the determination that manifest injustice would result by subjecting the defendants to U.S. immigration law. Furthermore, the analysis is the harsh collateral consequences which is significant when reviewed with an equal protection analysis. He opined that the state focuses too narrowly on jail time as being the assessment of whether or not a sentence is severe and does not consider the impact of the entire sentence. He explained the three-judge panel must comply with all sentencing criteria and, by definition; the sentences will not be less severe but will be appropriate for the circumstance, which ultimately promotes uniformity. He described a case similar to the Silvera case wherein harsh collateral consequences of loss of medical benefits could have an extreme

consequence if a medical condition is life threatening. Denying a defendant the opportunity to argue collateral consequences also undermines the Alaska State Constitution's principles regarding reformation, deterrence, and protection of the community, he proffered as well as could undermines the health of families. He then stressed that just because the collateral consequence and the non-statutory mitigator had been proven and had been taken up by the three-judge panel, it does not necessarily mean the defendant will receive departure under state law as the sentence as a whole must comply with the Alaska State Constitutional mandate. The DOL's memorandum is not correct as it implies that deportation and its consequences are not constitutionally valid sentencing criteria, except that the impact of a given sentence and its collateral consequences, specifically rehabilitation and deterrence, is the very point of sentencing and is specifically articulated in case law as being valid considerations. Ultimately, he remarked, there is no equal protection problem in the U.S. as citizens who are similarly situated and subject to equally harsh collateral consequences, whatever they may be, may obtain a referral to a three-judge panel based upon the same conclusion of manifest injustice. He explained that even when a non-statutory mitigator is established and there is a referral to a three-judge panel, the defendant must argue the ultimate conclusion that the sentence as a whole is manifestly unjust. He reiterated that simply proving the non-statutory mitigator exists and should be considered does not necessarily result in departure [from the presumptive sentencing range], which is the analysis under state law sentencing as it relates to the constitution, he opined.

1:50:39 PM

HEATHER STENSON, Staff Attorney, Alaska Immigration Justice Project, informed the committee she is a member of the Alaska Bar practicing immigration law in Anchorage. She related her firm opposition to [Amendment 1] and agreement with the points previously articulated by her colleagues. As a legal professional, she conveyed that [Amendment 1] did not make sense as it seeks to change an existing careful process. She explained that to receive other than a presumptive sentence a judge must carefully screen a case and find, by a very high standard, that manifest injustice would result from deviation from a presumptive sentence and refer it to a three-judge panel. The series of strong procedural safeguards is in place to ensure that sentences are just. However, excluding consideration of immigration status from that process limits the court's ability

to do what is just, she opined. Under immigration law a conviction of a year can be a life sentence when a defendant is sentenced as an aggravated felon and deported because the defendant would lose his/her home and family, and the family would lose a family member; the aforementioned is a major consequence that should be considered in sentencing. One of the cases that started this is one in which a man received a sentence of 364 days rather than 365 days. The 1 day reduction meant that he served his time rather than serving his time and then being deported and losing his entire life. The court, she opined, should be able to consider that. However, this amendment eliminates the court's ability to do so.

1:53:08 PM

JASON BAUMETZ, Supervising Staff Attorney, Alaska Immigration Justice Project, noting he is a member of the Alaska Bar with 10 years of experience as an immigration attorney and stated his opposition to [Amendment 1]. Drawing from his experience as an immigration attorney, he opined that it is fair, appropriate, and essential that sentencing courts are allowed to consider immigration consequences together with other mitigating and aggravating factors in forming its sentencing decisions.

1:54:14 PM

RICHARD ALLEN, Director, Office of Public Advocacy, Department of Administration, remarked that although previous testimony addressed [Amendment 1] issues, the issue is allowing courts the authority to evaluate a specific case and consider the totality of the circumstances before rendering a sentence. He emphasized that it is important to give judges that sort of discretion in these cases.

1:55:35 PM

ANNIE CARPENETI, Assistant Attorney General, Legal Services Section, Department of Law (DOL), clarified that although she is not an expert in immigration law, Assistant Attorney General Ann Black, Office of Special Prosecutions & Appeals (OSPA), (DOL), does know immigration law and can answer questions. Ms. Carpeneti then defended Deputy Attorney General 2/11/14, memorandum to House Speaker Mike Chenault stating it was not a legal memorandum, or a treatise on immigration law or intended to describe nuances in immigration law. The memorandum rather was to summarize a proposed amendment and the reasons DOL supports the amendment. Ms. Carpeneti agreed with Ms. Stock in

that a naturalized citizen could be convicted of a crime that may result in a de-naturalization procedure. She acknowledged that Mr. Steiner and other witnesses presented good testimony regarding Alaska's sentencing law. Ms. Carpeneti explained that the legislature has adopted presumptive sentencing ranges for a defendant convicted of a crime in Alaska. Furthermore, a sentencing court has the authority to increase a sentence to the maximum range or decrease the sentence within the [presumptive] range for factors in aggravation and mitigation if proven by clear and convincing evidence by the party proposing them. If there are no statutory aggravators or mitigators provided in Alaska's law, then defendant has the ability to prove that manifest injustice will occur as a result of a sentence in the presumptive range for factors not set out in statute, and thus the case should be sent to a three-judge panel to consider that factor, she opined. The three-judge panel has the ability to sentence a defendant to any term authorized in statute, from zero to the maximum.

1:58:42 PM

MS. CARPENETI recalled Mr. Steiner's testimony that every criminal sentence whether presumptive, mitigated, or aggravated must be based on criteria set out in AS 12.55.005, also known as the "chain of criteria," that was provided in the Alaska State Constitution and adopted by the Alaska Supreme Court many years ago. The factors are rehabilitation, deterrence of self and others, affirmation of community norms, and where necessary, isolation of someone to protect the public as well as a victim's rights. Ms. Carpeneti explained that avoiding control and influencing the application of federal immigration law is not listed in State of Alaska v. Chaney, [477 P.2d 441, Alaska 1970], in Alaska Statute, or the Alaska State Constitution. She offered that Amendment 1 simply provides that whatever the federal government may or may not do to a defendant when sentenced under state law should not be considered by a state sentencing court. She then expressed concern with Ms. Stock's testimony that under federal law once a defendant has been convicted as an aggravated felon, the defendant will be deported and there is little discretion. Drawing from conversations with Ms. Black and others, Ms. Carpeneti opined there is actually much discretion within the Department of Justice as to whether or not it deports a defendant. She then referred to memorandum DOL received from an Immigration and Customs Enforcement (ICE) attorney that lists various factors ICE attorneys consider when deciding whether to initiate deportation proceedings involving a person who has been convicted of an aggravated felony. These

factors include specific emphasis on serving in the U.S. military, whether an illness is involved, and "various items". Unfortunately, she shared, even though ICE attorneys have provided DOL with advice, the ICE attorneys do not testify and will not be put on the record regarding factors they consider. She mentioned that DOL has memorandums from ICE attorneys available [for the committee] that may be helpful.

2:01:31 PM

MS. CARPENETI reiterated that [the factors used to determine] whether or not the federal government will exercise its discretion to determine if a deportable defendant should, or should not, be deported is not in the Alaska State Constitution or Alaska Statutes. Alaska's sentencing laws are designed to promote reasonable uniformity in sentencing for criminal acts that are similar, and whether or not a defendant performing a [criminal] act similar to a deportable defendant is difficult to predict. As Ms. Stock testified, federal law dealing with immigration status is very complicated. Ms. Carpeneti emphasized that the committee should seriously consider whether attorneys in DOL who are district attorneys and not experts in immigration law should be dealing with these issues. Criminal attorneys in DOL enforce the laws and sentences the legislature establishes under Alaska Statute and the Alaska State Constitution. She then expressed concern with safety issues. In Silvera, a non-citizen, was convicted of stabbing a person in the face, sent to a three-judge panel, and sentenced to 364 days to avoid being classified as an aggravated felon. The issue is not that Mr. Silvera received one day less when another defendant would have been sentenced within the range of 1-3 years, the issue is the lack of any period of supervised probation. The fact that Mr. Silvera was not supervised, she opined, is a question of public safety that should be addressed. Ms. Carpeneti informed the committee of a current case on appeal wherein the sentencing court did not send the case of a man convicted of attempted sexual abuse of a minor to a three-judge panel. The defendant claimed at sentencing that he was potentially deportable and should be sentenced to a period of time that would avoid any period of supervision, sex offender treatment, or various [programs] the state [offers] to help defendants who are transitioning into life after a sentence is served, she related.

2:04:57 PM

MS. CARPENETI stated her agreement with Ms. Stock that immigration law is very complex, which she believes makes the case for Amendment 1 in that criminal courts should not try to determine if a sentence within the presumptive range would raise issues of federal deportation rather state law should be applied in a neutral manner and not factor in [deportation]. Ms. Carpeneti stated her disagreement with a local newspaper's description of [Amendment 1] as an anti-immigration law and she explained that [Amendment 1] is intended to apply these factors as neutral for every person when sentencing for the same criminal act.

2:05:50 PM

REPRESENTATIVE LYNN related his great confidence in the advice he has received from DOL over the years. He acknowledged that everyone isn't an expert on all areas [of law], but opined that DOL has resources available to call upon for immigration issues or any other issue.

2:06:45 PM

REPRESENTATIVE GRUENBERG recalled Ms. Carpeneti's comment that immigration is "a very specific and specialized area of the law."

2:07:03 PM

MS. CARPENETI clarified that her words were, "it is a very complicated area. In further response to Representative Gruenberg, advised that DOL does not have a dedicated expert in immigration law, but Ms. Black has spent a lot of time in the last several years dealing with such issues.

2:07:49 PM

REPRESENTATIVE GRUENBERG questioned whether Ms. Carpeneti believes one person would be enough to handle the anticipated case load with Amendment 1 or would more staff be necessary to handle immigration cases. He then pointed out that HB 218 is not referred to the House Finance Committee. Representative Gruenberg clarified that he is asking whether DOL could handle the additional sentencing, as potentially there will be significant appellate and constitutional questions with the passage of Amendment 1.

MS. CARPENETI stated she has incredible faith in the attorneys in the Office of Special Prosecutions & Appeals (OSPA) and advised she does not have the answer to resource issues.

CHAIR KELLER related his understanding the Ms. Carpeneti said DOL has the personnel to handle the analysis of this bill.

2:10:26 PM

REPRESENTATIVE GRUENBERG, referring to the testimony of Ms. Benson and Ms. Stock's allegations of erroneous legal advice in the memorandum, queried if Ms. Carpeneti would like to respond to Ms. Benson and Ms. Stock's specific allegation of the House Judiciary Standing Committee being unintentionally mislead by the 2/11/14 memorandum from Deputy Attorney General Svobodny.

MS. CARPENETI responded that Ms. Stock and Ms. Benson were criticizing the memorandum as if it were a nuanced legal brief dealing with legal issues, although it was simply a memo describing a bill, an amendment, and a concern DOL has about sentencing. She opined that DOL's OSPA attorneys could answer all of the questions raised by Ms. Stock and [Ms. Benson] as the issue is simply whether or not the possibility of deportation should be a consideration for state court judges when sentencing defendants for the commission of crimes. In response to Representative Gruenberg, Ms. Carpeneti advised that Ms. Black is very familiar with the Padilla case and is online.

2:12:27 PM

REPRESENTATIVE FOSTER queried if Ms. Carpeneti had a sense of how many additional cases would come forth due to [Amendment 1].

MS. CARPENETI opined that after any litigation regarding the validity of the law that is passed would result in less litigation. She deferred to Ms. Black.

2:13:15 PM

CHAIR KELLER interjected that it appeared odd to him that the legislature is discussing subservience to an immigration judge's decision on deportation that is future. He questioned why the aforementioned even has to be taken into consideration and whether it's tied into manifest injustice. Is manifest injustice a gateway to the three-judge panel for more than just immigration.

MS. CARPENETI responded there are various factors not in the statutory mitigators that a defendant can raise to the three-judge panel if a defendant has proven to the sentencing court that manifest injustice would occur from a sentence within the presumptive range.

2:15:24 PM

ANN BLACK, Assistant Attorney General, Appeals Unit, Office of Special Prosecutions & Appeals (OSPA), Department of Law (DOL), stated she has 30 plus years of legal experience, including practicing law in the Alaska state courts, federal courts with district courts, and federal circuit courts of appeals in federal habeas [corpus] claims. She related that she is [admitted to practice before] the United States Supreme Court, and prior that a former Judge Advocate General with approximately 10 years in the military courts. She agreed with Ms. Carpeneti that the Deputy Attorney General Svobodny memorandum is not a comprehensive treatise with regard to Alaska constitutional law, Alaska criminal law or federal and immigration law. Furthermore, it in no way covers the complexities of federal immigration law. She opined that the legislation is designed to address the fact that Alaska's criminal sentencing judges and district attorneys do not have the expertise [in immigration law] of Ms. Stock and prior witnesses. Alaska's criminal judges are making assumptions about federal law and the state's district attorneys are not in a position to adequately educate Alaska's criminal judges regarding the actual consequences and intricacies of immigration law, she further opined.

2:17:44 PM

MS. BLACK remarked that the panel of three state judges is asked to answer extremely weighty policy questions and determine important decisions while "dabbing" in an area of [federal] law in which they lack sufficient knowledge. With regard to the Padilla case, Ms. Carpeneti took exception with Ms. Stock's interpretation because, while the quotes she read to the [committee] are quotes from the case, they were taken out of context and omit the fact that the U.S. Supreme Court in Padilla decided the ability of a sentencing judge to intentionally control the outcome of an immigration proceeding based on criminal conduct does not exist. In Padilla, she pointed out, the Supreme Court went out of its way to say that while judges previously [controlled the outcome of an immigration proceeding based on criminal conduct] Congress determined it no longer

wanted judges doing that. Within the federal context, the claim that federal law permits judges to impose a sentence for the purpose of affecting deportation is not accurate, she explained, as every federal court that has addressed the issue, specifically the following Courts of Appeal: 2nd, 5th, 8th, 9th, 10th, 11th, and D.C. circuits, have all held that attempting to assist a defendant avoid deportation is not proper sentencing criteria. Ms. Black explained [Amendment 1] provides that Alaska is indifferent to the federal government as Alaska applies its sentencing and criminal justice criteria regardless of what the federal government's policy is, will be, or may be. To that extent, she noted, [Amendment 1] is not regarding being subservient to the federal government, but is instead regarding independence from the federal government.

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MS. BLACK said prior discussions regarding certain defendants automatically being deported is problematic because "it" started too far down the system in order for defendants like Mr. Silvera or Mr. Perez to be considered deportable under federal statutes as they would have to meet the criteria of having committed an aggravated felony because they committed a crime of violence for which a sentence of one year or more is imposed. In both Silvera and Perez, the defendants requested a shorter sentence than a [U.S.] citizen would have received so they would no longer be qualified as deportable, and therefore would not face federal immigration judges. She noted disagreement with the earlier remarks that this isn't about "people getting out of jail earlier," and proffered that the prior discussion is regarding defendants pleading their cases before three-judge panels and requesting the judges not impose what the Alaska Legislature determined should be presumptively imposed. The aforementioned is desired in order that federal immigration law dictates their sentences. Ms. Black recalled a prior suggestion wherein the legislature changes the [preemptive sentences] by at least one day in order that sentences fall outside of the federal definition of a crime of violence and an aggravated felony. In essence, such a suggestion is requesting the Alaska Legislature allow the federal government to dictate what appropriate [state] sentences should be, she opined. She submitted that it is not an appropriate consideration for a three-judge panel or for the state legislature.

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MS. BLACK explained that rehabilitating a defendant, or protecting the public from future misconduct of the defendant, or adequately expressing Alaskan citizen's condemnation of the defendant's behavior. She stated that this legislation treats all defendants equally in Alaska's criminal courts, such that they all will be afforded the same benefits and same consequences. The consequences defendants may or may not face in the federal system should not be relevant as to whether a particular state sentence will be effective in terms of things. Under State of Alaska v. Chaney, [477 P.2d 441, Alaska 1970], the Alaska Statutes, and the Alaska State Constitution, the sentencing courts are requested to decide effectiveness of sentences and this legislation ensures uniformity which reduces guesswork. Currently, she opined, the state's three-judge panels are operating blindly and the state's district attorneys cannot provide them full well-rounded [immigration law] guidance. Although DOL has requested assistance from ICE attorneys and enforcement officers, the department has been told that "we cannot make advisory opinions and we cannot tell you what will be the consequence." Over the past three years, Ms. Black conveyed, she has been in contact with ICE officials who tell her "I don't understand why your state sentencing courts are worried about imposing a sentence that may or may not result in deportation. The way our system operates is we presume that states will impose sentences based on state concerns and state criteria without regard to the federal government." She explained that only after the state has completely concluded its interest in a defendant will ICE attorneys and immigration officials begin their process with the defendant. The state [criminal] system and the federal immigration system are two very independent systems and just because one system takes up its work after another does not make one system subservient or dependent on the other system. Thus, [Amendment 1] ensures that Alaskan courts are independent of federal immigration law, she opined.

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MS. BLACK related that this legislation protects the rights of crime victims as it ensures victims that Alaska's sentencing courts will not treat their victimization as less worthy of redress just because the assailant is not a U.S. citizen and subject to deportation. She noted that [Amendment 1] fosters rehabilitation as Alaska's courts consistently turn to suspended impositions of sentences, which works as both the "carrot and the stick" to ensure that a released defendant is held accountable in attending and complying with ordered

rehabilitative treatment and also conforms its behavior [to society's standards]. Under the federal system, suspended time is figured into whether or not a person has committed a crime for which a sentence of a year or more has been imposed. Ms. Black explained that whether a state's definition of a crime and a state's sentence for a crime qualifies as a crime of violence and potentially an aggravated felony are "terms of art." The federal government does not rely on Alaska's definitions as it defines a crime of violence in an extremely specified way. For instance, there is federal case law that includes the 9th Circuit in which a person can shoot a gun at a building they know to be occupied and that action is not considered a crime of violence under the federal immigration code, she noted. Ms. Black describes [immigration law] as a complex system with often counter-intuitive "terms of art" of which Alaska's judges are not experts. She offered that the state should not ask its judges to divert state resources by diverting judge's dockets to determine whether it is appropriate for an offender to remain in the country. Alaska's judges are taxed with deciding appropriate [state] sentences to ensure offenders will no longer re-offend or pose a threat to the public and ensure that the rights of Alaskan victims are protected, she further opined.

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MS. BLACK posited that many of the comments in the memorandum had already been vetted by the National Association of Attorneys General (NAAG) for their legal accuracy. Furthermore, while the memorandum [was never intended to] constitute a treaties, it is not inaccurate and does not present an incorrect view of the law. In response to Chair Keller, Ms. Black confirmed her availability and stated she has performed extensive research and briefing with regard to the interplay of Alaska constitutional and criminal law as well as federal law.

2:30:34 PM

CHAIR KELLER announced that HB 218 would be set aside.

2:30:37 PM
The committee took an at-ease from 2:30 to 2:35 p.m.
[Chair Keller passed the gavel to Vice Chair Lynn]

2:35:36 PM

VICE CHAIR LYNN announced that the next order of business would be HOUSE BILL NO. 284, "An Act relating to an interstate compact on a balanced federal budget."

HB 284-COMPACT FOR A BALANCED BUDGET

2:36:03 PM

CHAIR KELLER, speaking as prime sponsor of HB 284, informed the committee that HB 284 addresses the federal national debt and proposes a specific constitutional balanced budget amendment. There are several states involved in [the Constitutional Amendment movement] and the Goldwater Institute is presenting the idea of continuing the "Compact for America" [movement]. He explained that the bill applies [U.S. Constitution] Article V conditions and uses the compact approach in order to become a U.S. Constitutional Amendment. The U.S. Constitution, Article V, lays out two avenues of proposing amendments and two avenues for proposing amendments and ratifying them. He directed attention to Article V, which read:

> Article V
> The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

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NICK DRANIAS, Director, Constitutional Policy, Policy and Development, Goldwater Institute, noted that he is on the Board for Compact for America, Inc., is a 16-year attorney of which 8 years has been focused in constitutional law and he has been involved in developing Article V approaches and researching the

issue for 4 years. He then related that his main claim to fame is a successful win in the U.S. Supreme Court striking down Arizona's system of campaign finance regulations. He noted that [the Goldwater Institute] published Professor Robert G. Natelson's, three-part series in the fall of 2010 and early 2011, which has proven to be seminal in providing guidance to Article V aficionados throughout the country. Mr. Dranias, focusing on the Compact for America Balanced Budget referred to the slide entitled "Your Future is at Stake" depicting the nation's current gross federal debt, not only the portion held by the public. He opined the gross federal debt is relevant to [the United States'] credit rating and described the U.S. as being at 107 percent of Gross Domestic Product (GDP), a situation the U.S. has not experienced since the height of World War II. The aforementioned is not a sustainable situation as the U.S. cannot easily grow its way out, and in fact, it may be impossible. The degree of unsustainability and "crazy" fiscal policy going on in Washington must end. Referring to a slide entitled "It Isn't Getting Better" depicting how the deficit has narrowed from $1.1 trillion last year [2013] to $650 billion, he advised that those figures possess no value because the U.S. is increasing its debt at a pace over several hundred billion dollars, given the amount of debt already accrued, and it is continuing along the unsustainable same path. He likened the fiscal situation in the U.S. to that of Greece five or six years ago when Europeans began to panic. He then opined that the fundamental problem with the debt is that of concentrated power in which the debtor is able to set their own credit limit. Therefore, that concentration of power needs to be broken up and the plan is to have a balanced budget amendment as contained in HB 284 that is a plausible and bi-partisan route de-centralizing the power over debt and limiting the ability of a debtor to write their own credit limit.

2:45:04 PM

MR. DRANIAS, referring to the slide entitled "A BBA that Divides Power is the First Payload," explained that the balanced budget amendment was developed with the goal of reaching 38 states and is an idea that should command respect and support from the center-left, center, to center-right. In fact every component of the balanced budget amendment has been poll tested by McLaughlin & Associates at over 60 percent approval ratings. He then reviewed the sections of the balanced budget amendment as follows: Section 1 defines what balance would be and limits spending to the actual cash in the bank at all times. The definition of a balance is that spending at all points in time

are limited to tax revenues or the equivalent. A consequence is that there must be a revolving line of credit to "smooth out" the tax cash flow volatility, he opined. Therefore, Section 2 provides a large revolving line of credit that initially is set at 105 percent of the outstanding debt and the extra 5 percent is designed to provide a transition period to the use of debt so that within an adequate time, the hard choices are made. However, ultimately there is a constitutionally fixed debt limit that would be enforced unless that debt limit can be lifted. Section 3 ensures that the concentration power problem is lifted. He explained that if any increase in this "huge" initial line of credit were deemed necessary, it would have to be in the form of a proposal requiring a referendum of the states. In essence, he summarized, Congress would have to "refer up" the states and secure support from 26 state legislatures, a simple majority and not a super majority, of any proposed increase in the debt limit. He opined that this makes good fiscal sense as it introduces the states as sort of a fiscal board of directors that intervenes and provides supervision for a wayward CEO. Section 4 enforces the debt limit without damaging the U.S. credit history and rating. Within the current statutory debt limit system, he noted, there are "games of chicken" that arise each time it comes into play and this amendment creates a process by which the "game of chicken" cannot happen. In essence, he opined, the president will now have to name what he will impound, delay, not pay, or what he will prioritize over others in terms of spending, at 98 percent of the debt limit. He explained that the extra 2 percent basically provides 6-12 months prior to the initial debt limit, assuming it is ratified in the near future. Therefore, the president, 6-12 months prior to reaching the debt limit, will have a constitutional obligation to identify exactly what he would impound if that debt limit were enforced. Mr. Dranias acknowledged that is a considerable amount of power, but advised it is not new power as the president has the inherent implied power to do impoundments whenever there are not adequate monies to support appropriations. This amendment requires the president to exercise his power in advance. If the president lays out a plan for impoundment with which Congress disagrees, then Congress can override those impoundments within 30 days by a simple majority concurrent resolution with equal or greater amounts. The idea, he clarified, is not to secure the impoundments, but rather to [make the plans known] 6-12 months before reaching the debt limit so everyone has a clear sense of what is at stake if that debt limit, as it is currently set, will be enforced. Section 5 ensures that if the debt problem is to be fixed, the U.S. does not destroy its capacity for economic

growth by over raising taxes. He explained that debt is taxes and if the intention is to pay the debt, then the U.S. does not want to have taxes so high it destroys its capacity to grow and pay back that debt. Therefore, the compromise to limit tax rate increases which would require a super majority vote, 2/3 of the whole number of each house for any increase in existing income taxes, general revenue taxes, or any new general revenue tax, he explained. Furthermore, three powerful" exceptions were created to allow a reasonable degree of revenue increases: replace the income tax with an end user non-VAT [Value-Added Tax] sales tax that is sometimes called the "fair tax;" eliminate deduction credits and loop hole exemptions that is sometimes called "making tax flatter;" and implicit exception in the definitions the Goldwater Institute uses regarding the possibility of raising tariffs and fees. He specified that those exceptions could result in new revenues with simple majorities as it is done now. The special interest "push back" will be fairly strong, he expected, and if the people's representatives in Washington are able to overcome that special interest push back, it would show a genuine consensus on the need for new revenues rather than relying on spending cuts. He opined that the overall incentive structure would incentivize spending cuts first as the root problem is spending beyond [the nation's] means. He further opined that revenue increases would be possible and would be obtained through forms of revenue increases that would either flatten or make the tax code more voluntary. He reiterated that the poll tests performed by Goldwater Institute and others are fairly consistent and go back 40 years.

2:54:59 PM

[Vice Chair Lynn passed the gavel to Chair Keller.]

2:55:09 PM

CHAIR KELLER explained that the bill's premise is that the debt problem is a crisis and the "Compact for America" Amendment introduces checks and balances necessary to address the debt issue. He questioned the status of other states taking this amendment forward.

MR. DRANIS stated that the Georgia House of Representatives recently passed a similar bill out of its House with a 103:63 vote. The bill is pending in Arizona, is on the table in Arkansas where a fiscal limit may preclude it from being heard, and may possibly be introduced in Louisiana and Ohio. The

intent, he noted, is to keep "this session" narrow so that the compact legislation is substantively identical, he opined.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:57 p.m.