ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 23, 2015
1:03 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Matt Claman
Representative Max Gruenberg
Representative Neal Foster
Representative Charisse Millett

MEMBERS ABSENT

Representative Bob Lynn
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 15
"An Act relating to credits toward a sentence of imprisonment and to good time deductions."

- MOVED CSHB 15(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUE FOR HOUSE BILL NO. 11
"An Act restricting the publication of certain records of criminal cases on the Internet; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 15
SHORT TITLE: CREDITS FOR TIME SERVED/GOOD TIME
SPONSOR(s): REPRESENTATIVE(s) WILSON

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	STA, FIN
01/23/15	(H)	STA REFERRAL REMOVED
01/23/15	(H)	JUD REFERRAL ADDED BEFORE FIN
02/18/15	(H)	BILL REPRINTED 2/16/15
02/20/15	(H)	JUD AT 1:00 PM CAPITOL 120

02/20/15	(H)	Heard & Held
02/20/15	(H)	MINUTE(JUD)
03/18/15	(H)	JUD AT 1:00 PM CAPITOL 120
03/18/15	(H)	Heard & Held
03/18/15	(H)	MINUTE(JUD)
03/23/15	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 11
SHORT TITLE: NO INTERNET ACCESS TO SOME CRIM. CASES
SPONSOR(s): REPRESENTATIVE(s) WILSON

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	HSS, JUD
03/04/15	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/04/15	(H)	READ THE FIRST TIME - REFERRALS
03/04/15	(H)	JUD
03/20/15	(H)	JUD AT 1:00 PM CAPITOL 120
03/20/15	(H)	-- MEETING CANCELED --
03/23/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE TAMI WILSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As prime sponsor of CSHB 15, presented changes within the committee substitute and answered questions.

RICK SNOBODNY, Deputy Attorney General
Criminal Division
Alaska Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Expressed concerns during the hearing of CSHB 15 regarding credit for electronic monitoring and answered questions.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SSHB 11 as prime sponsor.

NANCY MEADE, General Counsel
Office of Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SSHB 11 answered questions.

ACTION NARRATIVE

1:03:16 PM

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Keller, Claman, Gruenberg, and LeDoux were present at the call to order. Representatives Millett and Foster arrived as the meeting was in progress.

HB 15-CREDITS FOR TIME SERVED/GOOD TIME

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 15, "An Act relating to credits toward a sentence of imprisonment and to good time deductions."

1:04:26 PM

REPRESENTATIVE KELLER moved to adopt proposed Committee Substitute for HB 15, Version 29-LS0102\I, Gardner/Martin, 3/19/15 as the working document. There being no objection, Version I was before the House Judiciary Standing Committee.

1:04:49 PM

REPRESENTATIVE TAMI WILSON, Alaska State Legislature, pointed to page 2, lines 5-6, and advised the current committee substitute reads "rehabilitative activity" as opposed to the previous version which read "counseling." She opined that she spoke with public defenders who believe this bill offers more tools to the court in determining assistance the person in pretrial requires. Under current law, she explained, the offender waiting in pretrial receives credit for sitting in jail, and this bill offers electronic monitoring, of which a business is attached. During the pretrial hearing the judge orders what is required of the offender while on electronic monitoring and those orders may include, certain types of treatment, employment, [educational training], and community service. She pointed out that treatment is not available in many of the jails in Alaska, and especially not in pretrial. The offender receives the same credit [on electronic monitoring] as someone sitting in jail in pretrial if they follow the [judge's orders and obey the laws of the land], she explained. She specified that the bill solely

discusses pretrial and that electronic monitoring cannot be performed out-of-state.

1:08:15 PM

REPRESENTATIVE GRUENBERG referred to the term "medical appointment" on page 2, line 6, which read:

(3) ...activity or medical appointment.

REPRESENTATIVE GRUENBERG said he assumed she is using it in a broad sense, in that it could be a nurse practitioner, chiropractor, naturopath or physical therapist, all of which would be interpreted by the Department of Corrections (DOC).

REPRESENTATIVE WILSON advised the judge would order exactly what [entity] the offender could receive services.

REPRESENTATIVE GRUENBERG referred to the language on page 1, lines 9-12, which read:

> (d) ... a sentence of imprisonment for time spent [IN A PRIVATE RESIDENCE OR] under electronic monitoring **if the person has not committed a criminal offense while under electronic monitoring and the court imposes substantial restrictions** ...

REPRESENTATIVE GRUENBERG advised that he literally read that to include "electronic monitoring 15 years ago in Rhode Island," yet he understands the intent of the sponsor is to have a narrower focus. He stated it was his hope to look into this issue further.

REPRESENTATIVE WILSON advised that the phrase was included by the Department of Law (DOL) because there was an incident where a defendant on electronic monitoring committed another crime. She shared "They didn't necessarily say that, they felt it needed to be there." She confirmed that she will have further discussions with DOL and reiterated that the intent is that during the time an individual is on electronic monitoring they must abide by the rules and cannot commit crimes.

1:11:08 PM

RICK SNOBODNY, Deputy Attorney General, Criminal Division, Alaska Department of Law (DOL), requested Representative Gruenberg to restate his question.

1:11:44 PM

REPRESENTATIVE GRUENBERG again referred to the language on page 1, lines 10-11, and requested clarification on the concept of a criminal offense under electronic monitoring that is somehow related to "this" case, or in the recent future. For example, he offered, "you" couldn't use a 1985 situation from Rhode Island, "that would make them ineligible for life."

MR. SVOBODNY answered that Ms. Schroeder [DOL] worked with the sponsor on this language and he opined it would be for "this" offense. He noted that if the state is giving credit under the present case law pretrial, and the offender is in the "functional equivalent of incarceration" the offender will receive credit for that time whether a crime is committed or not. He offered that the principle is credit for time that is served either in jail or the functional equivalent of incarceration.

1:14:00 PM

REPRESENTATIVE GRUENBERG highlighted his belief that contours need to be defined down the line.

1:14:42 PM

REPRESENTATIVE CLAMAN assessed that the way the bill is currently written, a defendant released on electronic monitoring pretrial would be treated the same as a defendant who was released pretrial to a treatment program.

MR. SVOBODNY replied "Yes, that is my understanding."

REPRESENTATIVE CLAMAN asked for confirmation that this bill does not get into "good time" credit.

MR. SVOBODNY said that good time is for good behavior in jail and [on electronic monitoring] the individual is not in jail, so it was dropped out of the bill.

REPRESENTATIVE CLAMAN determined that all parties in the courtroom must come to an agreement that is converted into a Pretrial Release Order allowing electronic monitoring. He explained that at sentencing the judge determines whether the defendant performed as ordered and orders whether the defendant will receive credit for time served.

MR. SVOBODNY agreed that Representative Claman described the scenario accurately, but that there are nuances not in the premise of Representative Claman's comments.

1:17:05 PM

REPRESENTATIVE CLAMAN asked Mr. Svobodny to explain.

1:17:09 PM

MR. SVOBODNY responded that "everybody, I think, is not paying attention to, or forgot, or didn't know, the default is you get out of jail." He further responded that the default in the statute ... unless it is an unclassified or class A felony, the person is released on their "own recognizance." He opined there are individuals released on their own recognizance that must go to a treatment program that has the equivalency of being in jail. Or, he noted, the court could order that it is also a condition of a monetary bail. He said he assumed it wouldn't be a third party custodian, as a third party custodian is not going to go to the functional equivalency of jail pending trial. He disputed the statement that when a defendant goes to the [pretrial] hearing that everyone is on board, as only the judge needs to be on board.

1:19:00 PM

MR. SVOBODNY then presented his testimony that there is a major public policy question in that "should we let people buy their way out of jail," because that is what this [bill] is. He questioned what individual facing a mandatory three days in jail for driving while intoxicated (DWI) wouldn't beg the judge to be put on electronic monitoring. [The bill] defeats the principle that an individual must serve a mandatory three days in jail for the first DWI, and twenty days for the second DWI. He offered concern for the word "counseling," as it reminds him of a woman in Juneau who committed perjury in a trial, was sentenced to jail time, and claimed that going to Weight Watchers was the functional equivalent of a rehabilitative program and that she should get credit for going to Weight Watchers appointments. The judge did not allow that argument, but the focus was changed from rehabilitative program to counseling.

1:21:04 PM

CHAIR LEDOUX noted that Mr. Svobodny testified previously on this bill and asked whether he was testifying that the administration and DOL are officially opposed to this bill, because it sounded like he was.

MR. SVOBODNY responded that he testified previously and made these same points, but now the [language] is down to specific examples. He said he does not believe his testimony has changed, but that the current language is a different iteration. He expressed that the fundamental question is still the same, "if you let people pay for electronic monitoring to get out of jail, what you've done is say ... you've moved us back to the Middle Ages where somebody can do their jail time ... I can have somebody ... I can pay somebody to do my jail time for me, or I can pay the king to not have me go to jail." For example, he noted, will the victim be at the [pretrial hearing] when electronic monitoring is imposed as they have a right to be heard. "Now, you've kind of flipped the whole process around, where do that victim show up? When either he or she shows up at sentencing to say now this guy should go to jail, judge. And the judge is going to say, 'Oh sorry, we already did ... we did that at the bail hearing.'"

1:22:58 PM

REPRESENTATIVE CLAMAN offered that this bill would not change the victim's right to be present at every bail and sentencing hearing to offer their view, recognizing that the ultimate decision is left to the judge.

1:23:35 PM

MR. SVOBODNY agreed with Representative Claman and stated there is a substantial difference when the district attorneys' (DA) office calls the victim advising there is a bail hearing or sentencing ....

CHAIR LEDOUX interjected that it would be the responsibility of DOL to give the victim the information of what will take place at the bail hearing.

MR. SVOBODY agreed and said DOL will inform the victim that the defendant will be living in his own home, will wear an ankle monitor, and it will count as though he was in jail. He also agreed that they have a right to be at the bail hearing and judges often give them the right to speak, they don't

necessarily have the right to speak at the bail hearing, but do have the right to speak at sentencing.

1:24:46 PM

REPRESENTATIVE GRUENBERG referred to Mr. Svobodny last statement that a defendant doesn't have a right to speak at a bail hearing, and questioned that if the defendant and his lawyer are asking for electronic monitoring, they must have the right to speak to make that argument.

MR. SVOBODNY said he misspoke as he meant to say the victim.

REPRESENTATIVE GRUENBERG related that if the victim has a right to be notified and present at a bail hearing, doesn't it follow that if the victim or the victim's advocate had an objection to the proposal they would have a right to be heard.

MR. SVOBODNY acknowledged he may be wrong as victims may have a right to speak at bail hearings. He noted that in Anchorage the first bail hearing is set before the victim is "even" home, they are set by committing magistrates over the phone." He opined that is probably not going to happen where people are released to these programs at that point, but there is a hearing the next day. He further opined "it's not like you can sit down and write out your thoughts, or even be out of the hospital."

1:26:45 PM

REPRESENTATIVE GRUENBERG said that certainly DOL can accomplish this, or is DOL not capable of executing.

MR. SVOBODNY expressed that the issue is whether the committee is willing, as a public policy, to create the legal fiction that [staying home and wearing an ankle monitor] is the same as being in jail.

1:27:55 PM

CHAIR LEDOUX read [Sec. 2, AS 12.55.027(d)], page 1, line 12-14, which read:

> (d) ... and the court imposes substantial restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence except for a ...

CHAIR LEDOUX referred to "including" court appearances, meeting with counsel during a period which the person has to do X, Y, and Z. She pointed out that those are just the things that this bill says that "you" wouldn't think about giving a person credit if they haven't met those three requirements, and that the court could impose other restrictions.

MR. SVOBODNY said "That is absolutely correct."

CHAIR LEDOUX continued that the court has to find that it imposes restrictions which are equivalent to substantially restricting the movement of the person.

MR. SVOBODNY agreed, but stated that substantially restricting the movement of a person ... the individual can go to work, go to Weight Watchers ...

1:29:23 PM

CHAIR LEDOUX argued that if the court views that Weight Watchers as more of a social event, they cannot attend.

MR. SVOBODNY further agreed with Chair LeDoux and said that the judge can create situations where living in a person's own home meets the functional equivalent of jail. He reiterated the issue is that a person can stay home and wear an ankle bracelet ... as the bill states "shall give credit" for that being the same as jail. He opined that it appears to be creating a situation where people who can pay are allowed to wear an ankle bracelet and take three days off if a first DWI, twenty days off for the second DWI, and not receive any jail time for that offense. He said, "That's within your prerogative, that's within a judge's prerogative. Now if the judge ratchets it down more than just saying that it is ... I don't know, curfew at night and an ankle monitor." He described it as a public policy question and expressed there could be a potential increase in the delay in going to trial because a good defense lawyer would drag it out to the point the individual meets whatever sentence the attorney believes the court is going to give.

1:31:59 PM

CHAIR LEDOUX reiterated her question of whether the administration and DOL officially oppose this bill.

MR. SVOBODNY related that he has advised what he sees as issues with the bill, and further related that he does not believe the administration has a position on the bill. From the prosecutor's point of view, he advised is that the committee determines whether staying at home and wearing an ankle bracelet is the same as being in jail.

1:33:05 PM

REPRESENTATIVE CLAMAN referred to the topic Mr. Svobodny raised having to do with financial access to electronic monitoring typically in the private criminal defense client, and not typically in the public defender client has been discussed previously. He noted another issue is geographic in that within certain parts of Alaska the technology doesn't exist, but could be more available to defendants in larger communities. He surmised that DOL's position is that if the committee wants to allow it to be more available in certain communities that committee can make that choice.

MR. SVOBODNY agreed, and opined legislators make decisions all the time on where programs are, or are not, available.

1:34:28 PM

REPRESENTATIVE GRUENBERG opined that when the legislature first considered ignition interlocks the financial ability of someone was not discussed, but there was a discussion of geographical issues regarding installation.

CHAIR LEDOUX asked whether that was a question.

REPRESENTATIVE GRUENBERG responded that the equal protection issues were discussed and asked whether Mr. Svobodny had any comment.

MR. SVOBODNY offered that the system treats people with money better than the people without money, and noted that a judge can weigh financial circumstances, determine flight risk, and the danger to the community when ordering bail.

1:38:09 PM

CHAIR LEDOUX remarked that currently a person receives credit for time spent in an overnight rehabilitation program.

MR. SVOBODNY advised he was not sure whether that was the only requirement whether they would, as restrictions must be similar to being in jail.

CHAIR LEDOUX argued that allowing someone with money to enter a pleasant treatment facility could discriminate against someone who cannot afford the pleasant treatment facility. But, she said, the state still does not say they do not get credit toward their time served.

MR. SVOBODNY responded that assuming the [treatment facilities] have the equal equivalencies of being incarcerated, because under present law the judge could fashion an order for the "fancy" facilities. He related there are exceptions in present law for meetings with counsel, [court appearances, and court ordered appointments]. He described a history of one of the members of this body went to alcohol treatment at the "Maui Hilton, right?"

1:40:47 PM

CHAIR LEDOUX responded that she was not aware of that, and questioned whether, assuming the "Maui Hilton" has a residential treatment program, would that be allowed.

MR. SVOBODNY answered, yes.

CHAIR LEDOUX referred to Mr. Svobodny's statement wherein he noted that this wouldn't be fair in that a person with money can receive electronic monitoring; a person without money cannot receive electronic monitoring and; therefore, cannot receive credit. She expressed that people without money should be able to participate in electronic monitoring and remarked that the problem could be corrected within DOC as there is nothing inherently wrong with giving credit for electronic monitoring.

MR. SVOBODNY reiterated that if the legislature concludes a person going to a treatment program offering the equivalency of incarceration, is [identical] to staying in the person's own home and wearing an electronic monitoring device, is the legislature's choice.

1:43:16 PM

REPRESENTATIVE WILSON responded that Legislative Legal and Research Services worked with Mr. Svobodny and she was surprised to hear his testimony. In reading the bill, [the treatment

program] must be as if the person was in jail and cannot be on electronic monitoring sitting in front of the TV as there are other [stipulations] to meet. She pointed out that the bill requires receiving that a person receive treatment, is employed, performs community service, attempts to get their life back on track, and avoids the revolving door. She explained that currently DOC can offer electronic monitoring in any community in Alaska as the Department of Health & Social Services (DHSS) places money into [the program]. What is not currently available is the incentive of going to jail for $158 per day, as opposed to electronic monitoring for approximately $20 per day, she noted. She posited that the goal of [electronic monitoring] is putting the person on the road to recovery. She described the bill as exceptional and advised she has worked with all of the parties involved.

1:46:29 PM

CHAIR LEDOUX noted concern that someone charged with a three-day mandatory prison sentence for DWI [is allowed to use electronic monitoring]. She remarked that part of that three-day sentence is to cause people who may not normally see the inside of a jail, actually see the inside of jail. She is not sure that spending three-days on an electronic monitoring device and staying home watching TV, even though they are restricted for those three-days, is quite the same as going to jail.

REPRESENTATIVE WILSON answered that the bill is a tool in the toolbox and not a requirement as the judge can order the person to jail. "As far as the three-days goes, if that worked, I don't think we'd have so many people coming through the jails all the time," she opined.

1:49:23 PM

REPRESENTATIVE CLAMAN said he intends to propose an amendment on page 1, lines 5 and 9, which changes the language from "shall" to "may." He pointed out that under Title 28, on the first DWI the court has to impose a sentence of 72-hours consecutive imprisonment. He said that when the language in the statute reads "shall," the judge would be required to let the person spend time at home on electronic monitoring. Whereas, "may" offers the judge discretion to say "no" to one person, and "yes" to everyone else.

1:51:40 PM

REPRESENTATIVE CLAMAN moved Amendment I.1 to CSHB 15, [Amendment 1], labeled 29-LS0102\I.1, Gardner/Martin, 3/20/15, which read:

Page 1, line 5:
Delete "**shall** [MAY]"
Insert "may"

Page 1, line 9:
Delete "**shall** [MAY NOT]"
Insert "may [NOT]"

There being no objection, Amendment 1.1 passed.

1:53:00 PM

REPRESENTATIVE KELLER moved to report proposed CS for HB 15, Version 29-LS0102\I, Gardner/Martin, 3/19/15, as amended, from committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 15(JUD) was reported from the House Judiciary Standing Committee.

1:53:24 PM

The committee took an at-ease from 1:53 to 1:56 p.m.

1:56:21 PM

HB 11-NO INTERNET ACCESS TO SOME CRIM. CASES

1:56:22 PM

CHAIR LEDOUX announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 11, "An Act restricting the publication of certain records of criminal cases on the Internet; and providing for an effective date."

1:56:32 PM

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, explained that CourtView is available on the internet through the Alaska Court System, and people are clearly advised to "please read all of it." She opined CourtView can be confusing as to whether a person is convicted of a crime, what part of the crime they are convicted, or whether the person is found innocent or guilty. She further explained that a bill last year [Senate Bill 108] would have taken the data off of CourtView, and also taken away written records located in the court clerk's

office. She opined CSHB 15 represents that data should not be for all to see as it could interfere with a person obtaining a job or an apartment. CourtView could put doubt in the public's mind regarding the person's character.

1:59:41 PM

REPRESENTATIVE GRUENBERG noted this bill is similar to Senate Bill 108, from the twenty-eighth legislature, which was vetoed by Governor Sean Parnell.

2:01:04 PM

REPRESENTATIVE CLAMAN asked whether she had communicated with the current administration for its opinion, and that he recognizes there are significant issues around closing any court records to public view, whether on line or in person.

REPRESENTATIVE WILSON opined that the administration was in favor of the original bill, and she assumed that taking out the sealing portion would not cause the administration to oppose the bill. When this bill was re-filed she was approached by the Alaska Court System and advised they were willing to take data off of CourtView. She opined that one of the biggest issues is [closing records to public view] and this bill allows a person to review files at the court clerk's office. She pointed out that there are newspaper articles for everything and the internet is not just about CourtView.

2:03:41 PM

CHAIR LEDOUX questioned Representative Wilson's statement regarding the availability of the internet and asked whether an alleged victim would be interested enough to photocopy the records and put them on the internet themselves.

REPRESENTATIVE WILSON explained that when a person is arrested the data goes up on CourtView, and the public could follow the case to the end. She further explained that in the event a person is acquitted, 60 days later the data is taken down from CourtView. She indicated that a report of crimes can be found on the internet via a different venue than CourtView and related that when the bill discusses the internet it is solely about CourtView.

2:05:01 PM

REPRESENTATIVE MILLETT recalled an issue with Senate Bill 108 last year was that the victim's advocacy groups were interested in still being allowed access to those charged with a crime and had gone through a plea agreement. She quiered if the person pleaded out to a lesser charge whether the case would still be on CourtView.

REPRESENTATIVE WILSON responded that all of the charges related to the same case would be on CourtView.

REPRESENTATIVE MILLETT questioned whether Ms. Wilson had talked to the victim's advocacy groups about this bill.

REPRESENTATIVE WILSON replied that the victim's advocacy groups received HB 11 and SSHB 11, and [the groups] advised Representative Wilson that they would get their comments to her and she has yet to see anything in writing other than that they received the information.

2:06:39 PM

The committee took an at-ease from 2:06 to 2:08 p.m.

2:08:56 PM

NANCY MEADE, General Counsel, Office of Administrative Director, Alaska Court System, said she is available to answer questions about the bill.

REPRESENTATIVE CLAMAN referred to Representative Wilson's comment that after Governor Parnell vetoed the bill last year the Alaska Court System made changes regarding the availability of records. He asked the status of the changes, and what flexibility the Alaska Court System has without legislative action.

MS. MEADE advised that the Alaska Court System administratively determined categories of cases that should not appear on CourtView, even though the case files are not confidential. She explained there is an administrative rule that lists case types it does not feel are appropriate for posting on CourtView. Approximately nine months ago, the Alaska Court System took steps to amend the rule to remove from CourtView criminal cases that were dismissed because the prosecuting authority declined to file a charging document, criminal cases dismissed for lack of probable cause under Criminal Rule 5D, criminal cases dismissed for an identity error and, she noted, there are about

10-12 similar categories. She described a large category being when a Petition for Domestic Violence Protective Order is filed and during the Ex Parte hearing the judicial officer finds there is no probable cause to find domestic violence, or there was not a domestic relationship. The court realized it could be held against a respondent even though the court found, within 24 hours of the hearing, that it was basically an unfounded petition. She advised that those were removed from CourtView in response to complaints of people being undeservedly on CourtView and the negative consequences they were suffering.

2:11:13 PM

REPRESENTATIVE CLAMAN asked, without passing CSHB 15, in terms of the court's authority, how much latitude the court has to basically restrict what is made available on the internet. He further asked that if the court is aware of the issue of misuse of court data, whether the legislature has to get involved.

2:11:56 PM

MS. MEADE offered that the court has the authority to put onto, or take off of, CourtView anything that it prefers. It is within the court's purview not to have CourtView publically available to people as it is a case management system. She remarked that the court could decide not to post cases on CourtView and people would only be allowed to review public records at the courthouse. She highlighted that the court does have its own public records law, and it does believe in public access to records. She offered that the legislature can do more, but the court did what it thought was appropriate.

2:13:00 PM

CHAIR LEDOUX assessed that without legislation the court actually would have the authority to not post any of the issues which are encompassed by the bill on CourtView.

MS. MEADE answered in the affirmative, that the court could take additional categories of cases down from CourtView.

CHAIR LEDOUX questioned the court's rationale in choosing, without legislation, to continue to post cases regarding someone who has been completely acquitted.

MS. MEADE said she will be cautious in answering that question because she does not predict what the Alaska Supreme Court

Justices are thinking, but they went as far as they felt was appropriate administratively. Since the decision to remove criminal cases where someone is acquitted or dismissed is, as has been seen, somewhat more controversial. It is less an administrative function and more a policy decision that affects Alaskans who differ in their views on this. The court was not prepared to take the [policy] step, leaving it more for the legislature as the public wouldn't necessarily know to comment on any administrative decision. She reiterated that it is more of a policy decision for the legislature than administrative type decision for the court. The court could do it, but she believes the above is the court's thinking as to why it did not.

MS. MEADE responded to Chair LeDoux that the Alaska Court System does not have a position on this bill, as they are neutral.

2:15:21 PM

REPRESENTATIVE MILLETT asked the origin of CourtView and why the court decided to put its case management on the internet for public view.

2:15:40 PM

MS. MEADE answered that CourtView was purchased as an electronic case management system for the benefit of court staff and attorneys with cases in court. She opined that it was never intended to be a tool to do a sideways criminal background check on someone, and it is not the official criminal background check repository in the State of Alaska. Originally, she noted, it was intended to be the Alaska Court System's case management system and described it as not particularly user friendly for a member of the public. It was put online as a help to the public and to attorneys, but in recent times the thinking is that it has been abused by some people with improper conclusions drawn. There is a warning at the initial screen when a person logs onto CourtView advising people to be careful and not draw improper conclusions, she remarked.

2:17:27 PM

REPRESENTATIVE MILLETT questioned whether there had been complaints from the public about misinformation and inaccuracies on CourtView, as there has been misuse in performing a background check or checking out neighbors. She offered the scenario of filing a domestic violence complaint against Chair LeDoux and making the case that because they live in close

proximity of each other, "I fear her." She stated the action itself would appear on CourtView whether or not it was dismissed, as it would show Representative Millett filing a protective order against Chair LeDoux.

MS. MEADE posited that she does not hear complaints that there are inaccuracies on CourtView as her staff is quite good at entering the data, but people do look at it and draw improper conclusions because, perhaps, they do not understand what it says. She clarified that CourtView includes every document that is filed in a case as it is the docket sheet relating to the Alaska Court System. She explained, with regard to Representative Millett's scenario, in all likelihood it would be found, at the initial hearing, to be unfounded and under the court's administrative rule would be removed from CourtView. She added that it was one of the adjustments the court made on its own in the last six-nine months, and offered that the situation in itself was addressed by the court.

2:20:18 PM

REPRESENTATIVE GRUENBERG noted that the veto message of Senate Bill 108, last year, contains discussions of many issues that merit close attention before making a decision in this area. He asked whether there is a court rule on this subject.

MS. MEADE answered, Administrative Rule 40A.

REPRESENTATIVE GRUENBERG asked whether the Alaska Court System "amended that rule to accommodate either CourtView or what they are doing with this on CourtView."

MS. MEADE said she was not sure she understood his question. The amendment to Administrative Rule 40A added approximately eight new categories of cases that the court removed from CourtView, and other cases still remain public, she conveyed.

2:22:56 PM

REPRESENTATIVE GRUENBERG questioned whether this bill would change Administrative Rule 40A.

MS. MEADE advised the court does not view this bill as incorporating any sort of rule change.

REPRESENTATIVE GRUENBERG quiered whether the court published the changes in Rule 40A in its role as a procedural rule or as a

substantive rule. He asked, in the event the legislature chose to amend Rule 40A whether it would require a two-thirds vote as an amendment to a procedural rule.

MS. MEADE offered that there is a substantial question as to whether the legislature can amend the administrative rules, as the court does not consider those rules of practice and procedure. She further offered that the court does not view this as an amendment to the administrative rule and; therefore, does not see a problem with the legislature deciding to take this tact in this case.

2:24:13 PM

REPRESENTATIVE GRUENBERG asked whether the Alaska Court System believes there are certain rules the legislature does not have power to amend, change, or is completely immune to legislative review.

CHAIR LEDOUX interjected that Representative Gruenberg's question has nothing to do with this bill and she directed that he keep the discussion to this bill.

REPRESENTATIVE GRUENBERG questioned whether Ms. Meade had any comments regarding his statement, "how this thing can cut both ways."

MS. MEADE stated she has no official comment on that and she understands his job can be difficult.

2:25:18 PM

REPRESENTATIVE KELLER asked in the event this bill was [Senate Bill 108], of last year, whether it have required the rule change that took place.

MS. MEADE opined that the court has decided the legislature has authority to act in this area and does not perceive it as an amendment to Rule 40D. She advised the legislature can take this action without the court thinking the legislature is improperly amending some court rule.

REPRESENTATIVE KELLER expressed that it is valuable that the bill becomes a statute and thanked the sponsor for bringing it forward.

2:26:06 PM

REPRESENTATIVE CLAMAN provided that a bill like this raises issues of protecting people who are charged improperly for crimes, and it creates concerns. He quiered whether this [bill] is only affecting CourtView and not the bigger question of what is broadly accessible to the public.

MS. MEADE confirmed that this bill affects only what is on CourtView, and that Senate Bill 108 would have made the cases confidential. She explained that under this bill someone could still go to the courthouse and look into cases, including those that were fully dismissed or acquitted. In the event this bill passes, it would remove those cases from CourtView, she advised.

REPRESENTATIVE CLAMAN asked whether those cases would only be accessible from the courthouse data base. He offered the scenario that a person could go to the courthouse, look up a case, locate a filed domestic violence action, and locate the judge's ruling that there was no relationship subject to a charge.

MS. MEADE clarified that the hypothetical is off CourtView now due to the court rule and it has nothing to do with this bill.

MS. MEADE, in response to Representative Claman, advised that this bill would allow people to go to the courthouse, look at a computer, and find cases about people who ended up in dismissal and/or acquittal.

REPRESENTATIVE CLAMAN asked whether this bill goes further than the current administrative court rule.

MS. MEADE responded "further" in that it speaks to cases coming off CourtView that are not mentioned at all in the court rule. "It is a different beast," she offered.

2:30:27 PM

REPRESENTATIVE WILSON reminded the committee that every person is innocent until found guilty and CourtView has done an excellent job of trying to warn people that this is not the official view. However, people have become techies and sometimes look on CourtView because they want to know. She mentioned that by definition a person is not a criminal if acquitted at trial or if their case is dismissed by the courts. SSHB 11 asks that Alaskans who have not been found guilty of any

wrong doing be given the right of emancipation of social distrust and inherent prejudices.

2:31:34 PM

REPRESENTATIVE GRUENBERG requested the opinion of the Department of Public Safety, and asked whether her office made any inquiry regarding states that may have addressed this issue.

REPRESENTATIVE WILSON advised that few states have allowed this type of access outside of the courts. She said [that entities such as] the Department of Health & Social Services and the Department of Public Safety have a data base on line that is pass coded.

REPRESENTATIVE GRUENBERG asked the staff to distribute Alaska Administrative Rule 40A.

2:33:07 PM

CHAIR LEDOUX opened public testimony and advised she will not close it today.

2:34:15 PM

REPRESENTATIVE KELLER opined that this is partially caused by technology and the internet being available. He noted that the whole idea of defamation previously was cut and dry, and it was understood what was going on in a liable suit. He remarked those types of things are changing because an accusation is easier to read in social media than any type of extended defense. He remarked that he appreciates this bill coming forward because an accusation can be devastating.

REPRESENTATIVE GRUENBERG suggested including a sunset date.

REPRESENTATIVE WILSON stated she is not opposed to the idea, but people have to pay a lot of money for being at the wrong place at the wrong time.

2:36:32 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:36 p.m.