

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2014

1:09 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Charisse Millett  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Lance Pruitt

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar

William Granger - Anchorage

- CONFIRMATION ADVANCED

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 187(JUD)(TITLE AM)

"An Act relating to the crime of misconduct involving confidential information in the first degree; amending Rule 16, Alaska Rules of Criminal Procedure; amending Rule 8, Alaska Child in Need of Aid Rules; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 282

"An Act relating to the rights and obligations of residential landlords and tenants; and relating to the taking of a permanent fund dividend for rent and damages owed to a residential landlord."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 64(FIN)

"An Act relating to theft and property offenses; relating to the definition of 'prior convictions' for certain theft offenses; establishing the Alaska Criminal Justice Commission and providing an expiration date; relating to the crime of custodial interference; relating to the duties of the Alaska Judicial Council; relating to jail-time credit for offenders in court-ordered treatment programs; relating to conditions of release, probation, and parole; relating to duties of the commissioner of corrections and board of parole; establishing a fund for reducing recidivism in the Department of Health and Social Services; requiring the commissioner of health and social services to establish programs for persons on conditions of release or probation that require testing for controlled substances and alcoholic beverages; requiring the board of parole to establish programs for persons on parole that require testing for controlled substances and alcoholic beverages; relating to the duties of the Department of Health and Social Services; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 187

SHORT TITLE: CONFIDENTIAL INFORMATION: MISCONDUCT, RLS

SPONSOR(S): SENATOR(S) COGHILL

02/21/14	(S)	READ THE FIRST TIME - REFERRALS
02/21/14	(S)	JUD
03/12/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/12/14	(S)	Heard & Held
03/12/14	(S)	MINUTE(JUD)
03/14/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/14/14	(S)	-- MEETING CANCELED --
03/17/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/17/14	(S)	Moved CSSB 187(JUD) Out of Committee
03/17/14	(S)	MINUTE(JUD)
03/18/14	(S)	JUD RPT CS 2DP 1NR NEW TITLE
03/18/14	(S)	DP: COGHILL, DYSON
03/18/14	(S)	NR: OLSON
03/26/14	(S)	TRANSMITTED TO (H)
03/26/14	(S)	VERSION: CSSB 187(JUD)(TITLE AM)
03/27/14	(H)	READ THE FIRST TIME - REFERRALS
03/27/14	(H)	JUD
04/04/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 282

SHORT TITLE: LANDLORD AND TENANT ACT  
SPONSOR(s): REPRESENTATIVE(s) ISAACSON

01/29/14 (H) READ THE FIRST TIME - REFERRALS  
01/29/14 (H) L&C, JUD  
02/28/14 (H) L&C AT 3:15 PM BARNES 124  
02/28/14 (H) Heard & Held  
02/28/14 (H) MINUTE(L&C)  
03/14/14 (H) L&C AT 3:15 PM BARNES 124  
03/14/14 (H) Heard & Held  
03/14/14 (H) MINUTE(L&C)  
03/17/14 (H) L&C AT 3:15 PM BARNES 124  
03/17/14 (H) Moved CSHB 282(L&C) Out of Committee  
03/17/14 (H) MINUTE(L&C)  
03/19/14 (H) L&C RPT CS(L&C) 1DP 6NR  
03/19/14 (H) DP: JOSEPHSON  
03/19/14 (H) NR: MILLETT, CHENAULT, HERRON,  
REINBOLD, SADDLER, OLSON  
03/28/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/28/14 (H) Heard & Held  
03/28/14 (H) MINUTE(JUD)  
04/04/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 64

SHORT TITLE: OMNIBUS CRIME/CORRECTIONS/RECIDIVISM BILL  
SPONSOR(s): JUDICIARY

02/27/13 (S) READ THE FIRST TIME - REFERRALS  
02/27/13 (S) STA, JUD  
04/04/13 (S) STA AT 9:00 AM BUTROVICH 205  
04/04/13 (S) <Bill Hearing Postponed>  
04/09/13 (S) STA RPT CS 1DP 1NR 1AM NEW TITLE  
04/09/13 (S) DP: DYSON  
04/09/13 (S) NR: GIESSEL  
04/09/13 (S) AM: COGHILL  
04/09/13 (S) STA AT 9:00 AM BUTROVICH 205  
04/09/13 (S) Moved CSSB 64(STA) Out of Committee  
04/09/13 (S) MINUTE(STA)  
07/25/13 (S) JUD AT 10:00 AM WASILLA  
07/25/13 (S) Heard & Held  
07/25/13 (S) MINUTE(JUD)  
01/29/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/29/14 (S) Heard & Held  
01/29/14 (S) MINUTE(JUD)  
01/31/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/31/14 (S) Heard & Held  
01/31/14 (S) MINUTE(JUD)

02/03/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/03/14 (S) Heard & Held  
02/03/14 (S) MINUTE(JUD)  
02/05/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/05/14 (S) Heard & Held  
02/05/14 (S) MINUTE(JUD)  
02/07/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/07/14 (S) -- MEETING CANCELED --  
02/10/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/10/14 (S) Heard & Held  
02/10/14 (S) MINUTE(JUD)  
02/12/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/12/14 (S) Moved CSSB 64(JUD) Out of Committee  
02/12/14 (S) MINUTE(JUD)  
02/14/14 (S) JUD RPT CS 4DP 1NR NEW TITLE  
02/14/14 (S) DP: COGHILL, MCGUIRE, WIELECHOWSKI,  
DYSON  
02/14/14 (S) NR: OLSON  
02/14/14 (S) FIN REFERRAL ADDED AFTER JUD  
02/25/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/25/14 (S) Heard & Held  
02/25/14 (S) MINUTE(FIN)  
03/06/14 (S) FIN AT 5:00 PM SENATE FINANCE 532  
03/06/14 (S) Heard & Held  
03/06/14 (S) MINUTE(FIN)  
03/11/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/11/14 (S) Heard & Held  
03/11/14 (S) MINUTE(FIN)  
03/11/14 (S) FIN AT 5:00 PM SENATE FINANCE 532  
03/11/14 (S) Heard & Held  
03/11/14 (S) MINUTE(FIN)  
03/13/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/13/14 (S) Moved CSSB 64(FIN) Out of Committee  
03/13/14 (S) MINUTE(FIN)  
03/14/14 (S) FIN RPT CS 3DP 1NR 3AM NEW TITLE  
03/14/14 (S) DP: KELLY, MEYER, HOFFMAN  
03/14/14 (S) NR: OLSON  
03/14/14 (S) AM: FAIRCLOUGH, DUNLEAVY, BISHOP  
03/14/14 (S) TRANSMITTED TO (H)  
03/14/14 (S) VERSION: CSSB 64(FIN)  
03/17/14 (H) READ THE FIRST TIME - REFERRALS  
03/17/14 (H) JUD, FIN  
03/24/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/24/14 (H) Heard & Held  
03/24/14 (H) MINUTE(JUD)  
03/26/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/26/14 (H) Heard & Held

03/26/14	(H)	MINUTE(JUD)
03/28/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/28/14	(H)	Heard & Held
03/28/14	(H)	MINUTE(JUD)
03/31/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/14	(H)	Scheduled But Not Heard
04/02/14	(H)	JUD AT 1:00 PM CAPITOL 120
04/02/14	(H)	Heard & Held
04/02/14	(H)	MINUTE(JUD)
04/04/14	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

WILLIAM GRANGER, Appointee  
 Board of Governors to the Alaska Bar  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified as appointee to the Board of Governors of the Alaska Bar.

RYNNIEVA MOSS, Staff  
 Senator John Coghill  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Presented proposed House committee substitute and conceptual amendment to CSSB 187(JUD)(title am) on behalf of Senator Coghill, sponsor, and answered questions.

EMILY WRIGHT, Assistant Attorney General  
 Child Protection Section  
 Civil Division(Juneau)  
 Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Answered a question during the hearing of CSSB 187(JUD)(title am).

ANNE CARPENETI, Assistant Attorney General  
 Legal Services Section  
 Central Office  
 Criminal Division  
 Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Answered a question during the hearing of CSSB 187(JUD)(title am).

REPRESENTATIVE DOUG ISAACSON  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Speaking as the sponsor, presented CSHB 282(L&C).

BRENDA HEWITT, Staff  
Representative Doug Isaacson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing of CSHB 282(L&C), on behalf of the sponsor.

CLYDE (ED) SNIFFEN, Jr., Senior Assistant Attorney General  
Commercial and Fair Business Section  
Civil Division(Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Answered a question during the hearing of CSHB 282(L&C).

DICK BLOCK  
Mellen Investment Company.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to section 14 of CSHB 282(L&C).

KIRK MAYNARD, Owner/Broker  
Coldwell Banker Gold Country  
Fairbanks, Alaska

**POSITION STATEMENT:** Deferred his testimony to the next hearing of HB 282.

ERNEST PRAX, Staff  
Representative Wes Keller  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided the proposed changes in multiple amendments to CSSB 64(FIN) on behalf of Representative Keller.

QUINLAN STEINER, Director  
Central Office  
Public Defender Agency  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Answered a question during the hearing of CSSB 64(FIN).

JORDAN SHILLING, Staff  
Senator John Coghill

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided testimony during the hearing of CSSB 64(FIN) on behalf of Senator Coghill, chair of the Senate Judiciary Standing Committee, sponsor.

TONY PIPER, Program Manager  
Alcohol Safety Action Program  
Division of Behavioral Health  
Department of Health and Social Services  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing of CSSB 64(FIN).

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of CSSB 64(FIN), addressed proposed Amendment 17.

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

**POSITION STATEMENT:** Provided information related to proposed Amendment 17 to CSSB 64(FIN).

NANCY MEADE, General Counsel  
Administrative Staff  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing of CSSB 64(FIN).

#### **ACTION NARRATIVE**

[1:09:50 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Lynn, LeDoux, Millett, Gruenberg, and Keller were present at the call to order. Representative Foster arrived as the meeting was in progress.

#### **CONFIRMATION HEARING(S) Board of Governors of the Alaska Bar**

[1:10:18 PM](#)

CHAIR KELLER announced that the first order of business would be the confirmation hearing for the Board of Governors of the Alaska Bar.

[1:11:54 PM](#)

WILLIAM GRANGER, Appointee to the Board of Governors to the Alaska Bar, informed the committee he has lived in Alaska most of his life and is very familiar with the Alaska Bar Association. His occupation as a senior lender for Wells Fargo Bank, and previously with the National Bank of Alaska, has provided a lot of opportunity for contact with the local bar association and judiciary. He said he has served on the bar association previously and enjoyed the challenge, and is currently the bar association treasurer.

[1:13:29 PM](#)

REPRESENTATIVE GRUENBERG asked when Mr. Granger's term as vice-president of the bar association ended and his term as treasurer began.

MR. GRANGER was unsure, and he said he has served on the bar association for about 11 years, and most of that time as treasurer.

REPRESENTATIVE GRUENBERG, speaking as a member of the bar association, observed that continuity is important to the Board of Governors of the Alaska Bar as it deals with subjects such as admissions and disciplines. He expressed his support for Mr. Granger's appointment.

MR. GRANGER, in response to Chair Keller, said Ed Granger was his father.

[1:15:44 PM](#)

REPRESENTATIVE LYNN moved to advance from committee the confirmation of William Granger to the Board of Governors of the Alaska Bar. He reminded the committee that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection. There being no objection, the confirmation was advanced.

**SB 187-CONFIDENTIAL INFORMATION: MISCONDUCT, RLS**

[1:16:28 PM](#)

CHAIR KELLER announced that the next order of business would be CS FOR SENATE BILL NO. 187(JUD)(title am), "An Act relating to the crime of misconduct involving confidential information in the first degree; amending Rule 16, Alaska Rules of Criminal Procedure; amending Rule 8, Alaska Child in Need of Aid Rules; and providing for an effective date."

[Before the committee was CSSB 187(JUD)(title am).]

[1:16:44 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, directed attention to a proposed House committee substitute (HCS) for committee substitute (CS) for SB 187, found in the committee packet. Ms. Moss said SB 187 was the result of an incident last year in Alaska in which the videotaping of a confidential interview of a sexual abuse case ended up in the hands of relatives and was subsequently broadcast on the Internet. The proposed legislation would amend Alaska Statutes and three court rules. Firstly, AS 11.76.113 Misconduct involving confidential information in the first degree, would be amended to add an offense for a person who publishes or distributes an audio or video recording of an interview of a child for a criminal or child protection investigation, or records of a medical examination of a victim or a minor conducted for the purposes of an investigation under AS 11.41, or a child protection investigation, including photographs taken during the examination. Exceptions in proposed section 2 are for publishing or distributing with a court order, with a rule of court, or a state or federal law. There is also an exception for training law enforcement, prosecutors, or defense counselors, if the minor or victim's identity is concealed. In addition, this information could be utilized with a release of consent from an adult victim, an emancipated minor, or the minor's parent or guardian if the parent or guardian is not the perpetrator.

MS. MOSS continued to proposed section 3, which amends rule 16(d)(3) of Alaska Rules of Criminal Code, to include this crime as evidence that cannot be in the physical custody of the defendant.

[1:19:25 PM](#)

REPRESENTATIVE LYNN moved to adopt the proposed House committee substitute (HCS) for CSSB 187(JUD)(title am), Version 28-LS1145\P, Strasbaugh, 4/3/14, as the work draft. There being no objection, Version P was before the committee.

MS. MOSS directed attention to page 4 of the work draft, stating that section 3 of the proposed legislation emphasizes that when defendants do not have counsel they have physical custody of this [confidential] information, but if they share the information, it is punishable by contempt of court and requires that the court inform the defendant that sharing the information constitutes a criminal offense.

MS. MOSS explained that section 4 adds to court rule 16(d), that when evidence is submitted to the court, it must be in an envelope sealed and marked "confidential." She advised that the sponsor has worked closely with the Department of Law (DOL), the Public Defender Agency, (PDA), the Department of Administration (DOA), and the Office of Public Advocacy (OPA), DOA, on section 5, which amends Direct Court Rule Amendment, Rule (8), Alaska Child in Need of Aid Rules (CINA). The purpose of this change is to ensure that the information is confidential and out of the reach of the defendant, but to also have access to medical records when medical records are needed for medical treatment. For example, in a child abuse case where a child is physically injured by a parent and medical records are needed for a physician to treat the child. Section 5 also "mirrors" rule (16), by informing the "pro se parent" that if the information is shared with anyone, that would constitute a criminal crime, and allows for confidential filing in an envelope sealed and marked "confidential."

MS. MOSS further explained the proposed legislation addresses evidence for crimes under AS 11.41.410-11.41.450 which are sexual assault in the first, second, third, and fourth degrees, sexual abuse of a minor in the first, second, third, and fourth degrees, and incest. She directed attention to the conceptual amendment which addressed the language of the bill on page 4, line 30.

[1:22:54 PM](#)

REPRESENTATIVE LYNN moved to adopt Conceptual Amendment [1] to Version P, which read as follows [original punctuation provided]:

Page 4, line 30, after the word "records"

Insert:

**"that are also evidence under AS 11.41.410-11.41.450"**

Page 4, line 31-Page 5, line 1, after the words "AS 47.10.011 or AS 47.14.300":

Delete:

"that is also evidence for an investigation under AS 11.41.410-11.41.450"

[1:23:18 PM](#)

CHAIR KELLER objected for the purpose of discussion.

MS. MOSS stated Conceptual Amendment 1 was suggested by Quinlan Steiner, director of the Public Defender Agency, for the purpose of clarifying that the video and audio recordings and medical records are only connected to investigations involving the aforementioned crimes.

REPRESENTATIVE LEDOUX read from the proposed HCS, on page 4, beginning on line [14] as follows:

The clerk shall inform the defendant ... that violation of the order issued under this paragraph is punishable as contempt of court and may also constitute a criminal [offense].

REPRESENTATIVE LEDOUX questioned why not say, "and also constitutes a criminal [offense]."

[1:26:17 PM](#)

EMILY WRIGHT, Assistant Attorney General, Child Protection Section, Civil Division(Juneau), Department of Law, advised that this language is covered under the criminal rule of procedure 16(d)(3). She observed the term "may" leaves the question of criminality up to a jury thus "this is an advisement that a judge would be giving to ... a defendant."

REPRESENTATIVE LEDOUX further questioned whether a judge would tell a defendant, "this may constituent a crime [instead of] this is a crime."

MS. MOSS cautioned that the language is permissive because there could be a situation that arises in which the evidence "gets into somebody else's hands through no action of the defendant."

CHAIR KELLER clarified for the record that he removed his objection to Conceptual Amendment 1. There being no further objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE LEDOUX returned attention to page 4, lines 14-17, and pointed out that "may" is not used in the admonishment to the defendant regarding a contempt of court, which is inconsistent with the admonishment regarding a criminal offense.

MS. MOSS said the sponsor is open to discussion on a possible change.

CHAIR KELLER opined that it is best to leave the word "may."

[1:31:44 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Central Office, Criminal Division, Department of Law, stated that the proposed change is to a court rule which does not set out elements of the offense of any crime. Therefore, conduct that is covered under subparagraph (D), page 4, may include other conduct than that which is prohibited under the proposed new crime. She advised that using "may" is the cautious approach and ensures that the person is forewarned about the seriousness of his/her conduct.

REPRESENTATIVE LEDOUX accepted the opinion from DOL.

REPRESENTATIVE GRUENBERG further discussed the parameters of court rules. He concurred with Ms. Carpeneti.

REPRESENTATIVE LEDOUX then asked for details on the incident that prompted SB 187.

MS. MOSS said the attorney gave the videotape to a relative, who gave it to another relative who was upset about the situation and posted it on the Internet.

[1:34:07 PM](#)

REPRESENTATIVE GRUENBERG surmised the proposed new crime is directed at the following two sets of circumstances: A document in the hands of a prosecutor or defense attorney in a criminal

case "gets out," or in a Child in Need of Aid (CINA) case. From his experience practicing family law, he asked whether a family law case, such as a custody case, could be covered by the proposed bill. He suggested a provision that would state, "That if somebody releases this in violation of a custody order or an order involving child visitation ... something like that, in a private context also." Representative Gruenberg observed that this situation can come up in a private custody dispute.

MS. MOSS said the proposed bill as written only applies to evidence in the aforementioned criminal cases. In further response to Representative Gruenberg, she said the proposed legislation applies to CINA cases when there are criminal charges.

REPRESENTATIVE GRUENBERG pointed out there is a provision that the attorney cannot share certain information with his own client.

MS. MOSS directed attention to page 3, lines 2-4 which read [in part]:

The materials listed in this paragraph shall not be provided to the defendant, but the information in the materials may be shared with the defendant to the extent necessary to prepare the defense of the case

MS. MOSS concluded that the defendant cannot have physical custody of the materials.

[1:37:14 PM](#)

REPRESENTATIVE GRUENBERG questioned whether this restriction may be permissible under the Alaska Bar Rules of the Alaska Court System. He then directed attention to page 5, lines 27-28, and asked whether the sponsor would consider a change from "treating physician" to "health care professional" in order to be more inclusive.

MS. MOSS responded to Representative Gruenberg's earlier question saying that the proposed legislation includes child protection investigations, but does not include child custody investigations, thus that distinction may require clarification. Returning to "treating physician" on page 5, lines 27-28, she agreed with the point raised by Representative Gruenberg.

[1:40:17 PM](#)

REPRESENTATIVE MILLETT read from page 5, lines 26-28 as follows:

Notwithstanding another provision of this section, the legal custodian of a child may provide records of a medical examination of a child to the child's treating physician ....

REPRESENTATIVE MILLETT asked whether the treating physician "could be anybody - it could be the ER ... - that is a licensed medical professional."

MS. MOSS expressed her belief the possibilities include a nurse or someone in a health clinic, or a dentist.

REPRESENTATIVE MILLETT asked whether medical testimony from nurses, physician assistants (PAs), or advanced nurse practitioners (ANPs) has been used in previous cases or if all testimony pertaining to child abuse in CINA cases is from a medical doctor (MD). She expressed her understanding that this testimony was required to come from none other than an MD.

MS. MOSS was unsure.

REPRESENTATIVE GRUENBERG, speaking from his experience in many cases, said that if a child appears to be the victim of rape, an advanced nurse practitioner becomes involved.

REPRESENTATIVE MILLETT related that advanced nurse practitioners conduct rape kit tests. She stressed that her question is whether testimony from an MD is required in a child abuse case that does not involve rape.

[1:42:01 PM](#)

[SB 187 was heard and held.]

**HB 282-LANDLORD AND TENANT ACT**

[1:42:57 PM](#)

CHAIR KELLER announced the next order of business would be HOUSE BILL NO. 282, "An Act relating to the rights and obligations of residential landlords and tenants; and relating to the taking of a permanent fund dividend for rent and damages owed to a residential landlord."

[Before the committee was CSHB 282(L&C), labeled Version 28-LS0930\P, Bullock, 3/20/14.]

[1:43:51 PM](#)

REPRESENTATIVE DOUG ISAACSON, Alaska State Legislature, speaking as the sponsor, stated that CSHB 282, Version 28-LS0930\P, is a landlord and tenant bill. He advised that much of the bill reflects the proposed changes in the Uniform Residential and Landlord Tenant Act which is before Congress but has not been adopted. He reminded the committee that twenty-one states have adopted the sample uniform law. Two changes to the uniform act found in HB 282 involve adding unpaid rent or damages owed to landlords to the list of conditions found in AS 43.23.065(b) where yearly Permanent Fund Dividends can be garnished, and a provision for dry cabins, which needs clarification on its application in Alaska. Representative Isaacson observed HB 282 is a well-balanced bill. In response to Representative Gruenberg, he said there are four proposed amendments for consideration.

REPRESENTATIVE LEDOUX asked whether a landlord must disclose if he is on the Alaska Sex Offender Registry.

REPRESENTATIVE ISAACSON said yes.

REPRESENTATIVE LEDOUX then asked whether a landlord must disclose if any tenants living on the premises are on the sex offender registry, and if not, why not.

[1:47:19 PM](#)

BRENDA HEWITT, Staff, Representative Doug Isaacson, Alaska State Legislature, stated that the sponsor was advised by legal counsel that it probably is not the responsibility of the landlord to keep tenants informed and that tenants should use the registry provided by state law.

REPRESENTATIVE ISAACSON added that this question is similar to other occupancy issues in that it is up to homebuyers or renters to find out who their neighbors are.

[1:48:38 PM](#)

REPRESENTATIVE LEDOUX moved to adopt [Amendment 1] labeled 28-LS0930\P.1, Bullock, 3/20/14 which read:

Page 7, following line 19:

Insert a new bill section to read:

**\*\* Sec. 10.** AS 34.03.080 is amended by adding a new subsection to read:

(e) If the landlord is registered in the central registry of sex offenders and child kidnappers maintained under AS 18.65.087, the landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to an individual that the landlord is registered in the central registry. The disclosure must be made in writing after an individual accepts the offer to rent the premises but before the rental agreement is signed. After receiving the notice under this subsection, the individual may decline to rent the premises."

Renumber the following bill sections accordingly.

Page 13, following line 1:

Insert a new bill section to read:

**\*\* Sec. 18.** AS 34.03.360(11) is amended to read:

(11) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by **AS 34.03.080(a) - (c)** [AS 34.03.080];"

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 4 - 16"

Insert "Sections 4 - 18"

CHAIR KELLER objected for the purpose of discussion.

REPRESENTATIVE LEDOUX posed a scenario wherein six months after one has done their "due diligence," signed a lease, and moved in, the landlord rents to someone who is listed on the sex offender registry. She asked whether that is grounds to default on the lease.

[1:49:08 PM](#)

REPRESENTATIVE ISAACSON said no. He opined that putting unrealistic demands on a landlord for actions "that might happen," creates too much risk and many landlords may withdraw their properties and reduce the availability of affordable

housing for tenants. He deferred to the Department of Law to further address the question.

1:50:37 PM

CLYDE (ED) SNIFFEN Jr., Senior Assistant Attorney General, Commercial and Fair Business Section, Civil Division(Anchorage), Department of Law, informed the committee he serves in the Consumer Protection Unit at the Department of Law (DOL). He stated that it is equally incumbent upon tenants to determine the status of individuals in a unit. There is no special knowledge that a landlord would have access to that a tenant would not. Regarding a circumstance wherein someone is placed on the registry after a tenant has moved in, he agreed with Representative Isaacson that "those things happen," and the remedies are to discuss the issue with the landlord or to move at the end of the lease.

REPRESENTATIVE LEDOUX understood. However, she pointed out that section 14 of the proposed bill allows a tenant to terminate a rental agreement if the tenant is a victim of domestic violence. She opined the aforementioned circumstance is also applicable under the same argument of "things happen, and it shouldn't be the landlord's responsibility."

MR. SNIFFEN advised that proposed section 14, which allows the victim of domestic violence to terminate a lease, requires a showing of serious conduct, followed by a filing of reports establishing a salient issue. However, the risk from a registered sex offender is unknown. He said, "I can see some parallels, but I think they are a little different."

1:54:30 PM

REPRESENTATIVE LEDOUX stated that if two parties jointly purchase a house, but domestic violence occurred and one party wanted to move out, that circumstance would not release either party from their mortgage.

MR. SNIFFEN said correct. Depending on the terms of the mortgage, if the person living in the house could not make the obligations of the mortgage, the lender could foreclose or refinance. In a rental scenario, most of the issues are addressed in the rental agreement; for example, one party may leave for a variety of reasons and the landlord may have the right to renegotiate the rental agreement or evict the remaining tenant.

CHAIR KELLER suggested that the sponsor of the bill work with individual members of the committee to resolve questions.

REPRESENTATIVE LYNN asked whether a landlord has the right to refuse to lease or rent to an applicant who is a registered sex offender.

REPRESENTATIVE ISAACSON deferred to Mr. Sniffen. In further response to Representative Lynn, he said he did not believe that circumstance was an express provision of the proposed bill, and that further information would be provided to the committee.

[1:59:09 PM](#)

DICK BLOCK, Mellen Investment Company, noted his previously submitted written testimony was included in the committee packet. He concurred with the concerns stated by Representative LeDoux, adding that he did not think proposed section 14 was necessary; however, if section 14 is appropriate from a public policy standpoint, Mr. Block strongly urged the committee to review the amendments he submitted in his written testimony in order to ensure clarity in the proposed bill.

[2:00:43 PM](#)

KIRK MAYNARD, Owner/Broker, Coldwell Banker Gold Country, informed the committee his company has been in property management approximately six years and manages approximately four hundred "doors." He said since there was a lot of material to review regarding the bill and proposed amendments, he would defer his testimony to the next hearing.

REPRESENTATIVE GRUENBERG recalled the Seventeenth Alaska State Legislature addressed property disclosure requirements. He suggested researching current disclosure laws to find precedence for this debate.

[2:03:54 PM](#)

[The motion by Representative LeDoux to adopt Amendment 1 was left pending with an objection for the purpose of discussion from Chair Keller. HB 282 was heard and held.]

[2:04:12 PM](#)

The committee took an at-ease from 2:04 p.m. to 2:14 p.m., followed by a brief at-ease.

**SB 64-OMNIBUS CRIME/CORRECTIONS/RECIDIVISM BILL**

[Contains discussions of SB 108, HB 313, and SB 81]

[2:15:59 PM](#)

CHAIR KELLER announced that the final order of business would be CS FOR SENATE BILL NO. 64(FIN), "An Act relating to theft and property offenses; relating to the definition of 'prior convictions' for certain theft offenses; establishing the Alaska Criminal Justice Commission and providing an expiration date; relating to the crime of custodial interference; relating to the duties of the Alaska Judicial Council; relating to jail-time credit for offenders in court-ordered treatment programs; relating to conditions of release, probation, and parole; relating to duties of the commissioner of corrections and board of parole; establishing a fund for reducing recidivism in the Department of Health and Social Services; requiring the commissioner of health and social services to establish programs for persons on conditions of release or probation that require testing for controlled substances and alcoholic beverages; requiring the board of parole to establish programs for persons on parole that require testing for controlled substances and alcoholic beverages; relating to the duties of the Department of Health and Social Services; and providing for an effective date."

[2:16:18 PM](#)

[The proposed amendments were numbered.]

[2:20:42 PM](#)

CHAIR KELLER moved to adopt Amendment 11, labeled 28-LS0116\L.21, Gardner, 4/3/14.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. At the request of Chair Keller, Representative Gruenberg withdrew his objection.

CHAIR KELLER withdrew his motion to adopt Amendment 11.

[2:21:13 PM](#)

REPRESENTATIVE LYNN moved to rescind the committee's action in adopting Amendment 10 on 4/2/14.

CHAIR KELLER objected for the purpose of discussion. He explained the reason for the motion to rescind is that changes were made to the amendment. Chair Keller then removed his objection. There being no further objection, it was so ordered.

2:21:52 PM

CHAIR KELLER moved to adopt Amendment 11, labeled 28-LS0116\L.21, Gardner, 4/3/14, which read as follows:

Page 18, line 27, following "and":  
Insert "criminal justice"

Page 18, line 28:  
Delete "sentences"  
Insert "those sentencing laws and criminal justice practices"

Page 18, line 29, following "crimes,":  
Insert "the rights of the accused and the person convicted,"

Page 18, line 31, following "practices":  
Insert "and criminal justice practices, including rehabilitation and restitution"

Page 19, line 2:  
Delete "and court rules related"  
Insert ", court rules, and court decisions relevant"

Page 19, line 6:  
Delete "and proportionality"  
Insert "proportionality, and accountability"

Page 19, line 8:  
Delete "use"  
Insert "efficacy"

Page 19, lines 8 - 9:  
Delete "sentencing criminal defendants and to ensure"  
Insert "reducing recidivism, achieving rehabilitation, and ensuring"

Page 19, line 16, following "resources;":  
Insert "and"

Page 19, line 17:  
Delete all material.

Renumber the following paragraph accordingly.

Page 19, line 19:  
Delete "collection and dissemination"  
Insert "collection, dissemination, and  
extrapolation"

Page 19, lines 21 - 26:  
Delete all material and insert:  
    "(1) recommend legislative and  
administrative action on criminal justice practices;  
and  
    (2) select and retain the services of  
consultants as necessary."

Page 19, line 31:  
Delete "criminals"  
Insert "and administering justice"

Page 20, line 6, following "confine":  
Insert "violent"

Page 20, lines 14 - 15:  
Delete "the resources available to agencies in  
the criminal justice system; and"  
Insert "the sufficiency of state agency resources  
to administer the state's criminal  
justice system;"

Page 20, line 16:  
Delete "sentencing"  
Insert "criminal justice laws and practices"

Page 20, line 17, following "state":  
Insert "  
    (K) peer reviewed and data-driven research;  
    (L) the effect of over-classification of  
prisoners; and  
    (M) the effects of evidence-based  
restorative justice initiatives on persons convicted

of criminal violations and offenses, the victim, and the community"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[2:22:40 PM](#)

ERNEST PRAX, Staff, Representative Wes Keller, Alaska State Legislature, informed the committee Amendment 11 incorporates some of the conceptual amendments that were made in the rescinded Amendment 10 and also makes an additional change to the original language of SB 64. He related Conceptual Amendment 1 to Amendment 10 was changed to remove "usability" and restore "effectiveness." Directing attention to Amendment 11, page 2, lines 16-17, he said this change is Conceptual Amendment 2 to Amendment 10 that replaces "collection and dissemination" with "collection, dissemination, and extrapolation." On page 2, lines 19-23, he said this change relates to tasks of the commission, deleting all of the material on page 19, lines 21-26, of the original bill, and inserting, "that the commission may recommend legislative and administrative action on criminal justice practices and ... select and retain the services of consultants as necessary."

[2:25:38 PM](#)

MR. PRAX, as an aside, noted that the aforementioned changes to lines 19-23 are the work of Representative Gruenberg, Senator Coghill's staff, and he, and thus are supported by Representative Gruenberg.

REPRESENTATIVE GRUENBERG concurred.

MR. PRAX said the final change in Amendment 10 is reflected in Amendment 11, on page 3, line 3, which replaces "the sufficiency in" with "the sufficiency of." This was also a recommendation from Representative Gruenberg.

REPRESENTATIVE GRUENBERG pointed out that he had previously questioned the use of the term "proportionality" in Amendment 11, on page 1, lines 19-20, and in the bill on page 19, line 6. He expressed his understanding that proportionality is a term of art that means "is not tremendously disproportionate to what is intended under the statute." Representative Gruenberg noted the use of the term is found in Sikeo v. State, 258 P.3d 906, (Alaska Ct. App. 2011).

[2:28:49 PM](#)

REPRESENTATIVE GRUENBERG then removed his objection to the motion to adopt Amendment 11. [Although not stated, there being no further objection, Amendment 11 was treated as adopted.]

[2:29:09 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment [12], labeled 28-LS0116\L.9, Gardner, 3/31/14, which read:

Page 2, line 20, following "person":

Insert ", with the intent to take or keep the child or incompetent person"

CHAIR KELLER objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG related Amendment 12 establishes that "there has to be an intent that you're going to really do something."

[2:30:24 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency, Department of Administration, informed the committee Amendment 12 cures the problem that a person could be convicted of a crime for just making a statement. He said the amendment clarifies that there must be intent and further action.

[2:31:03 PM](#)

REPRESENTATIVE KELLER removed his objection. There being no further objection, Amendment 12 was adopted.

[Amendment 13, labeled 28-LS0116\L.15, Strasbaugh, 4/1/14, was briefly discussed and was not offered.]

REPRESENTATIVE GRUENBERG said Amendment 14 establishes post-traumatic stress disorder (PTSD) as a mitigating factor in sentencing. The language of the amendment was derived from [HB 313] which was heard before the House Special Committee on Military and Veterans' Affairs.

[2:32:42 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 14, labeled 28-LS0116\L.24, Strasbaugh/Gardner, 4/3/14, which read:

Page 1, line 6, following "and parole;":

Insert "relating to a mitigating factor for a person suffering from combat-related post-traumatic stress disorder or combat-related traumatic brain injury"

Page 13, following line 27:

Insert a new bill section to read:

"\* **Sec. 25.** AS 12.55.155(d) is amended to read:

(d) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but that significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 - 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 - 11.41.470, the victim provoked the crime to a significant degree;

(8) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(11) after commission of the offense for which the defendant is being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(12) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(13) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(16) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior;

(17) except in the case of an offense defined by AS 11.41 or AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time of sentencing, has successfully completed a court-ordered treatment program as defined in AS 28.35.028 that was begun after the offense was committed;

(18) except in the case of an offense defined under AS 11.41 or AS 11.46.400 or a defendant who has previously been convicted of a felony, the defendant committed the offense while suffering from a mental disease or defect as defined in AS 12.47.130 that was insufficient to constitute a complete defense

but that significantly affected the defendant's conduct;

(19) the defendant is convicted of an offense under AS 11.71, and the defendant sought medical assistance for another person who was experiencing a drug overdose contemporaneously with the commission of the offense;

(20) except in the case of an offense defined under AS 11.41 or AS 11.46.400, the defendant committed the offense while suffering from a condition diagnosed

(A) as a fetal alcohol spectrum disorder, the fetal alcohol spectrum disorder substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the fetal alcohol spectrum disorder, though insufficient to constitute a complete defense, significantly affected the defendant's conduct; in this paragraph, "fetal alcohol spectrum disorder" means a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy; or

(B) as combat-related post-traumatic stress disorder or combat-related traumatic brain injury, the combat-related post-traumatic stress disorder or combat-related traumatic brain injury substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and the combat-related post-traumatic stress disorder or combat-related traumatic brain injury, though insufficient to constitute a complete defense, significantly affected the defendant's conduct; in this paragraph, "combat-related post-traumatic stress disorder or combat-related traumatic brain injury" means post-traumatic stress disorder or traumatic brain injury resulting from combat with an enemy of the United States in the line of duty while on active duty as a member of the armed forces of the United States; nothing in this paragraph is intended to limit the application of (18) of this subsection."

Renumber the following bill sections accordingly.

Page 23, line 17:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 29 and 31 - 35"

Page 23, line 19:

Delete "sec. 26"

Insert "sec. 27"

Delete "sec. 27"

Insert "sec. 28"

Page 23, line 20:

Delete "sec. 28"

Insert "sec. 29"

Page 23, line 21:

Delete "sec. 32"

Insert "sec. 33"

Page 23, line 22:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 29 and 31 - 35"

Page 23, line 23:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 29 and 31 - 35"

Page 23, following line 23:

Insert a new subsection to read:

"(c) AS 12.55.155(d)(20), as amended by sec. 25 of this Act, applies to prosecutions occurring on or after the effective date of sec. 25 of this Act for offenses occurring before, on, or after the effective date of sec. 25 of this Act."

Page 23, line 27:

Delete "sec. 30"

Insert "sec. 31"

Page 23, line 29:

Delete "sec. 30"

Insert "sec. 31"

Page 24, line 3:

Delete "sec. 26"

Insert "sec. 27"

Page 24, line 6:

Delete "sec. 27"

Insert "sec. 28"

Delete "sec. 28"  
Insert "sec. 29"

Page 24, line 9:  
Delete "sec. 32"  
Insert "sec. 33"

Page 24, line 12:  
Delete "Section 29"  
Insert "Section 30"

Page 24, line 13:  
Delete "Section 36"  
Insert "Section 37"

Page 24, line 14:  
Delete "Sections 1 - 28 and 30 - 34"  
Insert "Sections 1 - 29 and 31 - 35"

CHAIR KELLER objected for the purpose of discussion. He spoke to his objection, saying that Amendment 14 is outside the scope and intent of the bill. In addition, the subject is addressed by other proposed legislation.

REPRESENTATIVE GRUENBERG said Amendment 14 makes clear that PTSD and combat-related traumatic brain injury are "mental disease or defect[s]", as referred to in [paragraph] 18, page 3, lines 6-10 of the proposed bill. The amendment directs that people who have PTSD and combat-related traumatic brain injury, as a result of active duty, would be able to use this mitigating factor. The subject is germane to the bill because the proposed bill deals with crimes and criminal procedures and is an omnibus bill with a broad title. In addition, he said it would be a shame not to let somebody who is not committing a crime against the person, or a first degree arson, present the aforementioned mitigating factor as evidence.

[2:36:56 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, informed the committee that Senator Coghill deferred judgment on Amendment 14 to the chair of the House Judiciary Standing Committee.

[2:37:23 PM](#)

The committee took an at-ease from 2:37 p.m. to 2:38 p.m.

[2:38:06 PM](#)

REPRESENTATIVE LEDOUX expressed her support of Amendment 14.

[2:38:26 PM](#)

CHAIR KELLER agreed that Amendment 14 is germane to the proposed bill. He removed his objection, and there being no further objection, Amendment 14 was adopted.

[2:39:23 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 15, labeled 28-LS0116\L.28, Gardner, 4/4/14, which read:

Page 17, line 21:

Delete "10"

Insert "12"

Page 18, following line 5:

Insert new paragraphs to read:

"(9) one victims' rights advocate appointed by the governor for a three-year term;

(10) the chief executive officer of the Alaska Mental Health Trust Authority or a designee of the chief executive officer;"

Renumber the following paragraphs accordingly.

Page 18, line 10:

Delete "(a)(7) or (8)"

Insert "(a)(7) - (9)"

CHAIR KELLER objected for the purpose of discussion. Speaking from his experience serving on commissions, he stressed the importance of keeping the proposed commission small. Expanding the commission to 12 participants is "nearly unmanageable." Although he would like to add the victims' rights advocates to the commission, he assured the committee "they're going to be listened to." His said his opposition is only to the expansion of the size of the commission.

[2:41:04 PM](#)

The committee took a brief at-ease.

[2:42:38 PM](#)

MR. SHILLING expressed his belief that Senator Coghill would defer to the chair on this amendment.

[2:43:09 PM](#)

REPRESENTATIVE GRUENBERG said the purpose of Amendment 15 is to provide "a smorgasbord approach." He made a motion to adopt an amendment to Amendment 15 to delete lines 9-10 which read:

the chief executive officer of the Alaska Mental Health Trust Authority or a designee of the chief executive officer,"

There being no objection, it was so ordered.

[2:44:22 PM](#)

CHAIR KELLER removed his objection to Amendment 15, as amended. There being no further objection, Amendment 15, as amended, was adopted.

[2:45:03 PM](#)

CHAIR KELLER moved to adopt Amendment 16, labeled 28-LS0116\L.27, Gardner, 4/4/14, which read:

Page 1, line 3, following "date;":

Insert "allowing a reduction of penalties for offenders successfully completing court-ordered treatment programs for persons convicted of driving while under the influence; relating to termination of a revocation of a person's driver's license; relating to limitation of drivers' licenses; relating to restoration of a driver's license;"

Page 13, following line 31:

Insert new bill sections to read:

"\* **Sec. 26.** AS 28.15.181(f) is amended to read:

(f) The court may terminate a revocation for an offense described in (a)(5) or (8) of this section if

(1) **either**

**(A)** the person's license, privilege to drive, or privilege to obtain a license has been revoked for the minimum periods set out in (c) of this section; **or**

(B) the person  
(i) has successfully completed a court-  
ordered treatment program under AS 28.35.028;  
(ii) has not been convicted of a violation  
of AS 28.35.030 or 28.35.032, or a similar law or  
ordinance of this or another jurisdiction since  
completing the program; and  
(iii) has been granted limited license  
privileges under AS 28.15.201(g) and has successfully  
driven for two years under that limited license  
without having the limited license privileges revoked;  
and

(2) the person complies with the provisions of AS 28.15.211(d) and (e).

\* **Sec. 27.** AS 28.15.201 is amended by adding new subsections to read:

(g) Notwithstanding (d) of this section, a court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges if

(1) the revocation was for a felony conviction under AS 28.35.030;

(2) the person has successfully participated for at least six months in, or has successfully completed, a court-ordered treatment program under AS 28.35.028;

(3) the person provides proof of insurance as required by AS 28.20.230 and 28.20.240;

(4) the court requires the person to use an ignition interlock device during the period of the limited license whenever the person operates a motor vehicle in a community not included in the list published by the department under AS 28.22.011(b) and, when applicable,

(A) the person provides proof of installation of the ignition interlock device on every vehicle the person operates;

(B) the person signs an affidavit acknowledging that

(i) operation by the person of a vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license;

(ii) circumventing or tampering with the ignition interlock device is a class A misdemeanor; and

(iii) the person is required to maintain the ignition interlock device throughout the period of the limited license, to keep up-to-date records in each vehicle showing that any required service and calibration is current, and to produce those records immediately on request;

(5) the person is enrolled in and is in compliance with or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h);

(6) the person has not previously been granted a limited license under this subsection and had the license revoked under (h) of this section;

(7) the person complies with a program established under AS 47.38.020 for a minimum of 120 days from the date a limited license is granted under this section.

(h) The court or the department may immediately revoke a limited license granted under (g) of this section if the person is convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction.

\* **Sec. 28.** AS 28.35.028(b) is amended to read:

(b) Once the court elects to proceed under this section, the defendant shall enter a no contest or guilty plea to the offense or shall admit to a probation violation, as appropriate. The state and the defendant may enter into a plea agreement to determine the offense or offenses to which the defendant is required to plead. If the court accepts the agreement, the court shall enforce the terms of the agreement. The court shall enter a judgment of conviction for the offense or offenses for which the defendant has pleaded or an order finding that the defendant has violated probation, as appropriate. A judgment of conviction or an order finding a probation violation must set a schedule for payment of restitution owed by the defendant. In a judgment of conviction and on probation conditions that the court considers appropriate, the court may withhold pronouncement of a period of imprisonment or a fine to provide an incentive for the defendant to complete recommended treatment successfully. Imprisonment or a fine imposed

by a court shall comply with AS 12.55 or any mandatory minimum or other sentencing provision applicable to the offense. However, notwithstanding Rule 35, Alaska Rules of Criminal Procedure, and any other provision of law, the court, at any time after the period when a reduction of sentence is normally available, may consider and reduce the defendant's sentence, including imprisonment, fine, or license revocation, based on the defendant's compliance with the treatment plan; when reducing a sentence, the court (1) may not reduce the sentence below the mandatory minimum sentence for the offense unless the court finds that the defendant has successfully complied with and completed the treatment plan and that the treatment plan approximated the severity of the minimum period of imprisonment, and (2) may consider the defendant's compliance with the treatment plan as a mitigating factor allowing a reduction of a sentence under AS 12.55.155(a). A court entering an order finding the defendant has violated probation may withhold pronouncement of disposition to provide an incentive for the defendant to complete the recommended treatment successfully.

\* **Sec. 29.** AS 28.35.030(o) is amended to read:

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and

(1) may restore the driver's license if

(A) [(1)] the license has been revoked for a period of at least 10 years;

(B) [(2)] the person has not been convicted of a criminal offense since the license was revoked; and

(C) [(3)] the person provides proof of financial responsibility;

(2) shall restore the driver's license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for two years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028;

(C) the court previously terminated the person's revocation as provided in AS 28.15.181(f)(1)(B);

(D) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(E) the person's privilege to drive may be restored as provided in AS 28.15.211; and

(F) the person provides proof of financial responsibility."

Renumber the following bill sections accordingly.

Page 23, line 17:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 32 and 34 - 38"

Page 23, line 18, following "Act,":

Insert "AS 28.15.181(f), as amended by sec. 26 of this Act, AS 28.15.201(g) and (h), enacted by sec. 27 of this Act, AS 28.35.028(b), as amended by sec. 28 of this Act, AS 28.35.030(o), as amended by sec. 29 of this Act,"

Page 23, line 19:

Delete "sec. 26"

Insert "sec. 30"

Delete "sec. 27"

Insert "sec. 31"

Page 23, line 20:

Delete "sec. 28"

Insert "sec. 32"

Page 23, line 21:

Delete "sec. 32"

Insert "sec. 36"

Page 23, line 22:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 32 and 34 - 38"

Page 23, line 23:

Delete "secs. 1 - 28 and 30 - 34"

Insert "secs. 1 - 32 and 34 - 38"

Page 23, line 27:

Delete "sec. 30"

Insert "sec. 34"

Page 23, line 29:  
Delete "sec. 30"  
Insert "sec. 34"

Page 24, line 3:  
Delete "sec. 26"  
Insert "sec. 30"

Page 24, line 6:  
Delete "sec. 27"  
Insert "sec. 31"  
Delete "sec. 28"  
Insert "sec. 32"

Page 24, line 9:  
Delete "sec. 32"  
Insert "sec. 36"

Page 24, line 12:  
Delete "Section 29"  
Insert "Section 33"

Page 24, line 13:  
Delete "Section 36"  
Insert "Section 40"

Page 24, line 14:  
Delete "Sections 1 - 28 and 30 - 34"  
Insert "Sections 1 - 32 and 34 - 38"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[2:45:14 PM](#)

MR. SHILLING explained that the purpose of Amendment 16 was to incorporate the concept of a limited license. This concept was originally in [SB 81], sponsored by Senators Meyer and Coghill, and which was "rolled into the crime bill, SB 64." He described the concept as very complicated, made more so by AS Title 28 - Motor Vehicles. The main reason to establish a limited license in Alaska is because those who have been convicted of felony driving under the influence (DUI) and lose their right to drive for life, still continue to drive while unlicensed and uninsured. Amendment 16 would establish a special license to "funnel these individuals into a state-supervised license." To qualify for the special license, an individual must agree to the

following public safety measures: participate in a therapeutic court, which is a treatment program; have insurance; have an ignition interlock device on their vehicle; be enrolled in the Alcohol Safety Action Program (ASAP); and be on the 24/7 Sobriety Program. Mr. Shilling stressed that an individual only has one opportunity to obtain a special limited license. He recalled that the sponsors have been working on the concept of Amendment 16 for over one year.

CHAIR KELLER observed the foregoing supports the creation of the Alaska Criminal Justice Commission.

REPRESENTATIVE FOSTER asked about the access to limited licenses for those living in the rural areas of Alaska.

[2:49:06 PM](#)

TONY PIPER, Program Manager, Alcohol Safety Action Program, Division of Behavioral Health, Department of Health and Social Services, responded that the Alcohol Safety Action Program (ASAP) has 13 offices around the state; in areas without an ASAP office, the "treatment agencies" in the area sometimes offer monitoring and reporting services.

REPRESENTATIVE FOSTER expressed his support for limited licenses, as long as the state can ensure that they are available to those in rural Alaska.

MR. SHILLING said he was unsure of which communities are exempted from interlock laws.

[2:50:36 PM](#)

REPRESENTATIVE GRUENBERG withdrew his objection. There being no further objection, Amendment 16 was adopted.

[2:51:00 PM](#)

CHAIR KELLER moved to adopt Amendment 17, labeled 28-LS0116\L.18, Gardner, 4/1/14, which read:

Page 2, line 1, following "**Services;**":  
Insert "**relating to the confidentiality of certain records of criminal cases;**"

Page 2, following line 2:  
Insert a new bill section to read:

"\* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT FOR SEC. 27 OF THIS ACT. It is the intent of the legislature in sec. 27 of this Act that, to the extent practicable, the Alaska Court System hold confidential records of criminal cases that were disposed of before the effective date of sec. 27 of this Act by acquittal of all charges, by dismissal of all charges, or by acquittal of some charges and dismissal of the remaining charges, to the same extent that records are held confidential under AS 22.35.030, enacted by sec. 27 of this Act."

Page 2, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 13, following line 31:

Insert a new bill section to read:

"\* **Sec. 27.** AS 22.35 is amended by adding a new section to read:

**Sec. 22.35.030. Records concerning criminal cases resulting in acquittal or dismissal confidential.** (a) A court record of a criminal case is confidential if 120 days have elapsed from the date of acquittal or dismissal and

(1) the defendant was acquitted of all charges filed in the case;

(2) all criminal charges against the defendant in the case have been dismissed by the prosecuting authority; or

(3) the defendant was acquitted of some of the criminal charges in the case and the remaining charges were dismissed.

(b) Notwithstanding (a) of this section, the following persons may have access to records made confidential under this section:

(1) employees of the Department of Health and Social Services who are responsible for the health, safety, welfare, or placement of a child, a person with a physical or intellectual disability, or a person with a mental illness;

(2) the public guardian under AS 13.26.370 or a guardian ad litem supervised by the office of public advocacy;

(3) a person who is authorized to have access to the criminal justice information network maintained by the Department of Public Safety under AS 12.62.

(c) The Department of Health and Social Services shall adopt regulations to administer (b)(1) of this section."

Renumber the following bill sections accordingly.

Page 23, line 3:

Delete "sec. 1"

Insert "sec. 2"

Page 23, line 4:

Delete "sec. 2"

Insert "sec. 3"

Delete "sec. 3"

Insert "sec. 4"

Page 23, line 5:

Delete "sec. 4"

Insert "sec. 5"

Page 23, line 6:

Delete "sec. 5"

Insert "sec. 6"

Delete "sec. 6"

Insert "sec. 7"

Page 23, line 7:

Delete "sec. 7"

Insert "sec. 8"

Delete "sec. 8"

Insert "sec. 9"

Page 23, line 8:

Delete "sec. 9"

Insert "sec. 10"

Delete "sec. 10"

Insert "sec. 11"

Page 23, line 9:

Delete "sec. 11"

Insert "sec. 12"

Page 23, line 10:

Delete "sec. 12"  
Insert "sec. 13"  
Delete "sec. 13"  
Insert "sec. 14"

Page 23, line 11:  
Delete "sec. 14"  
Insert "sec. 15"  
Delete "sec. 15"  
Insert "sec. 16"

Page 23, line 12:  
Delete "sec. 16"  
Insert "sec. 17"  
Delete "sec. 17"  
Insert "sec. 18"

Page 23, line 13:  
Delete "sec. 18"  
Insert "sec. 19"

Page 23, line 14:  
Delete "sec. 19"  
Insert "sec. 20"  
Delete "sec. 20"  
Insert "sec. 21"

Page 23, line 15:  
Delete "sec. 21"  
Insert "sec. 22"  
Delete "sec. 22"  
Insert "sec. 23"

Page 23, line 16:  
Delete "sec. 23"  
Insert "sec. 24"

Page 23, line 17:  
Delete "secs. 1 - 28 and 30 - 34"  
Insert "secs. 1 - 26, 28 - 30, and 32 - 36"

Page 23, line 18:  
Delete "sec. 24"  
Insert "sec. 25"

Page 23, line 19:  
Delete "sec. 26"

Insert "sec. 28"  
Delete "sec. 27"  
Insert "sec. 29"

Page 23, line 20:  
Delete "sec. 28"  
Insert "sec. 30"

Page 23, line 21:  
Delete "sec. 32"  
Insert "sec. 34"

Page 23, line 22:  
Delete "secs. 1 - 28 and 30 - 34"  
Insert "secs. 1 - 26, 28 - 30, and 32 - 36"

Page 23, line 23:  
Delete "secs. 1 - 28 and 30 - 34"  
Insert "secs. 1 - 26, 28 - 30, and 32 - 36"

Page 23, following line 23:  
Insert a new subsection to read:  
"(c) AS 22.35.030, enacted by sec. 27 of this Act, applies to criminal charges concluded on or after the effective date of sec. 27 of this Act, by dismissal or by acquittal of the defendant."

Page 23, line 27:  
Delete "sec. 30"  
Insert "sec. 32"

Page 23, line 29:  
Delete "sec. 30"  
Insert "sec. 32"

Page 24, line 3:  
Delete "sec. 26"  
Insert "sec. 28"

Page 24, line 6:  
Delete "sec. 27"  
Insert "sec. 29"  
Delete "sec. 28"  
Insert "sec. 30"

Page 24, line 9:  
Delete "sec. 32"

Insert "sec. 34"

Page 24, following line 11:

Insert a new bill section to read:

"\* **Sec. 39.** Section 27 of this Act takes effect October 1, 2014."

Renumber the following bill sections accordingly.

Page 24, line 12:

Delete "Section 29"

Insert "Section 31"

Page 24, line 13:

Delete "Section 36"

Insert "Section 38"

Page 24, line 14:

Delete "Sections 1 - 28 and 30 - 34"

Insert "Sections 1 - 26, 28 - 30, and 32 - 36"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MR. PRAX said the language in Amendment 17 was derived from SB 108 which is sponsored by Senator Dyson and is currently in the House Judiciary Standing Committee. The amendment relates to the confidentiality of records in criminal cases.

[2:52:02 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, expressed his belief that the adoption of Amendment 17 is supported by Senator Coghill. He informed the committee the substance of Amendment 17 was thoroughly vetted in the Senate [during the hearing of SB 108], and noted there has been consistent support in both houses of the legislature for rights held in the Second Amendment to the U.S. Constitution. Amendment 17 addresses Amendments 4 and 5 to the U.S. Constitution, which are included in the Bill of Rights: privacy and due process. He explained that Alaska has had - for the last 10 years - the most extensive record of court proceedings of any state through [the statewide index of trial court cases filed with the Alaska Court System] CourtView. However, there is no mechanism for arrest records "to disappear off the list" thus the records of misdemeanor arrests that have been dismissed are kept "forever without this bill." He estimated that last year there were about 7,000 felony arrests of which about 1,900 were dismissed and never went to trial, but

the records are maintained, along with those of defendants who go through the trial process and who are acquitted. Senator Dyson said the result is that people who are arrested but who are not charged, have had their cases dismissed, or who are acquitted, must explain to employers, lenders, and others why they have a record. Furthermore, he pointed out that interested parties may not sufficiently research a case to find a dismissal or an acquittal. The purpose of the amendment is for those who fully participated in the adjudication process, and have had all charges dismissed, after 120 days the record will be removed from CourtView. The records will still be available from the National Crime Information Center and from the Alaska Public Safety Information Network; in fact, there are special provisions in the legislation to provide training on access to the records for those researching adoptive and foster parents and guardians. Senator Dyson described some of the problems caused by a record remaining after a case was dismissed. He opined that the number of cases filed against defendants found guilty will be far less than the total arrests. He estimated that over a 10-year history of recordkeeping through CourtView, there may be 60,000-70,000 residents who were never charged or whose cases were adjudicated.

[2:57:24 PM](#)

CHAIR KELLER clarified that the "trigger" is acquittal or dismissal, and a [waiting] time period of 120 days.

SENATOR DYSON said yes.

[2:57:34 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, added that to have the arrest record removed a person must be acquitted and/or dismissed of all charges, so if a defendant is arrested on more than one charge, and pleads to the lesser charge, all of the charges remain on CourtView. He said, "So it only would go away if you were dismissed of all charges or all charges against you, you were acquitted of."

REPRESENTATIVE LEDOUX called attention to legislative intent, which appears to make the bill retroactive. She remarked:

And [it] also looks like that, as far as the retroactivity portion of it, it could be acquittal of some charges and dismissal of the remaining charges for retroactive application, as opposed to for

prospective application, it would only be dismissal of all of the charges. So that sort of confuses me.

MR. KOPP answered that the legislative intent section was added because of the practical considerations of undoing the damage of CourtView. To the extent this is practical, the court system would treat the proposed legislation as going back for those who are acquitted of all charges, dismissed of all charges or by acquittal of some charges and dismissal of the remaining charges, to the same extent that records are held confidential. Inclusion of this language would "help [the court system] do that to the portion of this process that most affects people, which is CourtView, and then go forward with both the hard copy and the electronic without a huge fiscal note ... going back for decades of hard file copies.

REPRESENTATIVE FOSTER expressed his support of Amendment 17.

REPRESENTATIVE GRUENBERG also expressed support, but pointed out that in the amendment a dismissal is only allowed if made by the prosecuting attorney; however, a dismissal could be made by the court.

MR. KOPP recognized that the court also dismisses cases and said the omission had previously been brought to the sponsor's attention. In further response to Representative Gruenberg, he said the sponsor is comfortable with correcting the omission.

[3:02:24 PM](#)

SENATOR DYSON cautioned that there have been objections to including dismissal by the court because of an apprehension of arbitrary court decisions, and "a predisposition on the Department of Law to keep control within their kingdom."

REPRESENTATIVE GRUENBERG said his first concern was to who can dismiss cases, and his second concern was to why cases can be dismissed. In fact, cases can be dismissed on their merits or for various administrative reasons, such as a lack of a speedy trial. He asked whether "the why of the dismissal" should be part of the reason the records are not retained. Of his third concern, he posed that a request for records could come for the purpose of their use at trial to impeach a witness, and he asked if the sponsor wants to allow the court to enter an appropriate order to retain the records.

SENATOR DYSON restated that the records are only taken off CourtView and officers of the court and police would still have access to other sources. The Alaska Court System has changed its court rules for civil cases.

REPRESENTATIVE LEDOUX observed that the amendment says, "A court record of a criminal case is confidential." However, not having records on CourtView does not mean they are confidential. She read from Amendment 17 on page 2, lines 9-10, which read:

(b) Notwithstanding (a) of this section, the following persons may have access to records made confidential under this section:

REPRESENTATIVE LEDOUX continued, saying the language clearly delineates the people who have access to records.

[3:07:31 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, in response to Representative LeDoux, confirmed that the proposed statute would make the aforementioned court records confidential in their paper format and on CourtView. The Alaska Court System's definition of confidential is that those records would be accessible only to the parties of a case and not by other attorneys, thus the specific exceptions to who can access the records is included in the proposed legislation.

REPRESENTATIVE LEDOUX stressed that the foregoing testimony has been that "somebody could actually go down there and look at the records, but that doesn't sound like that is necessarily the case."

MS. MEADE expressed her understanding that these cases would be confidential just like a Child in Need of Aid (CINA) case, and access to those records is restricted to the parties, the attorneys, and someone with a written order from the court or court staff. She restated that the records would not be on CourtView and would only be accessible in paper form to those who are authorized.

REPRESENTATIVE GRUENBERG observed that there are still questions about the amendment to be posed; for example, the best evidence rule has not been discussed. Generally, parties to a legal case seek a document in the best condition possible.

[3:10:10 PM](#)

The committee took a brief at-ease.

3:10:35 PM

REPRESENTATIVE LEDOUX said she felt uncomfortable with Amendment 17 as drafted.

MS. MEADE clarified that confidential records are accessible for the use of law enforcement.

3:12:01 PM

REPRESENTATIVE GRUENBERG removed his objection. There being no further objection, Amendment 17 was adopted.

3:12:13 PM

CHAIR KELLER [moved to adopt] Conceptual Amendment 18.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

3:12:28 PM

The committee took a brief at-ease.

3:12:34 PM

CHAIR KELLER rescinded his motion to adopt Conceptual Amendment 18, and then moved to adopt Amendment 18, labeled 28-0116\L.29, Gardner, 4/4/14 which read:

Page 23, following line 23:

Insert a new bill section to read:

"\* **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SPECIAL REPORT OF ALASKA CRIMINAL JUSTICE COMMISSION. The Alaska Criminal Justice Commission shall submit to the governor and the legislature a special report, not later than July 1, 2016, regarding alcohol-related offenses in AS 28. The report must include recommendations on

(1) whether a revision of the alcohol-related offenses in AS 28 is necessary;

(2) maintaining both the administrative and court license revocation processes;

(3) the effectiveness of ignition interlock devices in reducing the offenses of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to submit to a chemical test, and reducing recidivism;

(4) whether the punishment, fines, and associated driver's license revocation periods for the offenses of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to submit to a chemical test should be decreased or increased;

(5) the effectiveness of programs that promote offender accountability, emphasize swift and certain, yet measured, punishment, reduce recidivism, and maximize the offender's ability to remain productive in society;

(6) whether limited licenses should be available for persons charged with or convicted of the offenses of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or refusal to submit to a chemical test, while providing for public safety."

Renumber the following bill sections accordingly.

Page 24, line 13:

Delete "Section 36"

Insert "Section 37"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[3:13:50 PM](#)

MR. PRAX explained that Amendment 18 was the result of collaboration between Senator Coghill's staff, the Department of Law, the court system, other interested parties, and himself. He advised that Alaska's DUI laws are complex regarding licensed drivers who have received a misdemeanor or felony DUI conviction. He said the aforementioned collaborators concluded that AS 28 "needs to be ... simplified" for the benefit of drivers and other interested parties. Mr. Prax said the purpose of Amendment 18 was to add a special report from the Alaska Criminal Justice Commission to the legislature and the governor, which is to be received no later than 7/1/16. The commission is charged to review AS 28 and issue its report making recommendations on the following:

- whether a revision of alcohol-related offenses in AS 28 is necessary;
- maintaining both the administrative and court license revocation processes;
- the effectiveness of ignition interlock devices in reducing the offenses of driving while under the influence of alcohol and in reducing recidivism;
- whether the punishment, fines, and associated driver's license revocation periods for DUI offenses should be increased or decreased;
- the effectiveness of programs that promote offender accountability, emphasize swift and certain punishment and maximize the offender's ability to remain productive in society;
- whether limited licenses should be available for persons convicted of DUI offenses.

MR. PRAX provided a short description of each task.

[3:22:50 PM](#)

MR. SHILLING said the amendment is commendable and agreed that AS 28 is extremely difficult to interpret.

CHAIR KELLER cautioned about the amount of resources needed to complete the purpose of the amendment, and expressed his support.

REPRESENTATIVE GRUENBERG surmised that releasing an offender on the street with "nothing and no way to get anywhere" invites another offense.

CHAIR KELLER directed the committee's attention to a response from the Department of Corrections found in the committee packet related to the resources that are available to an inmate.

[3:25:06 PM](#)

REPRESENTATIVE GRUENBERG removed his objection. There being no further objection, Amendment 18 was adopted.

[3:25:17 PM](#)

[CSSB 64(FIN) was held over.]

[3:26:54 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:27 p.m.