

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 28, 2013

8:05 a.m.

**MEMBERS PRESENT**

Representative Bob Lynn, Chair  
Representative Wes Keller, Vice Chair  
Representative Lynn Gattis  
Representative Shelley Hughes  
Representative Doug Isaacson  
Representative Jonathan Kreiss-Tomkins

**MEMBERS ABSENT**

Representative Charisse Millett

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S):

Alaska Commission on Human Rights

Christa Bruce-Kotrc - Ketchikan  
Jason Hart - Anchorage  
Grace Merkes - Sterling

- CONFIRMATION(S) ADVANCED

Alaska State Board of Parole

Sarah Possenti - Fairbanks

- CONFIRMATION(S) ADVANCED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

CHRISTA BRUCE-KOTRC, Appointee  
State Commission for Human Rights  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified as appointee to the State  
Commission for Human Rights.

JASON HART, Appointee  
State Commission for Human Rights  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as appointee to the State Commission for Human Rights.

GRACE MERKES, Appointee  
State Commission for Human Rights  
Sterling, Alaska

**POSITION STATEMENT:** Testified as appointee to the State Commission for Human Rights.

SARAH POSSENTI, Appointee  
Alaska State Board of Parole  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified as appointee to the Alaska State Board of Parole.

TOM STENSON, Legal Director  
American Civil Liberties Union (ACLU) of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing for Sarah Possenti, Appointee to the Alaska State Board of Parole.

#### **ACTION NARRATIVE**

[8:05:10 AM](#)

**CHAIR BOB LYNN** called the House State Affairs Standing Committee meeting to order at 8:05 a.m. Representatives Keller, Isaacson, Gattis, Hughes, Kreiss-Tomkins, and Lynn were present at the call to order.

#### **Confirmation Hearing(s):** **Alaska Commission on Human Rights**

[8:05:34 AM](#)

CHAIR LYNN announced that the first order of business was the confirmation hearing for appointees to the Alaska Commission on Human Rights.

[8:05:45 AM](#)

CHRISTA BRUCE-KOTRC, Appointee, State Commission for Human Rights, related that she moved to Alaska over 40 years ago and worked in the public schools and as an adjunct professor for the University of Alaska. She recently shifted from development work at the Ketchikan Medical Center Foundation to the Alaska Health Education Center in Ketchikan. She said she also facilitates clinical rotations for University of Washington students in the area. She said she is a gubernatorial appointee to both the Alaska Humanities Forum and the State Commission for Human Rights. She stated that it has been an honor to serve the people of Alaska. She said she has found the commission "exceptionally professional" in its focus on the rights of citizens, and she commented on the personal connection between the commission and the public.

[8:07:49 AM](#)

MS. BRUCE-KOTRC, in response to Chair Lynn, said the commission focuses generally on discrimination cases.

[8:08:39 AM](#)

MS. BRUCE-KOTRC, in response to Representative Hughes, confirmed that she had been seeking a position on the Board of Regents, but when the State Commission on Human Rights contacted her, she decided a position on the commission would be a good fit because of her background. In response to a follow-up question, she said if a position on the Board of Regents comes up again, she would be interested in it; however, she is currently happy to be serving on the commission.

MS. BRUCE-KOTRC, in response to Chair Lynn, said the discrimination seen by the commission is based on issues such as race, gender, and "lifestyle."

[8:10:14 AM](#)

REPRESENTATIVE ISAACSON mentioned a contentious decision made by the commission regarding "the Goldstream store" in the Fairbanks area. He asked what Ms. Bruce-Kotrc's thought process is in determining the real issue of each case.

MS. BRUCE-KOTRC told Representative Isaacson that she does not know what he is referencing because she was not involved. She stated that it was important to her to ascertain that the commission is appropriate and follows the law in its processes. She emphasized how impressed she is with the way the commission

handles people, even while being "tremendously overloaded." Regarding constitutional rights - not just for individuals, but also for businesses - she said she does not see any biases, and thinks the commission tries hard to discover the facts. She related a recent example in which she said the commission went out of its way to ensure it treated the complainant fairly and equitably. She said she has seen this impartial treatment given to parties on both sides of the issue.

REPRESENTATIVE ISAACSON remarked that all constitutional rights currently seem to be reinterpreted, and he asked Ms. Bruce-Kotrc if she frames constitutional rights as popular opinion at the time.

MS. BRUCE-KOTRC answered that is a topic for a long discussion. Nevertheless, she said her background has made her proud of the country's hard work and success where "other countries seem to be struggling." She said she is protective of fundamental rights. She opined that Alaska has done a good job with its constitution, and she stated her intent to honor it and, within reason, the right of individuals to pursue their dreams without infringement.

REPRESENTATIVE ISAACSON described situations in which employers conduct business as they see fit, sometimes with religious convictions, a focus on public service, or for capitalism, and employees who feel entitled bring down the business instead of "moving on to find a job that better suits them or something." He asked Ms. Bruce-Kotrc, "What's your thought process on this?"

[8:17:00 AM](#)

MS. BRUCE-KOTRC stated that Representative Isaacson is keenly aware of the heart of the issues the commission addresses. She said a related issue occurred when she first was appointed to the commission where the consideration was whether it was necessary or frivolous for the individual involved to "stab" the business. She stated, "We don't need to treat things frivolously." She said she thinks the commission did a good job in that situation by suggesting to the individual that "there may be a better fit for you." She expressed her hope that the decisions made by the commission are good decisions for the long term.

REPRESENTATIVE ISAACSON expressed hope that Ms. Bruce-Kotrc would remember her words while she serves. When small businesses are fined - as a result of protecting one individual

- and do not have the funds to pay, the employer and employees suffer the loss when the business is closed. He opined that it is important to protect the rights of individuals, while also delineating "the greater picture." He suggested making fines appropriate if they are required and considering that not everyone has a business in a large urban area or can swallow a large expense.

MS. BRUCE-KOTRC said there is an instance where it is right and appropriate to let a business know that it needs to handle things differently, while protecting the rights of the individual. She said it is a balancing act, but hopefully, at the end of the process, both parties are wiser, have better communication skills, and work harder toward resolution.

[8:20:07 AM](#)

MS. BRUCE-KOTRC, in response to Chair Lynn, said she does not know how the fines are set, because she has not been involved with fines.

[8:20:51 AM](#)

REPRESENTATIVE HUGHES concurred with Representative Isaacson's concern and said she appreciates that both the employer and employee are people who have human rights.

MS. BRUCE-KOTRC, in response to questions from Representative Hughes about Ms. Bruce-Kotrc's resume, ventured that the confirmation hearing date of 3/1/12 shown on the resume may be related to her finishing out someone else's term. Regarding the "Project on Social Justice," she explained that she had been invited by the U.S. State Department to Azerbaijan, where she was involved with students talking about social issues and initiating conversations with American children in Alaska. She stated that the ultimate goal of this type of exchange is to better people's understanding of the U.S. She said she has been in several post-Soviet democracies. She offered further details.

[8:25:28 AM](#)

JASON HART, Appointee, State Commission for Human Rights, said he was born and raised in Anchorage, Alaska, and his family is Ahtna Athabascan and Menominee Indian. He stated his interest in serving both the state of Alaska, as well as the Ahtna

people. He said the commission has a rich history, and he would be honored to serve on it.

MR. HART relayed that he has a Master's degree in Business and a bachelor's degree in Business Management. He said he currently works at the Alaska Native Tribal Health Consortium, doing special projects, and he previously managed the benefits department and was the plan administrator who handled final appeals from plan participants. He said he served seven years in the Air National Guard, was recently appointed to the Zoning Board of Examiners by Anchorage Mayor Dan Sullivan, and was confirmed by the municipal board.

8:27:14 AM

REPRESENTATIVE ISAACSON asked Mr. Hart what his thought process is in determining the facts of an issue.

MR. HART answered that it is important to consider all the facts with equal weight. He said he would put himself in the shoes of both the person filing the complaint and the party against which the complaint was filed, and he would strive for impartiality. In response to a follow-up question, he said the basis for determining right and wrong would depend on the situation, but said he thinks "most individuals kind of think the same when it comes to what's right and what's wrong." He gave an example in which an employer has discriminated against an employee based on that employee's race or disability, and he said he thinks "we all know that that's wrong." He mentioned situations in which an employee takes advantage of an employer, and he said he thinks there are "a lot of things that are going to be pretty clear cut when you listen to the facts of the case."

8:30:20 AM

CHAIR LYNN asked Mr. Hart if he thinks "right" and "wrong" are [predetermined] or are relative to the facts of a case.

MR. HART answered he thinks right and wrong would be relevant to each case, as well as be determined by the laws of Alaska and the governing documents of the commission.

REPRESENTATIVE ISAACSON opined that without standards, somebody will be treated unfairly. He reiterated his remarks about entitlement, and he asked Mr. Hart how he would figure out whether someone is "using the process to punish an employer."

8:32:22 AM

MR. HART reiterated the importance of looking at the facts pertaining to the particular case and to consider all sides of the matter. He said it would also be important to look at previous cases that may have similar circumstances. He ventured that the reason the commission has seven members is to consider the views and opinions of multiple people.

8:33:31 AM

REPRESENTATIVE ISAACSON asked Mr. Hart what the purpose of fines is and how they are assessed.

MR. HART offered his understanding, after attending one meeting of the commission, that the fines are derived by following a specific formula, for example, whether there was "salary that the employee, for some reason, wasn't paid" or "a number of days that the employee wasn't able to be at work." He clarified that he thinks [the amount of fines] is "defined by the governing documents for the commission." In response to Chair Lynn, he offered his understanding that the fines are more compensatory than punitive.

8:35:35 AM

GRACE MERKES, Appointee, State Commission for Human Rights, relayed that she has served on the commission for over 10 years, and she said she thinks it is important for at least some of the commission members to have some experience with discrimination law and case practice. Ms. Merkes said she and her husband came to Alaska in 1956 and have eight children. She referred to her resume in the committee packet, and said although she does not have the kind of education other appointees have, her experience and education is in real life. She said she would like to remain on the commission because she believes in the importance of investigating discrimination actions and coming to conclusions that are unbiased and fair to all. She said she has background in how Alaska's discrimination law is written. She said, "If the legislators feel that there needs to be a change in the law, then we need to pursue that." She stated her belief that all people are created equal and should be treated thus. She said she served on the [Kenai] Borough Assembly for 17 years and has a lot of experience in making unbiased decisions after studying the issues and listening to the people. She said she is familiar with the commission's process of investigating a case and mediating to try to reach a settlement before a case

must go to hearing. She stated she thinks it is important for Alaskan citizens to have a Human Rights Commission to address perceived discrimination. She asked the committee to support her confirmation.

8:39:30 AM

CHAIR LYNN said if he had to choose between education and common sense, he would chose common sense, which he opined is not all that common.

8:39:44 AM

REPRESENTATIVE KELLER said having spent 10 years on the commission, and serving on other commissions, he knows the work involved. He said Ms. Merkes' experience could be valuable. He asked her if there is a certain segment of society in which most of the discrimination cases arise.

8:40:26 AM

MS. MERKES answered that that information can be found in an annual report produced by the commission. Notwithstanding that, she estimated that at least 90 percent of the cases that actually go to hearings are regarding employment and "nationality." There are cases regarding gender, as well as some disability cases.

8:41:41 AM

REPRESENTATIVE KELLER thanked Ms. Merkes for her work and acknowledged that he has received the reports.

8:42:11 AM

MS. MERKES recollected that a previous speaker had mentioned fines. She continued:

Personally, I don't really call them fines, but basically ... I understand ... they are ... based on ... employment, and if someone gets fired for a certain reasons, a lot of times they call it retaliation - they're retaliated against because they reported some kind of discrimination to the commission. And if they lose their job, then basically, ... according to the law, they're supposed to look for another job, but we have to make them

whole up 'till they do find another job, so that's kind of based on how long it takes them to find a job and if they were really looking and ... what they were getting paid. ... We also apply interest to it, and the interest is also based on the Alaska state discrimination law.

[8:43:07 AM](#)

REPRESENTATIVE HUGHES concurred with Chair Lynn regarding common sense. She posited that Ms. Merkes is valuable because of her real life experience, including the raising of eight children. She thanks Ms. Merkes for her public service and stated the importance of the institutional knowledge Ms. Merkes brings to the commission.

[8:44:11 AM](#)

REPRESENTATIVE ISAACSON opined that Ms. Merkes has an impressive resume. He asked Ms. Merkes to describe her thought process in determining who and what is "right."

MS. MERKES responded that the commission must follow the law and there has to be substantial evidence. The commission has the opportunity to determine whether a person is being truthful and what his/her reason for coming forward is. She said administrative law judges decide the cases and the commissioners divide the case reviews; therefore, not every commissioner will know about every case. She relayed one sexual harassment case that was based on the location and type of job. She said that type of job in this case made the idea of sexual harassment different from that in another location with other people. She said, "That, to me, is kind of using common sense and being reasonable and what really happens in certain kinds of jobs. So, those are [the] kinds of things we have to look at. You know, those aren't black and white." She indicated that she evaluates each case thoroughly.

CHAIR LYNN stated his assumption that some cases come down to a "she said/he said." situation.

MS. MERKES confirmed that is correct.

[8:48:19 AM](#)

MS. MERKES, in response to Representative Isaacson, said the standard upon which information presented by attorneys is judged

is the anti-discrimination law. She offered further details about the hearing process. In response to a follow-up question regarding retaliation, she said if no discrimination occurred, then the commission would not get involved.

REPRESENTATIVE ISAACSON offered a hypothetical situation in which an employer talks about his religious beliefs and an employee is offended. He said it is becoming more prevalent that someone who has been offended perceives that offense as discrimination. He remarked, "They're using the process to get back at the employer, and yet the employer put sweat, blood, and tears ... into building a business so that there's opportunity for employment."

MS. MERKES indicated she does not think an employee has a case against an employer who is religious and perhaps is trying to pass his/her religion on to the employee.

[8:53:49 AM](#)

The committee took a brief at-ease at 8:54 a.m.

**Confirmation Hearing(s):**  
**Alaska State Board of Parole**

[8:54:22 AM](#)

CHAIR LYNN announced that the final order of business was the confirmation hearing for the appointee to the Alaska State Board of Parole.

[8:54:49 AM](#)

SARAH POSSENTI, Appointee, Alaska State Board of Parole, said she was born and raised in Fairbanks, Alaska, and attended the University of Alaska Fairbanks (UAF), where she earned undergraduate degrees in justice and in social work. She relayed that she worked almost 12 years as a probation officer for the State of Alaska, 8 of those years spent in the field supervising inmates released back in to the community. She offered further details. She said following that she worked in an institution as a probation officer and worked closely with a treatment center to get inmates into its substance abuse treatment program and see them through that process. She relayed that two years ago, she was confirmed to the Alaska State Board of Parole to fill a vacated seat. She said she

enjoys serving on the board. She said she thinks she brings good perspective in terms of working in the field and in the institutions closely with [former] inmates who live in the community and inmates who are incarcerated for long periods of time. She stated that she would appreciate the opportunity to be confirmed for another appointment.

[8:56:58 AM](#)

REPRESENTATIVE KELLER thanked Ms. Possenti for her work and invited her to bring further insights to committee members. He said the number of incarcerated is projected to grow and he thinks there will be a greater emphasis on the board.

[8:57:49 AM](#)

REPRESENTATIVE HUGHES referred to a letter "expressing concern about the make-up of the parole board and those with knowledge of Alaska Native issues and rural issues." She noted that Ms. Possenti had training related to those issues, and she said she would like to hear how that might play a part in her role on the board.

[8:58:25 AM](#)

CHAIR LYNN interjected that a representative from the American Civil Liberties Union (ACLU) of Alaska was on line and might like to speak to that issue.

[8:58:40 AM](#)

MS. POSSENTI responded that although she is not an Alaska Native, she was born and raised in the state and has appreciation for the issues that are prevalent for the Alaska Native community. She talked about the considerations given by the board for all inmates, including Alaska Natives, who, upon release, may be returning to rural villages that do not offer rehabilitation programs. To address the issue, she said, there is a big commitment from the commissioner to educate inmates while incarcerated, so that when they do get released, they have already attended some of those rehabilitation programs. She said she has worked closely with village public safety officers (VPSOs) regarding this issue. She related that sometimes a released inmate might have to spend time in an urban area to complete a rehabilitation program before moving back to his/her village, and she said there is housing available in urban areas for this purpose. She said some sex offenders are Alaska

Native, and she works with treatment centers to "base some of the treatment on what their understanding was" and to consider "how things would look for their safety plans when they went back to the rural area that they were from."

[9:03:08 AM](#)

CHAIR LYNN stated his assumption that "this" is based on the challenges an individual may face in his/her community rather than on race or ethnicity.

MS. POSSENTI answered that is correct. She said there are a lot of "people who live in rural areas who are Alaska Native, and we take all of that into consideration." She said decisions are made based upon consideration of risks and available treatment and safety plans.

[9:04:22 AM](#)

REPRESENTATIVE HUGHES asked, "As you're making decisions regarding an individual, are you following specific guidelines in statutes and [regulations] or do you have quite a bit of flexibility, as far as those decisions?" She said she would also like to know "how much you interface with workforce opportunities for those being released."

[9:05:08 AM](#)

MS. POSSENTI responded that part of the parole process includes consideration of the person's history and plans for the future, both shown in the application and through verbal and nonverbal communication during a face-to-face interview. She said there are regulations regarding when a person can apply, based on what crime has been committed and how much time has been served; however, she added that "we do have some flexibility in terms of ... maybe making more of a customized release plan for this person and what it is that they need." Regarding employment, she said many inmates can earn their general educational development (GED) and gain hands-on experience in skills that may help them find a job once they are released. She said it is possible to make individual release plans rather than a blanket plan. She emphasized the importance of continuing education or programming without a gap.

[9:09:31 AM](#)

REPRESENTATIVE HUGHES disclosed that she was a contractor in the prison system who worked with inmates on getting their GEDs and helping them prepare to enter the workforce. She expressed concern that a lot of those released from prison break parole and end up back in prison. Regarding the "Alaska Native situation," she said "the numbers" are known and are disturbing. She asked if the parole board has the opportunity to "make recommendations to help with that assimilation." She expressed hope that there are non-profit, faith-based groups that are "trying to help with that," and she asked Ms. Possenti if she has interaction with those groups in attempting to "improve those statistics and not have so many breaking parole."

MS. POSSENTI replied that there are a number of programs available linking parolees to housing opportunities and groups available to help, such as the Native Justice Re-entry Program, in Anchorage, Alaska. She stated that it would be nice to see more of these programs in the rural areas. She reemphasized the importance of providing "some kind of program" to those inmates being released. Ms. Possenti related there is a much lower recidivism rate - 7-9 percent - in those inmates who apply for discretionary parole as compared to those who are released by mandatory parole. She said [the board] has interaction with those who have applied for discretionary parole, but does not see those who are released on mandatory parole.

[9:14:05 AM](#)

TOM STENSON, Legal Director, American Civil Liberties Union (ACLU) of Alaska, introduced himself.

CHAIR LYNN directed attention to the second paragraph of a letter in the committee packet [written by Jeffrey Mittman, Executive Director of the ACLU of Alaska], dated 2/27/13, and read, "The purpose of our letter is intended to prompt discussion of the [Alaska State] Parole Board's general function and how parole board members are selected generally." He indicated that Mr. Stenson wrote in the letter that "this has nothing to do with Ms. Possenti personally." He stated his understanding that the purpose of the confirmation hearing was to discuss the qualification of the appointees, not to discuss "the general function." He said he was hoping that Mr. Stenson's comments pertained particularly to Ms. Possenti. He directed attention to page 2 of the letter and read, "The ACLU would urge the committee to reject the proposed applicant and push for appointment of members familiar with daily village life, et cetera." He stated, "We do not discriminate against

applicants based on race or ethnicity or where they happen to live in the state of Alaska." He invited Mr. Stenson to make his statement "with those comments in mind."

[9:16:10 AM](#)

MR. STENSON said he is not asking the committee to discriminate based on ethnicity or race, nor did he state in the letter that an Alaska Native must be appointed. He said what he did point out in the letter is that there is a legal requirement that "the governor shall make appointments to the board with due regard for the representation on the board of the ethnic, racial, sexual, and cultural populations of the state." He said that is a legal requirement that the legislature produced, and he asked the legislature to consider that requirement in considering whether or not an appointment is appropriate.

MR. STENSON questioned Chair Lynn's statement that no discrimination shall be made based on where people come from within the state, because the same statute makes a firm requirement that there shall be at least one parole board member from the first judicial district, at least one from the third judicial district, and at least one from the second or fourth judicial district. He said that requirement is there to prevent the existence of a board whose members are made up solely with representation from Anchorage or the Southcentral region. He said that requirement does not embody the belief that everyone from Anchorage is bad; it is there because of the belief that the board functions best when it has a wide variety of opinion and represents the broad spectrum of Alaskans. He said, "If Ms. Possenti were from the third judicial district and her nomination would leave the parole board with no one from the second or fourth district, I think it would be appropriate for me to draw that requirement to the committee's attention, and this is a similar statutory requirement."

[9:19:01 AM](#)

MR. STENSON expressed concern that in Alaska, where 18 percent of the population is Alaska Native, 35-36 percent of those in custody are Alaska Native, and while 25 percent of parolees and probationers are Alaska Native, 43 percent of those who return to prison are Alaska Native. Mr. Stenson said he is not making accusations or leveling allegations, he is asking tough questions.

MR. STENSON, in response to Chair Lynn, said there are five members of the board. Currently, three of those members are from the third judicial district, from Kenai, Wasilla, and Anchorage; one member is from the first judicial district, from Juneau, and Ms. Possenti, the fifth member, is from the fourth judicial district, from Fairbanks. In response to a follow-up question, he said if Ms. Possenti is reappointed or someone else from the second or fourth judicial districts is appointed, then "the composition would be appropriate under the requirement that all districts be represented." He said, "I was using that as an analogy towards this requirement that the government shall make appointments with due regard to representation on the board of the ethnic, racial, ... sexual, and cultural populations of the state."

[9:21:04 AM](#)

CHAIR LYNN said the committee's task today is to consider the appointment of one person, Ms. Possenti, to the board, and he said he does not think it is within the committee's purview to consider "this other issue, if it is an issue."

MR. STENSON responded that ultimately the vote will be whether to move the appointees forward to a joint session of the House and Senate, but, as he noted for previous appointees, the committee has broad authority to ask whatever questions it likes.

[9:22:49 AM](#)

REPRESENTATIVE KELLER expressed appreciation for Mr. Stenson's testimony, but said he concurs with Chair Lynn that it is not germane to whether or not the committee shall "put this name forward."

[9:23:15 AM](#)

MR. STENSON concluded that nothing will change if "we" don't look at these statistics and ask hard questions. He expressed his hope that the committee will follow up appropriately on the concerns raised in the aforementioned letter.

CHAIR LYNN expressed his hope that matters of incarceration and parole are never treated in a discriminatory manner.

[9:24:24 AM](#)

REPRESENTATIVE KELLER indicated that the Department of Corrections came before the House Judiciary Standing Committee with information akin to that presented by Mr. Stenson in the ACLU of Alaska's letter, and legislators are struggling to respond appropriately to the alarming information that was brought forward. He said he does not want Mr. Stenson to think or say that [the legislature] is not concerned.

CHAIR LYNN echoed Representative Keller's remark.

[9:25:16 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:25:41 AM](#)

CHAIR LYNN reviewed the legislative confirmation process.

[9:26:30 AM](#)

REPRESENTATIVE ISAACSON said each of the appointees has his/her own distinctive perspective and appears to be qualified.

[9:26:50 AM](#)

REPRESENTATIVE ISAACSON moved to advance the names of Sarah Possenti, appointee to the Alaska State Board of Parole, and Christa Bruce-Kotrc, Jason Hart, Grace Merkes, appointees to the Alaska Commission on Human Rights, for consideration in joint session by the House and Senate. There being no objection, the names were advanced.

[9:27:42 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:28 a.m.