

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 13, 2015

1:05 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman
Representative Max Gruenberg

MEMBERS ABSENT

Representative Charisse Millett
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

SPONSOR SUBSTITUE FOR HOUSE BILL NO. 27

"An Act relating to the duties of the Department of Health and Social Services; relating to hearings on and plans for permanent placement of a child in need of aid; relating to school placement and transportation for children in foster care; relating to foster care transition programs; relating to emergency and temporary placement of a child in need of aid; relating to the confidentiality of information regarding child protection; and amending Rule 17.2, Alaska Child in Need of Aid Rules of Procedure."

- MOVED CSSSHB 27(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUE FOR HOUSE BILL NO. 7

"An Act relating to murder in the second degree and manslaughter."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 27

SHORT TITLE: DHSS DUTIES;CINA; FOSTER CARE; ADOPTION

SPONSOR(S): REPRESENTATIVE(S) GARA

01/21/15 (H) PREFILE RELEASED 1/9/15

01/21/15 (H) READ THE FIRST TIME - REFERRALS
01/21/15 (H) HSS, JUD
02/11/15 (H) SPONSOR SUBSTITUTE INTRODUCED
02/11/15 (H) READ THE FIRST TIME - REFERRALS
02/11/15 (H) HSS, JUD
02/12/15 (H) HSS AT 3:00 PM CAPITOL 106
02/12/15 (H) Heard & Held
02/12/15 (H) MINUTE(HSS)
02/24/15 (H) HSS AT 3:00 PM CAPITOL 106
02/24/15 (H) Heard & Held
02/24/15 (H) MINUTE(HSS)
04/02/15 (H) HSS AT 3:00 PM CAPITOL 106
04/02/15 (H) Moved SSHB 27 Out of Committee
04/02/15 (H) MINUTE(HSS)
04/03/15 (H) HSS RPT 4DP
04/03/15 (H) DP: TARR, FOSTER, WOOL, SEATON
04/13/15 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 7

SHORT TITLE: HOMICIDE OPERATING VEHICLE, PLANE, BOAT
SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/21/15 (H) PREFILE RELEASED 1/9/15
01/21/15 (H) READ THE FIRST TIME - REFERRALS
01/21/15 (H) JUD, FIN
02/23/15 (H) SPONSOR SUBSTITUTE INTRODUCED
02/23/15 (H) READ THE FIRST TIME - REFERRALS
02/23/15 (H) JUD, FIN
04/13/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented CSSSHB 27, discussed changes, and answered questions.

AMANDA METIVIER, Executive Director
Facing Foster Care in Alaska (FFCA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, offered support for the bill.

RACHEL BEDSWORTH, Anchorage Representative
Facing Foster Care in Alaska

Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, offered support for the bill, answered questions, and testified regarding her relationship with OCS.

ROBIN CHANEY

Dillingham, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, testified regarding her relationship with OCS.

SARAH ANDREWS

Dillingham, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, testified, offered support for the bill, and answered questions.

NAOMI HARRIS, Community Relations Manager

Office of Children's Services

Department of Health & Social Services (OCS)

Juneau, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, answered questions.

KATIE LYBRAND, Assistant Attorney General

Child Protection Section

Department of Law

Juneau, Alaska

POSITION STATEMENT: During the hearing on CSSSHB 27, answered questions.

REPRESENTATIVE ANDY JOSEPHSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions as prime sponsor for SSHB 7.

KARLA HART

Juneau, Alaska

POSITION STATEMENT: During the hearing on SSHB 7, offered support for the bill, and testified as a bicyclist.

RICHARD SVOBODNY, Deputy Attorney General

Criminal Division

Department of Law

Juneau, Alaska

POSITION STATEMENT: During the hearing on SSHB 7, answered questions.

ACTION NARRATIVE

[1:05:45 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Foster, Lynn, Claman, Gruenberg, and LeDoux were present at the call to order. Representative Keller arrived as the meeting was in progress.

HB 27-DHSS DUTIES;CINA; FOSTER CARE; ADOPTION

[1:06:12 PM](#)

CHAIR LEDOUX announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 27, "An Act relating to the duties of the Department of Health and Social Services; relating to hearings on and plans for permanent placement of a child in need of aid; relating to school placement and transportation for children in foster care; relating to foster care transition programs; relating to emergency and temporary placement of a child in need of aid; relating to the confidentiality of information regarding child protection; and amending Rule 17.2, Alaska Child in Need of Aid Rules of Procedure."

[1:06:26 PM](#)

REPRESENTATIVE KELLER moved to adopt CS for Sponsor Substitute HB 27, 29-LS0176\I, Glover, 4/16/15 as the working document. There being no objection, the committee substitute was before the committee.

[1:06:46 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, offered the committee substitute changes that include legislative intent toward cost efficiency, yet allowing changes in the foster care system giving children a permanent loving home and a chance life to succeed in life as other youth with a stable family. He referred to a letter from the Department of Health & Social Services, Office of Children's Services (OCS) admitting it made a mistake as "we are an underfunded agency in crisis." He advised this bill requires an OCS worker, appearing before the court during a [normally ordered] status hearing, to show the court they have performed their duties and made reasonable

efforts to find a permanent placement for the child. He opined there are incidences wherein very young social workers, with caseloads 70 percent higher than they can handle, make mistakes out of inexperience and being overburdened. He extended that better coordination between OCS and tribal entities must be offered, and the sponsor is currently working with all of the group to determine acceptable language in that regard. He commented that should acceptable language be offered, possibly another committee would consider it.

1:10:08 PM

CHAIR LEDOUX asked how many committees the bill has to go through.

REPRESENTATIVE GARA answered the bill will go to the floor and, if it reflects the House committee assignments, it will go through the Senate Health, Education and Social Services Standing Committee, and Senate Judiciary Standing Committee.

CHAIR LEDOUX surmised that Representative Gara has the summer to determine language and offered to hold the bill and offer it to the House floor with appropriate language.

REPRESENTATIVE GARA extended that is Chair LeDoux's discretion, but his preference is to move the bill along as next session the House Judiciary Standing Committee's schedule is unknown. He related that OCS is attempting to determine a way to pay for a dorm room, or a place to live, after a child leaves foster care in that the child has overcome obstacles and performed in a manner to enter college, or job training, but cannot pay for housing. The bill adds a no cost provision giving OCS the ability to determine how to offer a [post]-foster child housing, he conveyed.

1:11:46 PM

CHAIR LEDOUX asked where that provision is located.

REPRESENTATIVE GARA pointed Chair LeDoux to [Sec. 8, AS 47.14.100(a)], page 8, lines 1-11, which read:

(a) Subject to (e), (f), and (i) - (m) of this section, the department shall arrange for the care of every child committed to its custody by placing the child in a foster home or in the care of an agency or institution providing care for children inside or

outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law. For a child 16 years of age or older, the department may authorize another transitional living arrangement, including student dormitory residence at a postsecondary educational institution, that adequately meets the child's needs and is designed to assist the child's transition to independent living.

REPRESENTATIVE GARA explained that "the department may" which give the department the ability to work on a solution, of which they have worked on for years.

[1:12:21 PM](#)

CHAIR LEDOUX expressed that she does not understand how a solution can be found without a fiscal note. She asked in what manner OCS can arrange for dorm rooms without a fiscal note.

REPRESENTATIVE GARA responded that it is "the department may" so the department will have to come back to the legislature for funding. He pointed out that this legislation give the department the authority to find a solution. He anticipates the department will come back to the legislature and advise it will continue to keep the child in foster care at \$80 per day so that the child has a place to live. Although, the department may determine a cheaper way a child can leave foster care and stay in college. He summarized it is all subject to a future legislative appropriation.

CHAIR LEDOUX questioned how long a youth stays in foster care.

REPRESENTATIVE GARA explained there has been a national movement, including Alaska, of roughly 40 states that allow a youth, given the damage they have suffered, to stay in foster care as late as age 21, but can be released earlier if it is in the youth's best interests.

[1:14:03 PM](#)

REPRESENTATIVE GARA, in response to Chair LeDoux, opined that the earliest a youth can be released is age 16.

1:14:15 PM

REPRESENTATIVE KELLER, referred to the topic of a fiscal note, and pointed the committee to [Sec. 6, AS 47.10.080(x)], page 7, lines 12-24, which read:

(x) If the department transfers a child from one placement setting to another and it is reasonable and in the child's best educational interests, the department shall immediately, and in advance of the transfer if possible, coordinate with the school the child is attending to ensure the child is permitted to attend that school through the end of the school term if the child's new placement is in the same municipality and connected by a road to the school. If federal funds and school district transportation funds are not available to pay for the cost of transportation for the child, the department shall pay the costs of transporting the child to school. The department shall work with the family or agency where the child is placed to arrange for transportation. The department shall consult with the school district regarding the child's best interests, but the school district may not override the department's decision to allow a child to remain in the current school through the end of the school term.

REPRESENTATIVE KELLER said that OCS is required to provide transportation costs within the district and asked why the fiscal note would be zero.

REPRESENTATIVE GARA answered there is currently money in the budget, but no language in statute. He described a scenario of a child moving through three foster homes within one school term, and thereby attending three different schools. Consequently, he offered, that child is set back academically an average of three months each time they change schools. He extended that federal law, for homeless children but not most foster children, says a child should be able to finish their school term in the same school when living in the same community. He reiterated there is money in the budget for OCS to pay transportation, but no statutory language. He opined the statutory language would be that rather than waiting for the child to move between foster homes and sent to a new school, the bill is asking OCS to coordinate, if reasonable and able, with

the school before the transfer. In that manner the child remains in the school in a seamless manner.

1:15:45 PM

REPRESENTATIVE KELLER surmised that OCS is "getting the job done now, right."

REPRESENTATIVE GARA offered that OCS is trying to get the job done which goes to the double checks in the bill.

1:16:05 PM

CHAIR LEDOUX surmised that currently OCS pays for transportation costs when a child moves from one school to another school in order to keep that child in the same school.

REPRESENTATIVE GARA verified that OCS will, as a first option, offer mileage money to the foster family so the child can remain in the same school for the rest of school term, if in the child's best educational interests.

CHAIR LEDOUX pointed out that many people in Anchorage, not OCS people, move from one place to another and the government doesn't give them money for transportation.

REPRESENTATIVE GARA replied "No," but he is speaking about foster care children, who sometimes move between 15-16 placements, with no connection to a real family and no real support, who attempt to overcome hurdle after hurdle after hurdle, that are moved to a brand new family the child does not know. He opined the last thing the state wants to do is give the child another piece of dislocation in taking them out of one school to another school [before the school term is completed]. In the case of children with responsible loving parents, it is easier for the children to move between schools. He described foster children as basically being left on their own, and advised non-profit programs give these children suitcases because they move so often. He said the children are vulnerable, who have already been neglected, and have very high adverse childhood experiences scores just from being through the system. He noted that [moving a child from school to new school] is an issue that could be the straw that breaks the camel's back for a child.

1:18:47 PM

REPRESENTATIVE GRUENBERG opined there is a federal requirement that there be transportation for homeless children.

REPRESENTATIVE GARA answered in the affirmative, and advised the McKinney-Vento Homeless Assistance Act of 1987, applies to homeless children, which covers some small group of foster children also. He offered that it is the science that children with who have been neglected the last thing to do is make them move between schools in the middle of a term. In that regard, under federal law, there is funding for a homeless child to keep them in the same school for the remainder of the term.

REPRESENTATIVE GRUENBERG expressed that homeless children at risk may have at least one parent which is an advantage, and foster children do not have parents and are not homeless with the same type of problem. He opined that federal money cannot be accessed and in order to help these children it must be at the state level.

REPRESENTATIVE GARA reiterated there is money in the budget that passed a number of years ago.

[1:20:15 PM](#)

CHAIR LEDOUX surmised that the state is already [providing transportation] and there would not be a change in the law.

REPRESENTATIVE GARA advised the language codifies it in the law.

[1:20:23 PM](#)

CHAIR LEDOUX further surmised that previously OCS was providing transportation, but there was no statutory requirement.

REPRESENTATIVE GARA replied that "certainly" OCS has the power to do these things, and in 2009 a budget appropriation was passed with intent language and has been in the budget ever since, with no statutory requirement. He advise this bill, as opposed to intent language in the budget, asks OCS to coordinate an advance of the move so that the school district and OCS are on board, to the extent it is able. He described a possible circumstance wherein the child is forced to move between schools, then OCS coordinates with the school, and they then move the child back to the original school.

CHAIR LEDOUX asked whether the school districts grant waivers for the children.

REPRESENTATIVE GARA answered in the affirmative.

[1:21:24 PM](#)

REPRESENTATIVE GARA began his presentation and advised that currently 24 percent of foster youth end up in jail, 20 percent end up homeless by the strictest definition, and 20 percent end up couch surfing because they do not have their own home. Although, couch surfing was previously considered homelessness at a 40 percent homeless risk rate and is now at a 20 percent homelessness rate because the definition was changed, and that youth awaiting an adoptive home total 849. He pointed out that OCS describes itself as an agency in crisis due to short staffing, young case workers, and a turnover of workers. He pointed to the first part of the bill specifying how important it is to give a child a permanent home and, thereby, requiring that a OCS worker show the court they have taken reasonable steps to find a permanent home for the child during a status hearing. He expressed these cases cannot keep slipping through the cracks so the legislation asks the court to ask that question. In the event a social worker has not made the efforts, the court will order the worker to perform their required work.

[1:23:01 PM](#)

CHAIR LEDOUX asked the page number of this discussion.

REPRESENTATIVE GARA referred to [Sec. 4, AS 47.10.080(1)], page 5, lines 10-11, which read:

... and shall demonstrate in its report that the department is making reasonable [ON] efforts [BEING MADE] to find a permanent placement for the child.

REPRESENTATIVE GARA then referred to [Sec. 4, AS 47.10.080(1)], page 6, lines 24-28, which read:

(6) if the court finds, under (4)(C)(ii) of this subsection, that the department is not making reasonable efforts to find a permanent placement for the child, the court shall order the department to make reasonable efforts to find a permanent placement for the child unless the current placement is in the best interests of the child.

REPRESENTATIVE GARA advised it is a court double-check to ascertain that the process is working and social workers are performing as required.

[1:24:00 PM](#)

REPRESENTATIVE GARA expressed the importance in the world of foster care to find a family placement or a placement close to the child's family, if that is in the best interests of the child. Currently, within the first 30 days of a child being taken into foster care, under federal law OCS is required to make a diligent search to find available good family members or friends of the family for the child. This legislation requires that between each new placement OCS must determine whether there is a [natural] family placement. Thereby reminding OCS this is an important issue for the child as it is often a better placement than a stranger. He focused on the discussion of a child going to college, or job training, with no place to live, and giving OCS the ability to find a solution. He noted that currently, in 12 states, the statistics are that 50 percent of youth are still living with their parents up through age 25. He referred to foster youths going through 2-15 placements who suffer damage and sometimes are not ready to leave foster care at age 18. He pointed out that in line with 40 other states, this legislation extends foster care up to age 21, and noted that sometimes a less experienced social worker releases a child before they are 19-21 without a strong factual basis, and not in the child's best interests. He related that in the event a child is released from foster care before the age of 19-21, the case worker must demonstrate to the court that it is in the child's best interests, which is the standard.

[1:26:52 PM](#)

REPRESENTATIVE GARA referred to [Sec. 11, AS 47.18.320(2)], page 9, lines 1-2, which read:

(2) assistance in obtaining educational
[BASIC EDUCATION] and vocational training;

REPRESENTATIVE GARA advised that currently the state requires the department to give children assistance in obtaining a basic education. He opined that all children are entitled to more than a basic education, and some children are ready for traditional schools and others for vocational training. It is now OCS's duty to grant assistance in a child obtaining

educational or vocational training and related he is offended by the term "basic."

REPRESENTATIVE GRUENBERG expressed "I am offended to go back to basic, and I would hope we don't do that."

[1:28:12 PM](#)

REPRESENTATIVE GARA continued that this bill has been supported by both national and Alaska advocacy organizations as an important piece of legislation they see will make a difference. He called attention to the "Independent Living Program" for youth ages 16-23, mostly funded by the federal government with some state funds, to help youths get into college, job training, or on their feet, so they become success stories and not people the state pays for in the criminal system. This legislation requires a report to the legislature as to whether adequate employment training voucher funds are available and, he indicated that the bill does not require an appropriation from the legislature. He explained the department has gone from 1700 foster children five years ago, to 2400 foster children with essentially the same number of social work staff.

CHAIR LEDOUX opened public testimony.

[1:29:48 PM](#)

AMANDA METIVIER, Executive Director, Facing Foster Care in Alaska (FFCA), said she represents Facing Foster Care in Alaska (FFCA) and is a three year alumni of the foster care system who aged out of the system. She advised she supports HB 27, has a Bachelors and Master's degree in social work from UAA, and has been a foster parent for quite a while as well. Currently, almost 2500 children and youth are in foster care in Alaska, which is more than one percent of its child population and is growing in epidemic proportions. She expressed there are approximately 1400 foster homes so the foster children are in settings such as residential treatment facilities, homeless shelters, children's homes, and basically anywhere there is an open bed. She noted there are high rates of homelessness, incarceration, and early pregnancy for youth aging out of the foster care system. This legislation ensures that youth give their consent, or have a say prior to being released at age 21. She conveyed that most youth extending foster care until age 21, have not achieved a permanent family, with no ties back to their family, and need a little extra help.

1:31:33 PM

MS. METIVIER pointed out that most 18-year olds are still in high school, working toward graduation, and may not possess job skills. She reminded the committee that legislation was passed a few years ago allowing a youth to extend foster care until age 21, because they were not ready and needed a little extra help before moving into society. This portion of the bill is very important because she has actually seen youth released at age 17-19, with no high school diploma, no graduation, no housing, no job, and no job skills, who are literally released to the street on a regular basis. She expressed that the state holds these children in care for several years and doesn't prepare them, then dumps them out into society. In order to combat that issue this legislation offers foster children an opportunity to get ready and work within the Independent Living Program, thereby acquiring job skills, and preparing for issues necessary to complete in order to become successful adults, therefore, the cycle doesn't continue. She remarked that she has seen youth having children and coming back into the system. Ms. Metivier pointed to the important provision of promoting permanency, and there are federal timelines requiring that within 12-24 months moving toward adoption, legal guardianship, or reunification, as foster care is meant to be temporary. She submits that the state takes children away from their parents stating it can do a better job, which means the children need to be put into a permanent loving home. She said she currently works with youths who have been in care for 10-18 years, and that legislators should consider not only the foster care rate, but the cost of social workers and the court system. She expressed there is more the state could be doing to move foster children quickly out of the system. This legislation, she described, is supporting quick time lines to permanency by enforcing that the state take them in and move them to a family supporting them.

1:33:48 PM

MS. METIVIER referred to the educational provisions and advised she manages education and training voucher funds for foster youth at the UAA Child Welfare Academy, and specified she is not testifying for the Academy. She remarked that she completed her master's practicum at the Anchorage School District with the Homeless Project and testified that the Federal McKinney-Vento Homeless Assistance Act of 1987 reads that homeless children receive transportation services for families with children living in vehicles, in hotels. Assistance is provided for transportation so children can stay in their same school for the

remainder of the school year as they are bouncing around. She opined that that law also includes children awaiting foster care placement, or have experienced an emergency move in the last 24 hours. She related that for a child that has come into custody and is possibly an emergency 30 day placement with a foster home or in a shelter ...

CHAIR LEDOUX advised Ms. Metivier that testimony is limited to five minutes per person.

[1:35:06 PM](#)

MS. METIVIER responded that the legislation promotes educational stability and allows for youth transitioning out on their own to have the support of the Independent Living Program in the system.

CHAIR LEDOUX expressed that the bill is very well intended and she respects Representative Gara's passion with respect to the foster care system. Although, she noted, it appears to be a band-aid for a totally broken system. She related that people have come to her office who have been placed in 15-20 placements, and she does not know whether the legislation will correct that issue, or what will correct it. She offered a scenario of Ms. Metivier as the empress of the foster care system, what would she do.

[1:36:32 PM](#)

MS. METIVIER replied that she was one of the people speaking with her in her office. She admitted the legislation is a small fix in terms of the bigger picture of things the state could do, or should do. Ultimately, she pointed out, the department has very high turnover, while the state suffers from a budget deficit and other fiscal issues. In a dream world, she offered, OCS would have adequate staffing as many issues are tied back to worker turnover and workers not meeting the monthly requirement to visit children monthly. Also, she pointed out, in an ideal world, OCS could staff better trained social workers thereby allowing a more effective system, in that inexperienced, overworked case workers are the root of many problems.

[1:37:29 PM](#)

CHAIR LEDOUX asked her feeling about orphanages as opposed to foster care.

MS. METIVIER responded that most states have moved away ... Alaska has not moved toward what is called congregate care, or orphanages, or residential program type programs, or group homes. She opined that many states over the last 20 years have relied on that heavily and are actually moving away from that now. She expressed she is glad Alaska didn't move in that direction because ultimately youth do better when they have connections to a family, and a support system in place that isn't staff people, or social services, or an institution. She assessed that when youth have natural community support, foster children do better which comes with having a permanent family.

[1:38:19 PM](#)

CHAIR LEDOUX stated she understands Ms. Metivier's testimony in theory, yet in practice when speaking with someone moving so many times, she wonders whether a group home in which they stay in the same place might be better than the theoretically great foster family, which is sometimes greater in theory than in practice.

MS. METIVIER advised that a federal law recently passed "Preventing Sex Trafficking and Strengthening Families Act" 113th Congress (2013-2014), promoting permanency, but again if the state relied on orphanages it would still pay the foster care rate out-of-pocket every day for possibly 10-20 years until the child ages out versus moving them quickly out of the system. She suggested that if a child comes in at age 12, and are put into a permanent family, it could be 1-2 years in and out of the system quickly with the family caring for them versus the state.

[1:39:29 PM](#)

RACHEL BEDSWORTH, Anchorage Representative, Facing Foster Care in Alaska, said she is 18 years old, a senior and works at the Red Robin Restaurant part-time. She expressed that she has been in foster care for 12 years, had 45 foster home placements, and has been sent to different schools. She advised she has gone through five different social workers, and her current social worker maintains a heavy case load and Ms. Bedsworth barely sees her, or talks to her, or has any one-on-one time. She offered that her social worker is currently attempting to push her out of care and she is still in high school and "clearly" not ready to be on her own. She asked the committee to pass HB 27 so future foster care youth, like her, will not go to as many placements and find permanency with a family.

[1:40:44 PM](#)

CHAIR LEDOUX asked Ms. Bedsworth her opinion of the 45 homes she has been in rather than a permanent group home.

MS. BEDSWORTH replied that a group home would not be as beneficial as a foster home because within a foster home sometimes a connection is made even if the youth moves out. She advised she has been to a group home and sometimes an all-girls group home, and the youth do not talk to each other after leaving. The staff are only there because they are getting paid, not because they want to help the youth. She expressed that a foster home will actually have an at-home area where there can be one-on-one time with her, him, or the family, thereby receiving benefits as compared to a group home. She expressed she does not like the group home idea, "to be honest." Group homes are not beneficial to anyone, she opined.

[1:42:31 PM](#)

REPRESENTATIVE LYNN surmised that HB 27 is attempting to fix what is currently in place in that the state must make foster homes work as well as it can. He supports the discussion of exploring orphanages or large group homes, but in the meantime the legislature needs to fix the current system to the best of its ability. He stated he supports the bill.

[1:43:18 PM](#)

REPRESENTATIVE KELLER pointed to the section of the bill that puts into code that the department must make a reasonable effort to find permanent placement, and asked within her 45 placements whether she believes the department made reasonable efforts on her behalf for permanent placement.

MS. BEDSWORTH answered that when she was younger, ages 11-12 years of age, the department might have tried harder, but she doesn't remember because she has been moved in-state, out-of-state, and all over Anchorage. She admitted that sometimes it was her fault, but the majority of the time the foster family became overwhelmed with the foster care system. She opined that the department has not exactly made those reasonable efforts for her or with other youth she works with. Currently, she describes herself as "doing good" so the department doesn't help her with the things she needs which is the same with other youth her age as well.

REPRESENTATIVE KELLER expressed that he did not mean to imply she might be at fault. Declaring that the department does not take reasonable efforts to do its job, the committee needs to hear from the department and OCS, he remarked.

[1:45:17 PM](#)

REPRESENTATIVE CLAMAN questioned, of the 45 foster placements, whether she had homes lasting a couple of years.

MS. BEDSWORTH replied that she is currently living in a home of almost two years, which is her longest placement. She referred to this home as "independent living" because she is on her own as the woman just takes the paycheck foster care parents receive. Although, she pointed out, the woman pays her phone bill, but other than that she works for everything she has and the independent living program helps her. She advised the committee that the majority of her homes were weeks or months, and she had never been in a placement over one year, other than this one.

[1:46:50 PM](#)

REPRESENTATIVE CLAMAN noted that this placement sounds like it is going better.

MS. BEDSWORTH remarked it is because she is allowed to make her own choices. She highlighted that she grew up being independent as she took care of herself while her parents were doing their own thing. She described herself as more an independent person so this home is what she wanted, but not when she was younger. When she was younger, she recollected, she did not know what she wanted, but being age 18 and about to graduate high school, she wishes she had received permanency when she was younger because it would have been more helpful.

[1:47:40 PM](#)

REPRESENTATIVE CLAMAN asked whether her case workers had a manageable case load or did it feel like they always had more foster children to manage and supervise than they had time to work with.

MS. BEDSWORTH advised that case workers have always had more kids than they can work with. She said she is really close with her social worker ... or used to be, and because she has been doing so good and hasn't needed her, the case worker hasn't

checked in on her, although, she sent an email to her school to see how she was doing. She reiterated that the social worker is trying to push her out of care, and said the case worker did not indicate it was due to a high case load, but because Ms. Bedsworth is doing so well the case worker doesn't feel she needs to be in foster care any longer, "and I do." She pointed out that her prior four social workers always seemed overworked, and would only see her once a month at the end of the month when they are rushing everything. It was more "let's get these youths checked off and see how they're doing" so they could get back to their job.

[1:49:36 PM](#)

REPRESENTATIVE KELLER asked Ms. Bedsworth's future plans.

MS. BEDSWORTH stated that she is graduating May 13, 2014, and will then attend UAA. She will use her current funds to get into college and after that she does not have a plan.

[1:50:14 PM](#)

CHAIR LEDOUX questioned whether Ms. Bedsworth is currently in foster care, or an independent living home, or is in the independent living home part of ...

MS. BEDSWORTH interjected that independent living is her term because it is a foster home giving her independence, but she is currently a foster youth.

[1:50:40 PM](#)

ROBIN CHANEY said she is adopted, is the parent of three naturally born children and an adopted child, and is currently fostering a two year old. She stated that being from Southwest Alaska, has noted that many of the Native youth are disproportionally represented and in foster care. She pointed out that Alaska has the highest load of Child in need of Aid (CINA) cases, with highly over worked workers, and very few resource families. Currently, she remarked, there are seven licensed resource homes in the Bristol Bay Region and one is a group home for children with special emotional needs. Two of the six homes are at capacity without a permanent social worker, although a couple of itinerants have gone through to provide care for all of these villages. She indicated that her licensing worker contacted her requesting help in recruiting foster families in this region. The licensing worker advised

Ms. Chaney that they would have to find creative ideas because her budget for recruiting foster and resource families in the Bristol Bay Region was \$100. She explained that having been a foster parent in this region she finds it difficult for her, in good conscious, to recruit other families even though she finds it rewarding and she can protect and help these children, "but to be honest, working with OCS is so, so difficult." She opined that if it was just a matter of caring for children she would do it every single day, but unfortunately foster care comes with a whole legal and bureaucratic process that many families are unprepared to deal with.

[1:53:23 PM](#)

MS. CHANEY spoke to the portion of the bill encouraging tribal cooperation as often tribes are inadvertently or intentionally left out of this process even though they have equal legal status. She remarked that within Southwest Alaska, Native children and their families belong to tribes and need the protection of their tribes for permanency and to encourage family placement, which often times does not happen. She agrees that OCS is an agency in crisis as case workers have too many cases, are supremely over worked, and are unable to reach out. She stressed that the discussion is regarding children's lives, young people's lives, and involves the health of entire families and communities. She conveyed that her daughter's family was originally from the Bethel area, born in Anchorage, and her mother chose not to parent. Her premature daughter required extensive medical care and after 3-4 placements, was placed with a non-ICWA compliant family for two years who did not intend to adopt her. She indicated she should have had her daughter's placement at 18 months, but because her placement was changed between August and January, and her social worker changed five times during that period, their contact information was lost and she was not contacted. She reiterated that even though the legislation appears simple and does not fix the entire problem, it is very important there is continued effort to find permanency for these children. She expressed she strongly disagrees with the idea of orphanages although there may be a place for structured group homes for children with needs above and beyond an average foster family. She pointed out that being a Native from a rural community and watching generations of Alaska Natives still recovering from the historical trauma of orphanages, and also from forced removal from their families, she strongly opposes the idea of orphanages.

[1:56:24 PM](#)

SARAH ANDREWS said she deeply appreciates the ongoing advocacy and commitment to children in state custody demonstrated by Representative Gara. She opined that HB 27 is a step in the right direction in correcting many challenges inherent in the child protection system. She offered that she and her husband are currently licensed, ICWA compliant, rural Native foster parents providing an alcohol, drug-free, culturally enriched, healthy environment for children in state custody. They have great role models and playmates in their two children, ages 7 and 9. She offered that their daughter came to their family through a private adoption facilitated by Tribal Children's Service workers and they are still in contact with their daughter's birth family in a different region. She described herself as an early childhood educator with a Master's Degree in special education, and training in trauma and support for young children. She commented that her husband has worked with adults with disabilities for 20 years and is a skilled carver, wood worker, and subsistence provider. She further commented they are lifelong Alaskans with a large extended family in the Bristol Bay Region, South Central, and Southeast Alaska communities, are active in their church, volunteer at local schools, and participate in year round subsistence activities.

[1:57:54 PM](#)

MS. ANDREWS provided that they have offered foster care to three children over the last three years, and tried to adopt through OCS twice and in both cases were forced to decide not to proceed with the adoption. She explained this was not due to the circumstances or exceptional needs of the children, but entirely through the mismanagement of cases by OCS. She shared that at this time, they do not intend to renew their foster care license. She opined it is important for child advocates and decision makers to understand pressures put upon foster parents and why there is such a lack of foster parents in rural Alaska. They were initially contacted by OCS regarding a two-year old Alaska Native boy from their region who needed pre-adoptive placement. They were interested and completed the home study and other requirements laid out by the case worker, and advised the case worker they would be in Anchorage in approximately six weeks and would like to visit the child. Unfortunately, she related, they heard nothing for over one month even though she sent email reminders regarding their travel itinerary and still received no response. Even the Tribal Children's Service worker was unable to receive a response from the OCS office so they traveled to Anchorage and visited with their family for two

weeks. On the day they were to return home she received a call from the case worker saying she wanted to set up a meeting to finalize the child's pre-adoptive placement with her and then they could take him home, she said. At that time she advised the case worker that she had not even met the child and it wouldn't be fair to him or her family to handle the transition in such an abrupt manner. The case worker stated this is the only option as the current foster placement was no longer available.

1:59:18 PM

MS. ANDREWS advised the committee that she told the case worker they were ready to meet the child but were not prepared to take him home with them immediately. The case worker then stated that if they didn't take him home she would have to look for a different pre-adoptive placement. Ms. Andrews and her husband agreed this would not work for their family given they had two small children who had not had a chance to meet this child. She stated they felt very guilty and disappointed that they had to say no, but were not willing to put their family in crisis mode because a case worker had not adequately planned for the transition. Subsequently, she commented, they provided temporary foster care for two children whose parents were in residential treatment for three months. Somehow their phone number was given to both parents as well as extended family members thereby receiving angry phone calls. She said she referred them to the case worker and asked the family to set up visitation through OCS, but they continued to call and harass them with complaints and angry voice message rants. At one point, she had to inform the case worker they felt threatened by the increasingly aggressive tone of the communications from family members. The case worker's response was that she shouldn't have given them their phone number and advised the case worker she was not the person sharing that information. The case worker said she would tell them to please back off, but they continued to call whenever they felt like it until the children were returned to their custody, she expressed. Their last fostering relationship was with a baby placed with them when he was two months old from their region and, she related, he identified as an extended family member. The baby lived with them for 22 months, and he just transitioned from their home to approved adoptive placement after hunting two years. During his time with them, he had five OCS case managers and only one actually saw him, or his birth parents, or his family, she emphasized.

2:00:50 PM

MS. ANDREWS related that the majority of communications from the OCS office were completely reactive and created multiple crisis for her family. These events were due to a lack of information and support from OCS as she was regularly left out of communications regarding visits, court hearings, and case reviews. She said her requests for basic forms and child care assistance were ignored until the last minute, and while she provided regular updates on his health and developmental status she received very little response and the only time she understood ...

2:01:29 PM

CHAIR LEDOUX asked Ms. Andrews to begin wrapping up. Chair LeDoux acknowledged that her testimony is very disconcerting and that she is listening. Unfortunately, Ms. Andrews must wrap it up for purposes of this hearing, but she can call her anytime or any of the committee members, and also forward written testimony, she extended.

MS. ANDREWS expressed that when they decided not to adopt the last case, they were confronted by the social worker, "who was furious with us and she blamed us and said that if we had set up clear boundaries with the birth mother that there would have been no challenges in the adoption process." She related that her biggest concern is that foster families are set up to become adversaries with OCS workers and that it is undermining the foster care system in urban and rural areas. She offered she has ideas about specific support that would work for rural areas. She reiterated they have tried to adopt and currently do not plan to pursue adoption through the OCS system.

CHAIR LEDOUX expressed that she found her testimony to be very disconcerting and asked whether this bill addresses any of her concerns.

MS. ANDREWS replied that the bill will "absolutely" help as the fact that case workers are so overworked affects the quality and quantity of communications. She commented that probably 75 percent of the crisis and stress of being a foster parent is not knowing what is going on with the case plan and legal status of a child, especially if hoping to adopt. She reiterated that the bill addresses that issue and also addresses the need to support and recruit more foster parents. She described the bill as an incremental step to a system that needs many fixes and support.

[2:04:45 PM](#)

NAOMI HARRIS, Community Relations Manager, Office of Children's Services, Department of Health & Social Services (OCS), [Available to testify and answer questions.]

[2:05:10 PM](#)

KATIE LYBRAND, Assistant Attorney General, Child Protection Section, Department of Law, [Available to testify and answer questions.]

[2:05:19 PM](#)

CHAIR LEDOUX asked Naomi Harris and Katie Lybrand whether they have comments regarding the bill or regarding testimony previously presented.

[2:05:25 PM](#)

MS. HARRIS related that the testimony has "honestly" been very moving. She stated it is a sad reality of the current system wherein there are an unprecedented number of children in care and OCS being low staffed with many frontline social workers new to OCS. In the instance of a new inexperienced case worker immediately becoming overworked makes it difficult to stay long which results in a high turnover rate as well. She described the agency as being overstressed and overworked, and that it is hard work for everyone, the children, families OCS is working with to reunify, the foster families and recruitment efforts. She opined that this bill will codify many of the efforts of OCS, provide oversight to young workers, and be beneficial in aligning many internal practices, federal mandates, and prioritize and highlight more efforts for the children in care.

[2:06:43 PM](#)

CHAIR LEDOUX surmised that the department supports HB 27.

MS. HARRIS responded that while the department is neutral on this bill, it has been working with the sponsor and can easily implement many of the provisions.

[2:07:09 PM](#)

REPRESENTATIVE KELLER asked whether the bill in its current form, other than training, will cause the department to do anything differently.

MS. HARRIS answered in the affirmative, and remarked that there are many points in providing oversight for the young workers and will highlight efforts that will benefit children in care. Especially, she pointed out, with children getting older and still in care as it will allow workers to continue working with the youth, and should the youth decide to leave the system the youth will sign a consent to be released from care, which is important. The bill also includes identifying dormitories as a placement option which will enable OCS to support children as they enter into higher education.

[2:08:28 PM](#)

REPRESENTATIVE KELLER indicated that it begs the question of how, being overworked, this bill could have a zero fiscal note if it causes OCS to do things differently.

[2:08:41 PM](#)

MS. HARRIS replied that the zero fiscal note is due to current funding, and commented that the bill allows increased oversight by the court thereby giving increased structure to the existing work OCS performs.

[2:09:10 PM](#)

REPRESENTATIVE KELLER referred to the requirement to change court rules in telling the court to make a finding as to whether reasonable efforts were undertaken [to find permanency]. He questioned whether it is the potential of new findings the courts will make, or are there findings now that do this without using the term reasonable. He said he was trying to understand why that section is in the bill.

MS. LYNBRAND asked whether Representative Keller was asking about the new requirement of the court to rule whether or not OCS made reasonable efforts to find a permanent placement for the child.

REPRESENTATIVE KELLER referred to [Sec. 4, AS 47.10.080(D)(6)], page 6, lines 24-28, which read:

(6) if the court finds, under (4)(C)(ii) of this subsection, that the department is not making all reasonable efforts to find a permanent placement for the child, the court shall order the department to make all reasonable efforts to find a permanent placement for the child unless the current placement is in the best interests of the child.

REPRESENTATIVE KELLER then referred to [Sec. 13], page 9, lines 17-21, which read:

INDIRECT COURT RULE AMENDMENTS. AS 47.10.080(1), as amended by sec. 4 of this Act, has the effect of amending Rule 17.2, Alaska Child in Need of Aid Rules of Procedure, relating to permanency hearings, by adding a requirement for the court to make findings relating to the permanent placement of a child in need of aid and to the efforts of the Department of Health and Social Services to find a permanent placement for a child.

REPRESENTATIVE KELLER indicated that they go together.

[2:10:27 PM](#)

MS. LYBRAND responded that Representative Keller is correct in that there is an additional finding the court would be required to make at permanency hearings. She stated she believes the indirect court rule amendment is speaking to adding that new finding to the existing court rule for permanency hearings.

[2:10:46 PM](#)

MS. HARRIS, in response to Representative LeDoux, advised she is the Community Relations Manager and the Legislative Contact for the division.

CHAIR LEDOUX questioned whether she meant oversight with the department.

MS. HARRIS responded that it is the court's oversight for young workers to prove OCS has made reasonable efforts for placement thereby adding a layer of accountability.

[2:11:32 PM](#)

CHAIR LEDOUX asked why the department is saying it needs the court to mandate OCS to make reasonable efforts. She further asked why reasonable efforts are not being made right now without the court mandating. Isn't that something OCS would do naturally without the legislature demanding the court's oversight that OCS make reasonable efforts, she inquired.

MS. HARRIS pointed out that responding to state and federal mandates is very complicated, and with many young or new workers to OCS the turnover rate is very high. In that regard, it is adding that extra level of accountability to a practice currently in place.

[2:13:03 PM](#)

REPRESENTATIVE KELLER offered that Chair LeDoux's line of questioning leaves him stunned as he has never heard someone from the administrative branch ask for more guidelines and restrictions. He advised his previous interactions with social workers and OCS is that they are caring social workers with real problems out there "so get off our backs so we can get the work done," and yet Ms. Harris is asking for oversight.

[2:13:50 PM](#)

MS. HARRIS opined that it is indicative of the imbalance of the system in that currently there are more children in care than ever before and add to that the issue of many case worker vacancies due to high turnover. She related that when a plate is so full sometimes things fall off and this is a manner in which to ensure nothing falls off.

[2:14:30 PM](#)

REPRESENTATIVE CLAMAN remarked that this bill is a good step as this is a challenging system, "Don't let the perfect be the enemy of the good." He asked what meaningful options are there to improve the caseloads and longevity, short of increasing money to hire more workers.

MS. HARRIS replied that off the top of her head, the answer is that due to OCS burdens of workers and support staff, as Representative Claman heard through testimony, the youth are visited at the end of the month to get the monthly visits in. In reality, she pointed out, that worker is visiting as many kids as quickly as possible, but the documentation and follow up pieces the workers have to adhere to after [visiting] are just

as important so that there is oversight at every level. She opined that unfortunately during these budget cutting times it comes back to requiring more staff in critical areas where there are the most vulnerable populations needing care.

[2:16:52 PM](#)

REPRESENTATIVE CLAMAN highlighted that the number of [foster care placement] turnovers are worrisome as it does reflect people taking on kids for short periods of time, but reflects a pattern of the placements not working out at a high frequency.

MS. HARRIS advised that this bill supports current recruitment efforts in that there has been a shortage of foster homes. She surmised that this bill supports prioritizing a child remaining in their school where they have their peer supports. Within this bill are many pieces and multiple levels to provide safe stability for a child, she stated.

CHAIR LEDOUX closed public testimony after ascertaining that no one further cared to testify.

[2:19:19 PM](#)

CHAIR LEDOUX asked Representative Gara what section requires work.

REPRESENTATIVE GARA responded there was a section, not discussed in this meeting, "there are sometimes where a foster youth ... or youth does not go into foster care, but in the investigation ... or a Native family." He pointed out that 60 percent of all Alaska foster youth are Alaska Natives, which is 90 percent disproportionate of the population. He offered that sometimes OCS determines that someone is not a good foster parent in the Native community, but no information is shared with the Native entity to enable them to make a decision as to whether it was a reasonable decision or whether there is something they could do to make that home a good home. It is in the child's best interests to keep the child in the community. He stated he can't find language on how to do that legally at this point and advised that Ms. Lybrand is working with some of the tribal groups, but has not been able to find language at this point.

REPRESENTATIVE GARA, in response to Chair LeDoux, advised that the language is not currently in the bill.

CHAIR LEDOUX noted that the bill could go through both bodies and pass and five years from now figure out the language and introduce a new bill.

REPRESENTATIVE GARA referred to the Native entity sharing portion and stated he does believe they will be able to figure it out, but probably not in the next week.

REPRESENTATIVE GARA responded to Chair LeDoux that the language is not currently in the bill.

[2:21:31 PM](#)

REPRESENTATIVE GARA stated he is in a conundrum as he could ask for 3 million and OCS could help fix the foster care system, but legislators are under a charge to provide legislation with a low or zero fiscal note. Therefore, his responsibility is to improve as many lives as possible at no cost, and HB 27 will improve a number of lives and keep a number of youth from becoming homeless, and also help ensure more youth find a permanent and loving home. A discussion in the committee was very salient in that many of the youth are bouncing between foster homes and that is a main issue HB 27 fixes. He reiterated that most social workers try their best, are given extensive caseloads, and go home very emotional at the end of the day. This bill addresses a youth bouncing between homes because social workers do not have the time to do what the law requires. He pointed out that federal law requires putting a child into a permanent loving home within 12-24 months, and in that regard the child is not in foster care, the state is not paying \$60 per day to take care of the child, and OCS does not require additional social workers. He referred to the bill and stated sometimes inexperienced, overburdened social workers are not able to do their job to ascertain reasonable efforts have been taken to find a permanent home. He offered that in that case, the legislature does want the court to ask whether the case workers have made reasonable efforts and if the court finds they have not, the court orders them to "go out there and do it." He suggested that possibly supervisors should be more involved, but the answer cannot be that reasonable efforts were not made to find a reasonable home, and it is okay. He pointed out that OCS encourages the court's overview because it does not have enough supervisors to determine whether a case worker is performing as required. He explained that this is one extra question the court will ask at a normal status hearings.

[2:25:17 PM](#)

REPRESENTATIVE GRUENBERG asked Representative Gara whether he can live with the language in its current form.

REPRESENTATIVE GARA replied "I can absolutely live with the bill the way it is."

[2:25:31 PM](#)

REPRESENTATIVE LYNN moved to report CS for Sponsor Substitute HB27, labeled 29-LS0176\I, out of committee with individual recommendations and the forthcoming fiscal note. There being no objection, CSSSHB 27(JUD) moved from the House Judiciary Standing Committee.

[2:26:26 PM](#)

The committee took an at-ease from 2:26 to 28:59 p.m.

HB 7-HOMICIDE OPERATING VEHICLE, PLANE, BOAT

[2:28:59 PM](#)

CHAIR LEDOUX announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7, "An Act relating to murder in the second degree and manslaughter."

[2:29:11 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, pointed out that, especially in South Central Alaska, there has been a rash of vehicle versus pedestrian, and vehicle versus biker, deaths. He referred to an email from the Department of Transportation indicating that in 2010-2014, there were 29 pedestrian fatalities, and 5 cyclist fatalities in Anchorage alone. The combination during that window of pedestrian and cyclists deaths constitutes almost 23 percent of all traffic fatalities in Alaska, he explained. This is a serious problem for vulnerable pedestrians and cyclists as it is an appealing mode of transportation, and cities are now designed to facilitate that type of transportation for the well-being of everyone. He specified that this bill does not require all drivers to be perfect in that there are bad pedestrians, and bad cyclists who injure themselves or contribute to their own injuries by their negligence. Currently, he related, Alaska is one of 3 states out of 50 without vehicle homicide statutes, even though under existing provisions under AS 11.41.110 and AS

11.41.120, the state often successfully charge murder in the second degree and manslaughter. He suggested Alaska implement a statute plainly calling these crimes, should they become culpable enough to be prima facie crimes, what they are which is types of vehicular homicide. He posited that juries are entitled to use its intuitive sense and say, "you are having to describe that this vehicle is a dangerous instrument, under probably 11.81.900, and they get there ... I think they get there ... we'll hear from the state whether sometimes they can't make that leap because they are looking for a knife or a gun." He opined that without shifting any particular burdens in these trials, the state is allowed to have a vehicular homicide law more plainly intuitive.

[2:34:25 PM](#)

REPRESENTATIVE JOSEPHSON advised that he is aware that a factor of the equation is good urban design and city planning. Arguably, he stated, currently there are 21 types of murder in the second degree in that while there are five subsections, there are subsections and clauses within those. He advised this bill adds the crime of murder in the second degree if a person caused the death of another person while operating a motor vehicle, watercraft, or aircraft, under circumstances manifesting in extreme indifference to the value of human life. He explained that while online, he observed 124 cases discussing extreme indifference, although he could not find extreme indifference in the statute he is positive there are jury instructions in every superior court defining extreme indifference as it is a very high standard and threshold. He emphasize that the intent of the bill is not to just target drunk drivers, but bad drivers such as operating a cell phone.

[2:35:33 PM](#)

CHAIR LEDOUX asked the difference in targeting bad drivers and people who have been negligent, who have done something stupid. Something stupid is not necessarily extreme indifference to human life, she argued.

REPRESENTATIVE JOSEPHSON agreed with Chair LeDoux, and referred to Sec. 2, amending manslaughter which says "if a jury can show that someone recklessly caused the death of another person while operating a motor vehicle, watercraft, or aircraft, that that would be a prima facie ... well, the jury would have convicted them if they'd made that finding, but law enforcement would have to find a prima facie case that someone reached the definition

of recklessness in order to even bring the case and bring an indictment."

[2:36:47 PM](#)

REPRESENTATIVE KELLER assumed Representative Josephson was referring to 124 cases wherein that terminology was used by the prosecuting attorney. He asked whether extreme indifference is a term currently in Alaska Statute, including the instructions Representative Josephson implies exist as he would like to review the examples. He offered that he has never seen that terminology in the murder statute.

REPRESENTATIVE JOSEPHSON offered that the term comes from the Model Penal Code under Neitzel v. State, 655 P.2d 325 (Alaska Ct. App. 1982). He explained this is a tentative draft, but Representative Keller may get a taste of it. He related, "A person with the crime of murder if he recklessly causes the death of another person under circumstances manifesting in extreme indifference in the value of human life." He offered another test applied in the law ...

REPRESENTATIVE KELLER interjected that he was speaking to Alaska statutes and not case law as this is entering new terminology in Alaska statute. He opined that the legislature does not want to do that lightly because it does not want to follow case law arguments.

REPRESENTATIVE JOSEPHSON related that extreme indifference is currently in statute and not necessarily in murder in the second degree or manslaughter. He explained there is a four-pronged test applied regarding social utility, magnitude of risk, actor's knowledge of risk, and precaution the actor takes to minimize the risk. He reiterated it is a high threshold and he is not trying to put people in prison.

[2:39:48 PM](#)

REPRESENTATIVE GRUENBERG referred to [Section 1, AS 11.41.110(a)(2)], page 1, lines 8-10, which read:

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life.

REPRESENTATIVE GRUENBERG pointed to the term in that statute. He then referred to [Section 1, AS 11.41.110(a)(6)], page 2, [lines 18-20], which read:

(6) the person caused the death of another person while operating a motor vehicle, watercraft, or aircraft under circumstances manifesting in extreme indifference to the value of human life.

REPRESENTATIVE GRUENBERG opined that the above new subsection is virtually identical to Section 2, of the current bill. He said the only technical language difference is that Section 2, talks about knowingly engaging in conduct that results in the death, and the language on page 2, line 18, says "causes the death." He opined that the word "cause" is identical in effect to the current language and asked whether it is the sponsor's intent that the word "cause" is any different than the current language.

REPRESENTATIVE JOSEPHSON responded he is confident that under the default statute where there is an absence of culpable militate as to conduct in subsection (6) the culpable militate would be knowing as in subsection (2), and as to circumstance it would be reckless. He highlighted that it is common to have different theories of one case in that the prosecutor looks at the bad act and may charge it in different manners. As the facts flesh themselves out in approaching trial, settle on the most reasonable, or the best as the one for which the evidence is most supportive, he submitted. While he agree that subsection (6) could be subsumed by subsection (2), he continues to assert the fact that Alaska does not have the vehicular homicide statute is unnecessary as a matter of policy, he posited, he said. It creates more burden for the prosecution that is unnecessary and not intuitive to the jury, he contended.

[2:42:54 PM](#)

REPRESENTATIVE CLAMAN pointed to the premise that Alaska lacks a vehicular homicide statute and advised it troubles him because he has defended vehicular homicide crimes that were charged as manslaughter or murder in the second degree depending upon the circumstances. Often the debate is whether it is manslaughter or negligent homicide and the jury is involved in the topic about mental state, circumstance, the whole range of circumstances, and when starting with the premise that Alaska lacks a vehicular homicide statute, he does not see that. He contends that when the Model Penal Code was adopted in large

part and rewrote the Alaska Criminal Code in 1980, there was an intentional effort to place crimes involving the typical vehicular homicide crime as manslaughter, and it would only be exceptional vehicular homicide case that would become second degree murder.

REPRESENTATIVE JOSEPHSON advised that last week the 9th Circuit Court of Appeals in the case Gibson v. Johnson, No. 13-35087, D.C. No. 3:11-cv-00432-AC, reached the correct conclusion and had to wrestle with the topic of "when is a vehicle a dangerous instrument." This is something that as a matter of policy and should be dispensed with, he opined.

[2:45:39 PM](#)

REPRESENTATIVE CLAMAN asked that Representative Josephson cite one case in which the Court of Appeals got it wrong.

REPRESENTATIVE JOSEPHSON answered that is a lifeline question.

REPRESENTATIVE CLAMAN surmised that he could not cite a case in which the Court of Appeals got it wrong, and offered he is familiar with a number of cases and his memory is that it pretty much got it right every time.

REPRESENTATIVE JOSEPHSON directed the committee to the packet and noted there is a comment in a newspaper article from Ms. McDaniel, a long time criminal attorney, highlights the fact that due to a cultural predisposition, the state does not sanction drunk driving homicide the way it sanctions other types of homicide.

[2:46:46 PM](#)

REPRESENTATIVE GRUENBERG asked whether another way of approaching the problem is to include in the definition somewhere that this conduct may include vehicular conduct, without creating a new crime.

REPRESENTATIVE JOSEPHSON responded that is not the approach he and the drafters took, but understands what Representative Gruenberg is saying.

REPRESENTATIVE GRUENBERG reiterated to include in a definition, and make it clear to one and the world that this conduct does include, but is not limited to, vehicular conduct.

REPRESENTATIVE JOSEPHSON answered that Representative Gruenberg's suggestion is an option, and remarked there has to be a legislative role in this as Alaska is suffering from a rash of these problems. He has confidence that law enforcement can separate the egregious and criminally culpable from the others, he offered.

[2:48:15 PM](#)

CHAIR LEDOUX said she identifies with Representative Claman in that there are all sorts of vehicular homicide and manslaughter crimes involving vehicles and wondered whether this is a solution looking for a problem that may not exist.

[2:48:52 PM](#)

REPRESENTATIVE GRUENBERG deduced that the problem could be solved as a definition.

CHAIR LEDOUX stated, "Assuming there actually is a problem."

CHAIR LEDOUX opened public testimony.

[2:49:51 PM](#)

KARLA HART said she participates in bicycle tours and does not often ride in Juneau because it does not feel safe. She said she traveled to the Netherlands to investigate the bicycle culture and infrastructure and found that the signs, trails, and everything were great. She then realized the people on the road were actively looking out for her safety in their cars because Netherlands law reads that when a car hits a pedestrian or a bicyclist the car is at fault. She advised the culture of the Netherlands works to train people so that there are far fewer injuries because they actively do not hit people. She opined that Alaska law reads "if you want to kill somebody in Alaska hit them with a car and say it was their fault." She remarked there is model legislation from the League of American Bicyclists addressing more that could be added on to this bill, or supplemented, which is a deterrence. Currently, the people charged with a felony under HB 7, will not be deterred by the existence of this bill, she expressed, as the language with the model legislation says, "a person who operates a motor vehicle in a careless or distracted manner and causes serious physical injury or death to a vulnerable roadway user shall be guilty of infliction of serious physical injury or death to a vulnerable roadway user. And that person will be issued a citation under

this section and required to attend a hearing before a court of appropriate jurisdiction." She pointed out that the choice was specifically to require a court appearance and not just pay a ticket and get away from it. Further, she commented, it has a person having been committed under this statute required to have driving privileges suspended for six months. She reiterated that when a person is careless and causes a serious injury or death to a bicyclist they lose their license for six months which is a deterrence to more people to get to the safety of bicyclists than just going after the most egregious. She pointed out that there are many people in the bicycle community as well as other vulnerable roadway users, including highway flaggers, people on the highway fixing flat tires, kids on skateboards, scooters, and many different users.

[2:54:16 PM](#)

REPRESENTATIVE GRUENBERG offered that the bill has a lot of merit.

[2:54:39 PM](#)

REPRESENTATIVE CLAMAN emphasized that his questions on this bill do not reflect his dedication to making it safer for bicyclists. He has substantial questions because he is not sure there is a problem and that the homicide statutes should be amended, he reiterated, and expressed his concern in getting drivers to more seriously take their duty to protect pedestrians and bicyclists because those without a car around them are vulnerable.

CHAIR LEDOUX commented she identifies with Representative Claman on this issue having just bought a bicycle.

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

CHAIR LEDOUX asked Richard Svobodny whether this bill is necessary.

[2:56:47 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law, said "the sky is not going to fall in ... fall down if this bill doesn't pass." He advised that prior to Representative Josephson introducing HB 7, the Anchorage District Attorney, and Anchorage Deputy District Attorney, both having practiced in other jurisdictions, suggested there be a

vehicular homicide statute for two reasons. He pointed out that one reason is that prosecutors want to be consistent in the manner they charge as someone should not be charged differently in Palmer with the same facts as in Kenai. Prosecutors should be consistent with the conduct and mental states the same. This bill puts prosecutors closer to consistency because there are specific sections of both homicide and manslaughter that a prosecutor would look to in order to make a determination as to, how do these facts fit this law and, hopefully, the law would be more consistent, he explained. He offered that the other issue is that when someone is charged with the crime of manslaughter, or murder, it is difficult for the jury to get their minds around ... the discussion is regarding killing people. Under these circumstances that is a gross deviation for standard of conduct that a reasonable person would use, or in extreme indifference to the value of human life - the two different standards for manslaughter and criminally negligent homicide, he further explained. When discussing people using a car in a grossly inappropriate manner resulting in death, grossly inappropriate manner is the difference in present statutes of committing negligent homicide and manslaughter. He advised this bill takes out, from those two standards the jury's consideration that the conduct is driving an automobile. Under Gibson, the exact issue for the 9th Circuit Court of Appeals decision, "is a motor vehicle a dangerous instrument" and the court concluded it was. With regard to Representative Claman's question, "they always get it right," as they are the Court of Appeals.

[3:00:41 PM](#)

CHAIR LEDOUX asked whether there has been any court in the country or universe that has ever concluded that a car is not a dangerous instrument.

MR. SVOBODNY advised he does not have the answer to that question as it is all fact determined.

CHAIR LEDOUX asked whether he could imagine a court, where someone had been injured with a car, not concluding that a car was a dangerous instrument. She further asked whether there is really that much to grapple with.

MR. SVOBODNY pointed out that Chair LeDoux set the parameters in that someone has been hit with a car. He commented that when previously asked he was thinking ... so a person is in the car, lets the engine run, they die from carbon monoxide ... he does

not know the answer. The jury may review a dangerous instrument as a gun, a knife, and ask whether a car is a dangerous instrument. He advised those were the reasons the front line prosecutors said they need to follow 47 other states and implement a vehicular homicide statute.

[3:02:17 PM](#)

REPRESENTATIVE CLAMAN asked whether Mr. Svobodny is familiar with any Alaska cases, 9th Circuit Court of Appeals, or Alaska Supreme Court cases in which vehicular homicide was the issue wherein the court concluded the vehicle was not a dangerous instrument. He further asked whether the courts have consistently found when challenged that it is a dangerous instrument for purposes of either negligent homicide, manslaughter, or second degree murder.

MR. SVOBODNY replied that last week the court said, in a robbery case, that the car was a dangerous instrument and the two-three cases the court cited in that case were vehicular homicide cases that decided a vehicle is a dangerous instrument.

CHAIR LEDOUX advised HB 7 is held over.

[3:03:50 PM](#)

REPRESENTATIVE GRUENBERG questioned whether the language could specify in subsection (2), page 1, line 8, that the conduct includes operating a motor vehicle, and the same on page 2, line 23, it could read "under circumstances including the operating of these vehicles." He pointed out, thereby indicating the legislature's intent to make it clear that under these two statutes, it includes the operation of the vehicle.

[3:04:36 PM](#)

MR. SVOBODNY replied that he is not the sponsor and was not certain it met the sponsor's goal. He suggested putting it in Section 1, page 1, line 8, "the person knowingly engages in conduct including the operation of a motor vehicle."

[HB 7 was held over.]

[3:05:18 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.