ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 9, 2016
2:18 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 205
"An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court- ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."
"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and

orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 214

- MOVED HB 214 OUT OF COMMITTEE

HOUSE BILL NO. 286
"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; amending Rule 5(a)(4), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 334
"An Act relating to visitation and child custody."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 205
SHORT TITLE: CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID
SPONSOR(s): REPRESENTATIVE(s) MILLETT

04/17/15	(H)	READ THE FIRST TIME - REFERRALS
04/17/15	(H)	JUD, FIN
03/11/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/11/16	(H)	-- MEETING CANCELED --
03/12/16	(H)	JUD AT 2:00 PM GRUENBERG 120
03/12/16	(H)	-- MEETING CANCELED --
03/14/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/14/16	(H)	Heard & Held

03/14/16	(H)	MINUTE (JUD)
03/16/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/16/16	(H)	Heard & Held
03/16/16	(H)	MINUTE (JUD)
03/18/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/18/16	(H)	Heard & Held
03/18/16	(H)	MINUTE (JUD)
03/21/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE (JUD)
03/21/16	(H)	JUD AT 5:00 PM GRUENBERG 120
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE (JUD)
03/22/16	(H)	JUD AT 5:00 PM GRUENBERG 120
03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE (JUD)
03/23/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/23/16	(H)	-- MEETING CANCELED --
03/23/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/23/16	(H)	-- Continued from 3/22/16 --
03/28/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/28/16	(H)	Heard & Held
03/28/16	(H)	MINUTE (JUD)
03/30/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE (JUD)
03/31/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/31/16	(H)	-- Will be continued from 3/30/16 --
04/04/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/04/16	(H)	Scheduled but Not Heard
04/04/16	(H)	JUD AT 5:30 PM GRUENBERG 120
04/04/16	(H)	-- MEETING CANCELED --
04/05/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/05/16	(H)	Scheduled but Not Heard
04/05/16	(H)	JUD AT 5:00 PM GRUENBERG 120
04/05/16	(H)	-- MEETING CANCELED --
04/06/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/06/16	(H)	Heard & Held
04/06/16	(H)	MINUTE (JUD)
04/07/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/07/16	(H)	Heard & Held
04/07/16	(H)	MINUTE (JUD)
04/08/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/08/16	(H)	Heard & Held
04/08/16	(H)	MINUTE (JUD)
04/09/16	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 214
SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION
SPONSOR(s): REPRESENTATIVE(s) OLSON

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	L&C, JUD
03/14/16	(H)	L&C AT 3:15 PM BARNES 124
03/14/16	(H)	Heard & Held
03/14/16	(H)	MINUTE (L&C)
03/18/16	(H)	L&C AT 3:15 PM BARNES 124
03/18/16	(H)	Scheduled but Not Heard
03/28/16	(H)	L&C AT 3:15 PM BARNES 124
03/28/16	(H)	Scheduled but Not Heard
03/30/16	(H)	L&C AT 3:15 PM BARNES 124
03/30/16	(H)	Moved CSHB 214(L&C) Out of Committee
03/30/16	(H)	MINUTE (L&C)
03/31/16	(H)	L&C RPT CS (L&C) NT 3DP 4NR
03/31/16	(H)	DP: COLVER, KITO, OLSON
03/31/16	(H)	NR: JOSEPHSON, HUGHES, LEDOUX, TILTON
04/01/16	(H)	FIN REFERRAL ADDED AFTER JUD
04/09/16	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 286
SHORT TITLE: FISH & GAME: OFFENSES; LICENSES; PENALTIES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/29/16	(H)	READ THE FIRST TIME - REFERRALS
01/29/16	(H)	RES, JUD
03/21/16	(H)	RES AT 1:00 PM BARNES 124
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE (RES)
03/30/16	(H)	RES AT 1:00 PM BARNES 124
03/30/16	(H)	Scheduled but Not Heard
03/31/16	(H)	RES AT 1:00 PM BARNES 124
03/31/16	(H)	Moved CSHB 286(RES) Out of Committee
03/31/16	(H)	MINUTE (RES)
04/01/16	(H)	RES RPT CS (RES) NT 5DP 3NR
04/01/16	(H)	DP: SEATON, JOHNSON, HERRON, TALERICO, NAGEAK
04/01/16	(H)	NR: TARR, JOSEPHSON, CHENAULT
04/09/16	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 334
SHORT TITLE: CHILD CUSTODY; DOM. VIOLENCE; CHILD ABUSE
SPONSOR(s): MUNOZ

02/22/16	(H)	READ THE FIRST TIME - REFERRALS
02/22/16	(H)	HSS, JUD
03/22/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE (HSS)
03/24/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/24/16	(H)	<Bill Hearing Rescheduled to 3/29/16>
03/29/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/29/16	(H)	Heard & Held
03/29/16	(H)	MINUTE (HSS)
04/05/16	(H)	HSS AT 3:00 PM CAPITOL 106
04/05/16	(H)	Heard & Held
04/05/16	(H)	MINUTE (HSS)
04/06/16	(H)	HSS AT 3:30 PM CAPITOL 106
04/06/16	(H)	-- Continued from 4/5/16 Meeting --
04/07/16	(H)	HSS RPT CS (HSS) 2DP 5NR
04/07/16	(H)	DP: STUTES, VAZQUEZ
04/07/16	(H)	NR: TARR, TALERICO, FOSTER, WOOL, SEATON
04/09/16	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

LAURA STIDOLPH, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 214 on behalf of Representative Olson, prime sponsor.

KEVIN BROOKS, Deputy Commissioner
Department of Fish & Game
Juneau, Alaska
POSITION STATEMENT: Presented HB 286 on behalf of the House Rules Committee, by request of Governor Bill Walker.

BERNARD CHASTAIN, Major/Deputy Director
Division of Alaska Wildlife Troopers
Department of Public Safety
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 286 offered a sectional analysis.

AARON PETERSON, Assistant Attorney General
Office of Special Prosecutions
Criminal Division
Department of Law

Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 286 answered questions.

STEVEN SAMUELSON
Petersburg, Alaska
POSITION STATEMENT: During the hearing of HB 286 offered concern.

CRYSTAL KOENEMAN, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 334 of behalf of Representative Munoz, prime sponsor.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 334 answered questions.

KIRSTEN SWANSON, Attorney
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered testimony and answered questions.

DEBORAH HOLBROOK, Attorney
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered support and answered questions.

ANDY HARRINGTON, Attorney
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered concern.

CHRISTINE PATE, Legal Program Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Sitka, Alaska
POSITION STATEMENT: During the hearing of HB 334 testified in opposition.

BRENDA STANFILL, Executive Director
Interior Alaska Center for Non-Violent Living

Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered concern.

CORRINE VORENKAMP, Lead Staff Attorney
Alaska Center for Non-Violent Living
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered concern.

ALLEN BAILEY
Law Offices of Allen Baily
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 334 offered concern.

ALLEN LEVY, Physiological Associate
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 334 spoke in opposition.

FRED TRIEM, Attorney
Petersburg, Alaska
POSITION STATEMENT: During the hearing of HB 334 discussed versions of the bill.

STEVEN SAMUELSON
Southeast Alaska
POSITION STATEMENT: During the hearing of HB 334 offered testimony.

CARMEN LOWRY, Executive Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 334 spoke in opposition.

ACTION NARRATIVE

2:18:48 PM

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 2:18 p.m. Representatives Claman, Kreiss-Tomkins, Foster, Keller, Lynn, and LeDoux were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HB 205-CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID

2:19:34 PM

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 205, "An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court- ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."

[Before the House Judiciary Standing Committee was CSHB 205, labeled 29-LS0896\H, adopted 3/14/16.]

2:19:41 PM

CHAIR LEDOUX referred to withdrawn Amendment 30 [withdrawn 4/8/16], and advised that based upon conversations with the sponsor, Representative Millett may re-introduce the amendment. Chair LeDoux expressed that she does not agree with Amendment 30, which addresses both first and second degree murder. In the event Amendment 30 does not prevail, the committee will move to Amendment 31 which deals solely with first degree murder.

[Representative Millett walked in the door.]

2:20:36 PM

REPRESENTATIVE MILLETT advised the [other body] adopted Amendment 30 with a five year addition as opposed to the 10 year addition. She then offered to present a conceptual amendment to adjust it to a five year addition, and she would work on it while Chair LeDoux presents Amendment 31.

CHAIR LEDOUX advised she would not move to Amendment 31 until Amendment 30 was re-introduced and discussed.

2:21:35 PM

The committee took an at-ease from 2:21 to 2:22 p.m.

2:22:26 PM

CHAIR LEDOUX advised that Amendment 30 remains withdrawn; therefore, she will not introduce Amendment 31.

2:22:37 PM

CHAIR LEDOUX moved to adopt Amendment 32, Version 29-LS0896\H.57, Martin/Gardner, 3/31/16, as follows: [Amendment 32 is provided at the end of the minutes of HB 205.]

REPRESENTATIVE KELLER objected for purposes of discussion.

2:22:49 PM

CHAIR LEDOUX advised that Amendment 32 inserts a provision allowing the Marijuana Control Board to perform background checks on people applying for marijuana establishment licenses, which the Marijuana Control Board say is a "must have." Chair LeDoux said, in the event there is no other vehicle for this particular bill, and in an excess of caution, she is introducing it now.

2:23:34 PM

REPRESENTATIVE MILLETT opined this amendment is good for this bill and described it as a placeholder in the event other pending legislation is not passed. She agreed that in moving forward with the state's marijuana laws it must be in place.

2:23:52 PM

REPRESENTATIVE KELLER withdrew his objection. There being no objection, Amendment 32 was adopted.

CHAIR LEDOUX announced that HB 205 would be set aside awaiting a vehicle from the other body [SB 91].

[HB 205 was set aside.]

AMENDMENTS

AMENDMENT 32 29-LS0896\H.57, Martin/Gardner, 3/31/16

Page 1, line 2, following "sentencing;":
Insert "**relating to background checks for persons applying to operate marijuana establishments;**"

Page 50, following line 22:
Insert new bill sections to read:

"* Sec. 83. AS 12.62.400(a) is amended to read:

(a) To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for

(1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.11;

(2) licensure as a mortgage lender, a mortgage broker, or a mortgage loan originator under AS 06.60;

(3) admission to the Alaska Bar Association under AS 08.08;

(4) licensure as a collection agency operator under AS 08.24;

(5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure as a massage therapist under AS 08.61;

(7) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(8) certification as a real estate appraiser under AS 08.87;

(9) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(10) a teacher certificate under AS 14.20;

(11) licensure as a security guard under AS 18.65.400 - 18.65.490;

(12) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(13) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(14) serving and executing process issued by a court by a person designated under AS 22.20.130;

(15) a school bus driver license under AS 28.15.046;

(16) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(17) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060;

(18) a registration or license to operate a marijuana establishment under AS 17.38.

*** Sec. 84.** AS 17.38.200(a) is amended to read:

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days **before** [PRIOR TO] the expiration of the marijuana establishment's registration. **When filing an application under this subsection, the applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check. The board shall forward the fingerprints and fees to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.**"

Renumber the following bill sections accordingly.

Page 98, line 8:
Delete "sec. 99"
Insert "sec. 101"

Page 99, line 11:
Delete "sec. 86"
Insert "sec. 88"

Page 99, line 12:
Delete "sec. 87"
Insert "sec. 89"

Page 99, line 13:
Delete "sec. 93"
Insert "sec. 95"

Page 99, line 14:
Delete "sec. 94"
Insert "sec. 96"

Page 99, line 15:
Delete "sec. 95"
Insert "sec. 97"

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 150"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 136"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 137"

Page 100, line 13:
Delete "sec. 89"
Insert "sec. 91"

Page 100, line 14:
Delete "sec. 92"
Insert "sec. 94"

Page 100, line 15:
Delete "sec. 102"
Insert "sec. 104"

Page 100, line 16:
Delete "sec. 104"
Insert "sec. 106"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 138"

Page 101, line 10:
Delete "sec. 96"
Insert "sec. 98"

Page 101, line 11:
Delete "sec. 97"
Insert "sec. 99"

Page 101, line 15:
Delete "sec. 83"
Insert "sec. 85"

Page 101, line 16:
Delete "sec. 84"
Insert "sec. 86"

Page 101, line 17:
Delete "sec. 85"
Insert "sec. 87"

Page 101, line 18:
Delete "sec. 91"
Insert "sec. 93"

Page 101, line 21:
Delete "sec. 100"
Insert "sec. 102"

Page 101, line 22:
Delete "sec. 101"
Insert "sec. 103"

Page 101, line 23:
Delete "sec. 103"
Insert "sec. 105"

Page 101, line 24:
Delete "sec. 105"
Insert "sec. 107"

Page 101, line 25:
Delete "sec. 107"
Insert "sec. 109"

Page 101, line 26:
Delete "sec. 108"
Insert "sec. 110"

Page 101, line 27:
Delete "sec. 109"
Insert "sec. 111"

Page 101, line 28:
Delete "sec. 115"
Insert "sec. 117"

Page 101, line 29:
Delete "sec. 116"
Insert "sec. 118"

Page 101, line 30:
Delete "sec. 117"
Insert "sec. 119"

Page 101, line 31:
Delete "sec. 118"
Insert "sec. 120"

Page 102, line 1:
Delete "sec. 119"
Insert "sec. 121"

Page 102, line 2:
Delete "sec. 120"
Insert "sec. 122"

Page 102, line 3:
Delete "sec. 121"
Insert "sec. 123"

Page 102, line 4:
Delete "sec. 122"

Insert "sec. 124"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 125"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 126"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 127"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 128"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 129"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 130"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 131"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 132"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 133"

Page 102, line 14:
Delete "sec. 132"
Insert "sec. 134"

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 154 - 156"

Page 102, line 16:

Delete "152 - 154"
Insert "154 - 156"

Page 103, line 1:
Delete "sec. 99"
Insert "sec. 101"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 144"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 154"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 158(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 158(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 158(b)"

Page 103, line 17:
Delete "sec. 156(c)"
Insert "sec. 158(c)"

Page 103, line 20:
Delete "sec. 156(d)"
Insert "sec. 158(d)"

Page 103, line 23:
Delete "sec. 156(e)"
Insert "sec. 158(e)"

Page 103, line 26:
Delete "sec. 99"
Insert "sec. 101"
Delete "sec. 156(f)"
Insert "sec. 158(f)"

Page 103, following line 28:
Insert a new bill section to read:

"*** Sec. 161.** Sections 83 and 84 of this Act take effect immediately under AS 01.10.070(c)."

Renumber the following bill sections accordingly.

Page 103, lines 29 - 30:
Delete "76 - 88, 91, 93 - 95, 134, 135, 143 - 151, and 155"
Insert "76 - 82, 85 - 90, 93, 95 - 97, 136, 137, 145 - 153, and 157"

Page 103, line 31, through page 104, line 1:
Delete "89, 90, 92, 96 - 98, 100 - 133, and 136 - 140"
Insert "91, 92, 94, 98 - 100, 102 - 135, and 138 - 142"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 154"

Page 104, line 4:
Delete "99, 142, 152 - 154, and 156(f)"
Insert "101, 144, 154 - 156, and 158(f)"

HB 214-REPEAL WORKERS' COMP APPEALS COMMISSION

2:24:22 PM

CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 214, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

2:24:51 PM

LAURA STIDOLPH, Staff, Representative Kurt Olson, Alaska State Legislature advised, "Before you is the committee substitute for

HB 214, ... Version P," and this bill is at the request of the Department of Labor & Workforce Development, Commissioner Heidi Drygas. She explained that HB 214 repeals the Workers' Compensation Appeals Commission, established from an omnibus bill in 2005 to expedite the workers' compensation appeals process. Although, she said, within the past decade it has not produced timely results, with a 50 percent decision reversal rate by the Alaska Supreme Court. She noted the Workers' Comp Appeals Commission tried, for the past decade, to give Alaskan workers a timely and accurate process, but it has proven to not do the job as intended. The committee substitute addresses the requested changes brought forth by the court system, she explained, and numerous meetings were held between the department, the court system, and Representative Olson's office to make this bill agreeable to all parties. Marie Marx, Division of Workers' Compensation, and Andrew Hemenway, Chair of the Workers' Compensation Appeals Commission are available for questions.

2:26:45 PM

REPRESENTATIVE CLAMAN commented that currently a person has the opportunity to go before the Workers' Compensation Appeals Commission when unhappy with a Workers' Compensation Board decision. He surmised that under the revision, the first avenue of appeal would be the Alaska Superior Court, and then if unhappy with that decision they would then appeal to the Alaska Supreme Court.

MS. STIDOLPH agreed.

REPRESENTATIVE CLAMAN noted there are provisions within the bill managing the transition from today, when a person would still go to the Workers' Compensation Appeals Commission in cases that may be pending before the Supreme Court following an appeal to the Workers' Compensation Appeals Commission, and it could send some of the cases back to the superior court for review.

MS. STIDOLPH agreed, and she said there is transitional language that appeals would be sent to the Workers' Compensation Appeals Commission until June 1, 2016. There is then a transition between June 1, 2016 and December 2016 for anything that was held in the Workers' Compensation Appeals Commission limbo file.

REPRESENTATIVE CLAMAN surmised that by the end of year 2016 the Workers' Compensation Appeals Commission would completely cease to exist.

MS. STIDOLPH agreed, and she opined the House Labor and Commerce Standing Committee estimated that approximately six cases would not be finished by the end of the year and would be forwarded to the superior court.

REPRESENTATIVE MILLETT referred to page 5, lines 21-31 through page 6, lines 1-17, and advised that it clearly speaks to how the transition will move forward, and described it as an eloquent manner of transitioning from one approach to a new approach.

2:28:58 PM

CHAIR LEDOUX listed witnesses available for questions.

CHAIR LEDOUX opened public testimony and after ascertaining no one wished to testify, closed public testimony.

2:29:49 PM

CHAIR LEDOUX described the bill as déjà vu, and noted in 2005, when this commission was set up, it was a controversial issue. She said it reminds her of the poem, "It started with a bang and it's going to end in a whimper."

2:30:27 PM

REPRESENTATIVE KELLER moved CS for HB 214, Version [I] out of committee HB 214 with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 214(L&C) out of the House Judiciary Standing Committee.

[Later within these minutes the committee rescinded its action on CS for HB 214, Version 29-LS0854/P, and moved the intended CS for HB 214, 29-LS0854/I out of committee at timestamp 3:13:33.]

2:30:38 PM

The committee took an at-ease from 2:30 to 2:34 p.m.

2:34:52 PM
CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 286, "An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport

fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; amending Rule 5(a)(4), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

2:35:07 PM

KEVIN BROOKS, Deputy Commissioner, Department of Fish & Game, explained that the bill is a joint effort between the Department of Fish & Game (ADFG), Department of Public Safety (DPS) and the Department of Law (DOL). He related the bill was previously heard in the House Resources Standing Committee and is virtually identical to its companion bill, SB 164, currently in the Senate Rules Standing Committee. The bill provides Alaska Wildlife Troopers authority to issue correctable citations and allows a person to go to a DPS office and correct the citation by showing proof they had their license at the time the citation occurred. He pointed out that the bill also offers the following: standardizes penalties for violations throughout Title 16; aligns serious offenses committed within Title 16 with appropriate class A misdemeanor penalty; offenses to be charged as a violation when appropriate; prohibits an individual from receiving an Alaska license if their privileges have been revoked in another state; raises commercial fishing violation fines that have not changed in over two decades; raises restitution amounts for animals harvested illegally that have not been changed in over two decades; allows for leniency by not assessing restitution for a hunting mistake if the defendant voluntarily and immediately turns themselves in for a violation offense; and allows for the display of a license in electronic format to reflect modernization efforts the Department of Fish & Game has made to the Department of Fish & Game licensing programs.

2:38:02 PM

BERNARD CHASTAIN, Major/Deputy Director, Division of Alaska Wildlife Troopers, Department of Public Safety, offered to go through each of the changes from the original version or answer questions from the committee.

CHAIR LEDOUX asked Major Chastain to discuss the most important changes.

2:38:40 PM

MAJOR CHASTAIN referred to page 1, line 5, and said a semicolon was added to the title itself, "; creating an exemption for payment of restitution;".

2:38:56 PM

MAJOR CHASTAIN [referred to AS 16.05.330] said that page 2, Sec. 3, line 21, removes the words "tag or permit" from an item that can be correctable, and removes reference to the court. He advised the language allows the Alaska Wildlife Troopers or the issuing agency to write a citation that can be a correctable offense if the hunter or fisherman brings proof of their license to an office within a certain period of time.

CHAIR LEDOUX referred to Sec. 3, line 24, [AS 16.05.330(h)], which read:

> (h) A peace officer presented with an electronic device under (g) of this section is immune from any liability resulting from damage to the device.

CHAIR LEDOUX asked him what it is referring to.

MAJOR CHASTAIN responded that the Department of Fish & Game (ADFG), at some point in time, is planning to develop electronic licenses to take the place of a paper license. He explained that oftentimes troopers will board boats in inclement weather and damage to the cell phone or electronic device may occur while inspecting the license. The provision holds the ADFG immune from any liability resulting from damage to that device, he advised.

CHAIR LEDOUX asked Major Chastain whether he really thinks it is such a significant problem that it is likely to happen, and she commented that this sounds like boarding Alaska Airlines and putting your phone under the screen. Although, she doesn't really have any problems with it, it just seems strange to have it in here, she said.

MAJOR CHASTAIN stated that he does not have a problem with whether the provision is in the bill, but the purpose is that in the event a device is damaged ADG&G is immune from liability. In the event the Alaska Department of Fish & Game does go to

electronic licensing that section is in place for that purpose, he explained.

2:42:10 PM

MR. BROOKS advised the provision was included because other states have encountered this problem within their licensing programs. The rationale being that a person could still carry their paper license if they so choose, he said.

CHAIR LEDOUX pointed out that usually when there is an exemption for negligence, there is usually an exemption to the exemption for recklessness, and that is not included in the provision. She commented that she was unsure the amount being discussed with respect to the device is ...

REPRESENTATIVE CLAMAN offered a scenario of a trooper asking for a license, the fisherman hands the phone to the trooper in the pouring rain, and it slips out of the trooper hands and falls into the stream; can the trooper be sued. The practical side is why a person would bring their cell phone out fishing and instead show the trooper a paper license. He noted that Chair LeDoux raised an interesting question as to whether the committee should be in the business of a criminal statute, and should the committee specifically provide this kind of exemption to liability. He agreed that this is a peculiar provision to have in what is essentially a criminal violation within a civil violation statute.

CHAIR LEDOUX agreed that it is similar to the bar review questions.

CHAIR LEDOUX agreed with Representative Lynn that it doesn't really matter one way or the other.

2:44:40 PM

MAJOR CHASTAIN turned to page 5, line 6, and said the change adds the words "**and (c) of this section,**" which addresses the changes in section 18, of which he would discuss momentarily.

CHAIR LEDOUX referred to Sec. 15 [page 4, lines 25-30] and asked whether the fines and sentences in this provision are less or more than in current statute.

MAJOR CHASTAIN explained that all of the sections that discuss fines, class A misdemeanors, and punishable under AS 12.55 are

all aligned together and provide one class of crime, which is a class A misdemeanor for a situation where a trooper can prove a culpable mental state. A second class of crime, which is a violation offense, for situations where there is no culpable mental state, he explained.

CHAIR LEDOUX reiterated her question and asked whether that it is less than the current statute.

MAJOR CHASTAIN asked Chair LeDoux to turn to Sec. 15, page 4, lines 27-29, that delete [BY A FINE OF NOT MORE THAN $10,000, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH], and on lines 26-27 it makes it a class A misdemeanor of which the maximum fine is $10,000 or a year in jail.

2:46:27 PM

CHAIR LEDOUX surmised it raises the amount of time spent in jail.

MAJOR CHASTAIN explained it aligns with class A misdemeanors since Title 16 had a variety of penalties scattered throughout, this bill attempts to align those together.

CHAIR LEDOUX pointed out that the committee has been working on the criminal justice bill in which the idea is for the least serious crimes to not result in much in the way jail sentences. She further pointed out that this bill appears to have more in the way of jail sentences, which perturbs her, but she likes the portion of the bill regarding a correctable citation. She said she was noting the issue and asked Major Chastain to proceed.

2:47:53 PM

MAJOR CHASTAIN [referred to AS 16.05.925(a)] Sec. 17, page 5, line 6, and reiterated that it adds language "**and (c) of this section**" to address changes in Sec. 18 of this bill.

2:48:08 PM

MAJOR CHASTAIN [referred to AS 16.05.925(b)] Sec. 17, page 5, lines 14-25, and said it changes restitution amounts for big game animals taken illegally, and the court may impose up to that amount in addition to any fine for an animal unlawfully taken within the State of Alaska.

CHAIR LEDOUX asked whether this is a fine, because restitution is normally to the victim and the victim in this case is the animal.

MAJOR CHASTAIN said it is a restitution amount paid to the state for unlawfully taking an illegal animal, and each animal listed is of value to the state in different ways. The animals are valued in money to the state such as, the amount of money for social and economic reasons, and because another hunter would not be able to take that animal if it is taken illegally out the system. He advised that in 1995, this section was added for restitution amounts the court may impose, in addition to any fines or penalties given by the court. These are typically only imposed when a misdemeanor or a more serious crime has been committed, and it attempts to make the state whole for the illegal animal taken, he explained.

CHAIR LEDOUX pointed out that restitution means there is a victim other than the state, and asked why it wouldn't be a fine.

MAJOR CHASTAIN responded that all animals taken illegally belong to the State of Alaska; therefore, the state is the victim. He opined that these restitution amounts are paid to the state in an attempt to make the state whole for the illegal take.

2:50:48 PM

REPRESENTATIVE KREISS-TOMKINS referred to Sec. 17, and noted the marginal increases in restitution for different species of game varies dramatically and asked the rationale.

MR. BROOKS responded that the bill, in its original form, increased by 50 percent and was tied to an inflation adjustment from the time the restitution section was originally placed in statute in the mid-1990s. The House Resources Standing Committee discussed the differences in animals, such as a moose that could feed people for a long time. The amounts were changed by that committee and in some cases were raised above the 50 percent figure originally listed in the bill, he explained.

REPRESENTATIVE KREISS-TOMKINS referred to the felony theft threshold legislation from two years ago, the committee's work on the criminal justice reform bill, and the issue with certain dollar figures becoming outdated because the economy and inflation marches on. He asked whether there had been thought

in tying these numbers to the CPI so they automatically increase slightly every year.

MR. BROOKS advised there was discussion during the drafting stages to tie it to the CPI, and he could not recall why the choice was made to just update the 50 percent. He commented that it would complicate the bill to put a formula in there and it is a different approach.

2:53:59 PM

CHAIR LEDOUX asked why it would complicate the bill.

MR. BROOKS responded that inserting a formula ...

CHAIR LEDOUX interjected that a formula would be inserted stating it will be evaluated every five years according to the consumer price index (CPI). She remarked that it does not sound complicated.

MR. BROOKS agreed that it doesn't sound that complicated.

2:54:23 PM

REPRESENTATIVE KELLER asked the amount of restitution the state collected last year under this section.

MR. BROOKS said he does not have that information with him and reiterated that these are "not to exceed" amounts, and the court has the discretion in determining the seriousness of the case to go up to this amount. He opined that that may have been another reason it wasn't tied to a hard formula, but it is a number he could bring back to the committee if there is interest in that.

REPRESENTATIVE KELLER noted that he is thinking, possibly, this is insignificant economically to the department.

MR. BROOKS advised that all revenue for civil penalties go into the Department of Fish & Game fund, subject to appropriation by the legislature. Criminal penalties go to the Department of Public Safety and, he commented, the intent of these statutes is to be a deterrent.

2:55:44 PM

MAJOR CHASTAIN [referred to AS 16.05.925] Sec. 18, page 5, line 26 and noted that Sec. 17 refers to several portions that read:

and (c) of this section. He referred to Sec. 18, line 26, and said it creates a new section that provides that a court may not order restitution under Sec. 17 in a case where a defendant voluntarily turns themselves in and is charged with a violation offense. He noted that it also provides that a person must voluntarily and immediately report to the Department of Fish & Game or the Department of Public Safety a violation they committed to qualify for this affirmative defense. Basically, he explained, each year there are quite a few people who make hunting mistakes and use good ethics by salvaging the animal from the field and turn themselves into the office of Alaska Wildlife Troopers. He explained, in that scenario, rather than charging the person with a misdemeanor offense, they are charged with a violation that carries a maximum penalty of $500. He further explained that the person then loses the illegally taken animal, but nothing else happens. In that scenario, the court cannot order restitution, the court can only order the defendant to pay the fine, he explained.

2:57:15 PM

MAJOR CHASTAIN [referred to AS 16.10.110] Sec. 24, page 6, line 24, and advised it was a drafting statute number error that was corrected.

MAJOR CHASTAIN opined that Sec. 28, page 7, lines 9-10 was changed to remove a previous section specifying that a court rule must be changed in order to make an official correctable citation, but in consultation with the court system the court rule does not have to be changed.

MAJOR CHASTAIN advised that those are all of the substantive changes within HB 286, Version N.

REPRESENTATIVE KREISS-TOMKINS asked Mr. Aaron Peterson, Department of Law, whether there is a reason not to tie the restitution penalties to inflation.

2:58:58 PM

AARON PETERSON, Assistant Attorney General, Office of Special Prosecutions, Criminal Division, Department of Law, said he was not involved in the drafting process on this bill, but the decision was made to simply raise the amounts in concert with what the CPI increases have been since they were initially enacted, and they were changed again by the previous committee. He remarked that a formula tying it to the CPI could work and

that he would have to research the potential for an argument as to whether it would be a problem.

3:00:26 PM

REPRESENTATIVE CLAMAN commented that it is interesting the committee received this bill in the midst of working on the criminal justice reform bill and consequently it considers coming up with a formula to index for inflation on a five-year basis. He suggested reviewing the criminal justice reform bill to determine whether the indexing provision should be modified to include additional sections of the criminal code and these codes. Therefore, every fifth year perform the exercise of indexing for inflation rather than the legislature having to do this, it becomes an exercise that the government is supposed to go through. Every fifth year the government will do all of them and the legislature will not have to try to determine what is indexed and what isn't. He said this bill refers to the criminal code for $10,000 misdemeanor fine level, but the committee is comfortable raising that fine level to $25,000 which would impact this bill through what is being done ...

CHAIR LEDOUX interjected that the bill is being held.

REPRESENTATIVE CLAMAN noted that these are questions the committee members may not have had if they hadn't been spending so much time on the crime bill.

3:02:09 PM

REPRESENTATIVE KELLER referred to Chair LeDoux's intent to hold the bill probably makes his comment unnecessary, but opined that if the committee knew how many times a judge goes for the maximum it would impact it also. He said that he doubts it happens often because there are always mitigating circumstances and this gives the judge a lot of leeway to add something on top of the fines. He commented that it is a tool in the judge's toolbox and the exact amount is not all that critical.

CHAIR LEDOUX opened public testimony.

3:03:17 PM

STEVEN SAMUELSON, said he is a five generation Southeast Alaska family member, has been a commercial fisherman for most of his life, and he has the deepest respect for the governing entities and that their assistance on the water is much appreciated. He

opined that the following provision is premature and referred to [AS 16.05.330(h), Sec. 3] page 2, lines 24-25, which read:

> (h) A peace officer presented with an electronic device under (g) of this section is immune from any liability resulting from damage to the device.

MR. SAMUELSON stated that he can speak to subsection (h) and extended that when a ship at sea is boarded it is never a pleasant thing. Currently, permit cards issued for fisheries are similar to a credit card and can be scanned and under this bill [the department] is not liable if a trooper takes a cell phone or smart phone from a person for their license. Yet, he asked, where is his protection if something on the trooper's end breaks, is he liable, and does the boat insurance have to take care of it.

3:05:12 PM

MR. SAMUELSON referred to killing a moose in Southeast Alaska, and explained that Moose brow tines are difficult to see in a scope, and while the hunter is trying to determine the tines they are also thinking about feeding their family, and in the meantime the moose is ready to take off. The hunter determines the tines are correct, takes the shot and then realizes they were wrong, or it breaks off, or something else happens. Now, he pointed out, the hunter is liable for the $500 fine which, if a person is doing this purposefully and illegally it should be more than $500, but mistakes happen. Further, he advised, there are more consequences than just the $500 fine, in that they have to go to court and are then put on probation. Although, if the hunter is not a habitual offender it probably isn't a problem. He said some of the raises and increases don't make sense to him because he has found in several fish and game court cases when it has to do with commercial fishing or anything with the Department of Fish & Game, it is very strict. He acknowledged the misdemeanor language and different classification in the bill, but that he doesn't always see that used in court. Quite frankly, he expressed, the laws of certificates, commercial regulations, and the Department of Fish & Game could be a whole bill in itself. He expressed appreciation to the committee and was hopeful the committee would take a close look at the bill before moving it out.

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

3:07:54 PM

REPRESENTATIVE MILLETT referred to surrendering the meat when an animal has accidentally been killed, and pointed out that in Rural Alaska oftentimes someone hunts far from a food bank or a charity. She asked whether the individual is still required to surrender the meat.

MR. BROOKS deferred to Major Chastain.

MAJOR CHASTAIN responded that that is an important piece of how the troopers operate and how hunting violations are enforced across the state. In the event a person takes an illegal animal and turns themselves in, that meat is given to individuals, charities, churches, veterans, and Native groups. In a Rural Alaska situation, the meat goes to the same community the defendant lives and is distributed to many people in that area. Oftentimes, he said, when the meat is salvaged in good condition the meat is almost always given away rather than held in a freezer as evidence because the meat goes to better use by giving it to the community.

3:09:59 PM

REPRESENTATIVE MILLETT asked who transports the meat in a remote area.

MAJOR CHASTAIN answered that it depends upon the circumstances, for example, if someone voluntarily turns themselves in, they bring the meat out of the field, give it to the troopers, and the charity picks it up from the office. He said if the troopers catch someone in the field violating, they physically seize and remove the meat from the field and it is given to a charity in that local area.

3:10:55 PM

CHAIR LEDOUX referred to the testimony that the ADFG is moving toward electronic devices, and asked whether people will still have the option of using paper licenses, or be required to put their license on their cell phones. She further asked whether the individual is left without any recourse if a trooper drops the cell phone.

MR. BROOKS stated that the department will continue to accept paper and this is meant to be a convenience to the licensee and nothing more than that.

CHAIR LEDOUX surmised that individuals will continue to have the option and if a person believes the weather is too rough to hand over their cell phone, they have the option of using their paper license.

MR. BROOKS responded, absolutely.

[HB 286 was held over.]

3:12:13 PM

The committee took an at-ease from 3:12 to 3:13 p.m.

HB 214-REPEAL WORKERS' COMP APPEALS COMMISSION

3:13:43 PM

CHAIR LEDOUX announced that the next order of business is to return to the committee's actions on HB 214 today.

CHAIR LEDOUX moved to rescind the committee's vote to pass CSHB 214(L&C), Version 29-LS0854/P, out of the House Judiciary Standing Committee. There being no objection, CSHB (L&C), Version I was before the committee.

3:14:11 PM

REPRESENTATIVE KELLER moved to report CSHB 214, Version 29-LS0854/I out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 214(L&C) was passed out of the House Judiciary Standing Committee.

3:14:38 PM

The committee took an at-ease from 3:14 to 3:18 p.m.

HB 334-CHILD CUSTODY; DOM. VIOLENCE; CHILD ABUSE

3:18:15 PM

CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 334, "An Act relating to visitation and child custody."

3:18:40 PM

CRYSTAL KOENEMAN, Staff, Representative Cathy Munoz, Alaska State Legislature, advised that HB 334 was introduced to give judges more discretion in determining the best interests of the child in custody cases. She advised that Representative Munoz, through conversations with constituents and others, determined that the way custody visitation statutes are written regarding domestic violence may not provide proper due process. Currently, AS 25.24.150 includes a provision that if a parent has been accused of domestic violence, that parent may not be awarded sole, or joint physical or legal custody of the child. Although there is a rebuttable presumption in this statute, the accused is guilty and must prove their innocence, which is contrary to the typical judicial process where the accused is innocent until proven guilty. She noted the pendulum may have shifted "a little too far." The bill was introduced to provide more discretion for judges because during conversations with lawyers and judges it appears judges do not have enough flexibility in truly determining the best interests of the child. She then offered to go into the technical aspects of the bill and the changes made by the House Health, Education and Social Services Standing Committee.

3:21:47 PM

CHAIR LEDOUX advised that she would like to know the changes the House Health, Education and Social Services Standing Committee made, why the changes were made, and whether the sponsor is in agreement with those changes.

MS. KOENEMAN responded that the changes made in the House Health, Education and Social Services Standing Committee are quite extensive, but the sponsor worked closely with committee members on both sides of this issue and all parties are working toward a middle ground.

MS. KOENEMAN referred to CSHB 334, Version I, [AS 25.20.060(a)] Section 1, page 1, lines 8-9, and called attention to the bracketed language removing the rebuttable presumption established in AS 25.24.150(g), and advised the presumption was removed by the House Health, Education and Social Services Standing Committee.

3:22:53 PM

MS. KOENEMAN referred to AS 25.20.061, Sec. 2, and explained that within the original version of the bill [Version H] the

language read that the rebuttable presumption would kick in if a person was convicted of a crime of domestic violence. The House Health, Education and Social Services Standing Committee determined it was too high of a bar and the language was modified to "clear and convincing evidence," she said.

CHAIR LEDOUX asked too high of a bar for what.

MS. KOENEMAN responded that there was concern that when it comes to prosecuting those who have committed acts of domestic violence, they do not always receive a conviction. She continued that even though they may have an extensive history of domestic violence, they may have an excellent lawyer or are able to plead down the charges and the conviction of domestic violence would not be on their record. She explained there was concern with the conviction language and that clear and convincing evidence is a higher bar than a presumption of evidence, but not as high of a bar as a true conviction. She said the clear and convincing evidence was added in Sec. 2.

3:24:41 PM

MS. KOENEMAN referred to Sec. 3, [AS 25.20.070, page 2] and said the rebuttable presumption language is removed.

CHAIR LEDOUX asked her to explain where the rebuttable presumption evidence factors in.

MS. KOENEMAN responded that the workings of AS 25.24.150 were reworked in Sec. 7 of the bill. She offered to jump to that section and possibly make things more clear in moving through the bill, and noted that the earlier sections are conforming language either removing that rebuttable presumption language or adding it in.

CHAIR LEDOUX agreed.

3:25:29 PM

MS. KOENEMAN referred to Sec. 7, beginning page 4, [beginning line 17], is AS 25.24.150(c) said it outlines what the court shall determine in considering the best interest of the child. She then turned to page 5, line 6, **clear and convincing** and advised under current statute AS 25.24.150(g), repealed in this bill, the rebuttable presumption was housed. She explained that in place of the repealed language, the bill inserts a new Sec. 8, [AS 25.24.150(m)] page 5, lines 12-28], which read:

(m) If the court finds by clear and convincing evidence that a parent has a history of perpetrating domestic violence or has been convicted of a crime of domestic violence against the other parent, a child, or a domestic living partner, within the five years preceding the award of visitation, the court may set conditions for the visitation under AS 25.20.061.

MS. KOENEMAN explained that AS 25.20.061 is located in Sec. 2 of the bill. She described a bit of cross-referencing when it comes to this version in order to truly determine what conditions are contained in that. She pointed out that the rebuttable presumption included language for the batterer's program. Although, she related, it is not offered in all areas of the state, and in areas where the program was offered, due to funding cuts, the programs are down to limited amounts. Also, she offered, some programs are working toward not having that program at all, such as the Catholic Community Center in Juneau. The language in Sec. 2 outlines other visitation safeguards for the accused, she said.

3:27:50 PM

MS. KOENEMAN advised that Sec. 9 outlines the repealers of the rebuttable presumption language in current statute.

CHAIR LEDOUX asked whether there is no longer rebuttable presumption under this bill.

MS. KOENEMAN responded that under CSHB 334, Version I, the rebuttable presumption was removed.

CHAIR LEDOUX questioned that under current law if a person is found to have been a perpetrator of domestic violence, the person can rebut that presumption, correct.

MS. KOENEMAN agreed.

CHAIR LEDOUX surmised that under this bill it makes it more difficult for a person to have been found to have participated in domestic violence due to the clear and convincing evidence standard, but a person can no longer rebut it.

MS. KOENMAN agreed.

CHAIR LEDOUX surmised that it is giving on one hand and taking away on the other, it seems.

MS. KOENEMAN agreed that it is one way to look at it; however, the language in Sec. 2 of the bill outlining visitation, the courts may set conditions for the transfer of the child in a protective setting. She then listed some of the eight conditions [as set forth on page 2, lines 5-23], and other conditions necessary for the safety of the child. She said that if there isn't the evidence, the judge has the discretion to prohibit overnight visitation or the person may be ordered to go to the batterer's program, for example.

3:30:49 PM

REPRESENTATIVE KELLER asked for clarification that the sponsor is working on this and plans to come back to the committee, possibly tomorrow.

MS. KOENEMAN said if that is the will of the committee and advised that the sponsor is aware of the significance of this issue and understands the emotional aspects of it. She pointed out that the sponsor is not trying to push the bill through the system because she wants something that protects the victims and also protects those who may be wrongfully accused. The sponsor's interest is with the children and to not be taken away from their parents except in situations where the judge determines it is necessary.

3:31:53 PM

CHAIR LEDOUX advised that it is not her intention to move the bill today because there is a lot of public testimony yet to come. Although, she added, it is her intention to eventually move the bill because she is a co-sponsor.

REPRESENTATIVE KREISS-TOMKINS surmised that this legislation removes the rebuttable presumption and that rebuttable presumption presently exists within the criteria on domestic violence. He opined that in reviewing the surrounding statute, it appears there is not an evidentiary standard of clear and convincing evidence that applies, such as substance abuse. He then asked the rationale for ratcheting up the evidentiary standard for domestic violence while leaving the criteria on substance abuse unchanged.

3:33:25 PM

MS. KOENEMAN answered that clear and convincing evidence is a clearly defined definition in law and within current statute there is a history of domestic violence which is not defined and is left to the discretion of the judge. Under AS 25.24.150(h) it tries to define domestic violence and reads that if the court finds that the parent has engaged in one serious physical injury, or the court finds that the parent has engaged in more than one incident of domestic violence, that is when the rebuttable presumption kicks in.

REPRESENTATIVE KREISS-TOMKINS honed his question and pointed out that the bill is ratcheting up the evidentiary standard for domestic violence and there are other criteria that won't have such a rigorous standard, he asked why.

REPRESENTATIVE KREISS-TOMKINS offered that he was looking at AS 25.24.150(h).

MS. KOENEMAND referred to AS 25.24.150(h), evidence of substance abuse by either parent or other member of the household affects the emotional and physical wellbeing of the child. She said that is what is currently in statute and the sponsor was focused on the domestic violence piece, she did not look more closely at the evidence of substance abuse. She described it as a good question that she does not have the answer as to why it's evidence versus clear and convincing, and that it was not discussed in committee.

CHAIR LEDOUX commented that sometimes you can't fix everything at one time in a bill.

3:36:01 PM

MS. KOENEMAN offered a personal anecdote regarding her divorce, her children, and that her husband could have wrongly been accused of domestic abuse. She said she realized that she could ruin his life and her children's lives if she wanted to be vindictive, "which women tend to be at times, and I thought long and hard on it."

CHAIR LEDOUX interjected that all human beings tend to be vindictive at times.

MS. KOENEMAN stated Representative Munoz's office has seen fathers ripped away from their children for no other reason than a woman wanting custody of their children. There is true

domestic violence out there, she acknowledged, and children need protection, but there are times when the laws written by the legislature have unintended consequences. The sponsor is fighting for the parents that have had their children ripped away when they haven't done anything other than have an argument or slam a door, she said.

3:39:58 PM

REPRESENTATIVE KREISS-TOMKINS thanked Ms. Koeneman for her testimony as it helps illustrate the intent of the bill. He asked, under current law, when a restraining order has been filed and violated, whether the defendant has the ability to rebut the presumption of domestic violence.

MS. KOENEMAN advised that the defendant is awarded that opportunity; however, they are guilty until they prove their innocence. She added that it may have been something that happened 10-years ago in a prior relationship and they are able to use it in the current case. Also, it's a matter of who has the better lawyer, or who has a lawyer because in these situations they're not required to have a lawyer. It is a civil proceeding and not a criminal proceeding, she explained. Although, there are times when those without the funds can get a pro bono attorney but it doesn't guarantee that both [parties] will have attorneys while fighting to prove their innocence. Ultimately, it is up to the judge to determine the evidence they are provided to make that ruling, she said.

3:43:32 PM

REPRESENTATIVE KREISS-TOMKINS surmised that the bill's intent is, on one hand to prevent the scales being tipped against spouses who, because they didn't hire the Cadillac lawyer and might be deprived of the ability to have a fighting chance at custody of their children. On the other hand, weighing a robust protection of children that may have grown up in abusive households, he pointed out. He surmised the intent is to achieve a better balance by shifting it a bit more toward his first description rather than the second description.

MS. KOENEMAN responded that that is exactly what the sponsor is attempting to do, to find the balance, and that possibly the pendulum balance shifted too far and unintended consequences have resulted.

REPRESENTATIVE KREISS-TOMKINS asked whether there is data in child custody cases regarding how often the rebuttable presumption is invoked, and how often the rebuttable presumption for domestic violence dictates the outcome of a child custody case. He would like to have a sense of the scope of this perceived problem that this bill ostensibly seeks to solve.

MS. KOENEMAN deferred to Nancy Meade, and opined that the court system's tracking system doesn't capture that data.

CHAIR LEDOUX commented to Ms. Koeneman that it took guts to relate her story.

3:46:43 PM

REPRESENTATIVE CLAMAN said for several years he has been a pro bono attorney for the Alaska Network on Domestic Violence and Sexual Assault. He offered he has found the issue of child custody determinations challenging when it comes to domestic violence proceedings. District courts have been assigned, as a matter of jurisdiction, to make decisions about whether someone has committed, not a crime of domestic violence but enough acts to find that someone is entitled to a domestic violence protective order. That order sometimes leads to domestic violence convictions, and sometimes it doesn't. He pointed out that significant power has been given to the district courts to make findings about domestic violence and as part of those findings, have given the district court the power to make determinations about child custody. As a due process matter in a divorce, the district court is not trusted to make child custody decisions and, in theory, the superior court makes its own decision on child custody. He expressed that in practical terms, the domestic violence protective order that gives the children to one parent, tends to control what happens in the superior court later. Yet, he stressed, the district court isn't supposed to be deciding those things, and this bill has raised his concern with the whole notion about who is really deciding child custody, and at what point it is decided. He said he has been troubled by that and is not sure he has an answer.

2:49:30 PM

REPRESENTATIVE CLAMAN expressed that the other side of the whole dynamic is that Alaska is perhaps the worst state in domestic violence in the country, and that part of the problem with domestic violence is how to convince victims to come forward.

The cycle of domestic violence and the non-reporting is enormous and it is even worse in Bush Alaska and Rural Alaska than it is in urban Alaska. The people that have worked on behalf of victims in domestic violence consistently report that if this law is changed it will be harder for them to get real victims to come forward. He said he doesn't have a solution because he knows that children need meaningful relationships with both parents, and all parents are imperfect and have had moments of anger. Where is the balance, he asked and related that he is interested to hear from witnesses particularly on the jurisdictional question about this decision effectively being made in the district court even though it is a decision to be made in the superior court, and whether that is something the committee should be looking at.

3:51:13 PM

CHAIR LEDOUX said she follows Representative Claman and asked whether in the ex parte domestic violence restraining order situation where only the person requesting the restraining order is there, and that the person to be restrained is not at the hearing. She asked whether the person is served with notice and the process.

3:51:54 PM

MS. KOENEMAN deferred to Nancy Meade, and opined that with the ex parte orders only one party is present to obtain a restraining order and the other person is then served without notice.

CHAIR LEDOUX asked Ms. Meade to answer questions regarding restraining orders, and noted that the bill sponsor was in the room and she was welcome to add anything to her aide's testimony.

3:52:42 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), offered to explain the difference between ex parte domestic violence protective orders and long-term domestic violence protective orders. She said it is true that any party can file a petition for a domestic violence protective order and they are granted if there is probable cause. Under Title 18, there are short-term domestic violence protective orders that ...

CHAIR LEDOUX asked how short-term is short-term.

MS. MEADE answered that a short-term protective order is a 20 day order and it is ex parte. She clarified that there are three kinds of protective orders: a 72-hour filed by a law enforcement officer and not common; a more common situation is an ex parte short-term order and the judge has to find probable cause to believe that a crime of domestic violence has occurred and that the order is needed to protect the petitioner from further domestic violence, and at the end of the 20 days there is a hearing to determine whether a long-term order is justified and the respondent is present at the hearing. A long-term order can last up to one-year by statute and at the end of the year someone could file again. Short-term orders are granted ex parte, but under AS 25.24.150, the short-term orders do not count as a prior incident of domestic violence because they haven't been fully litigated. For example, she offered, when a judge is determining child custody cases, such as those covered by the bill, the short-term orders are not counted as one incident of domestic violence. Any party in a custody dispute can claim domestic violence and the judge would make a determination sitting right there about what happened, but the short-term are not litigated and are not an auto-count for purposes of finding the presumption is in place.

3:55:18 PM

CHAIR LEDOUX surmised that when Ms. Meade says "litigated" it is not litigated in front of a jury with the normal due process rights that would come from litigating something in front of a jury of your peers, is it.

MS. MEADE responded that domestic violence protective orders are not handled by a jury.

3:55:45 PM

REPRESENTATIVE LYNN noted that Ms. Meade had said that anyone can file for a protective order, and offered a scenario of a father being aware of domestic violence occurring in his daughter's home but the daughter doesn't want to file, can a father file a protective order for their daughter.

MS. MEADE answered that anyone can file anything in the court system, and it does have petitions entitled "OBO" which are "on behalf of." Therefore, a person can file on behalf of an alleged victim of domestic violence and the court would hear

those, although it would be better if the victim was available to back up the father's allegations. A parent can claim allegations against a child and it is not unusual, especially if they are all in the same household, she said.

REPRESENTATIVE LYNN surmised that the process would be the same.

MS. MEADE agreed that it is basically the same, there may be a difference in who provides evidence to the judge making the determination whether to grant the protective order. Those are not uncommon, she offered, and sometimes a person files on behalf of themselves and on behalf of their minor children in a household against someone they say is perpetrating domestic violence against all of them.

3:57:56 PM

CHAIR LEDOUX asked whether a judge would issue a protective order based upon someone's allegation, simply saying that someone told the person offering the allegations, that they were being hit by another person, she asked.

MS. MEADE replied that she would not speculate on what a judge would or wouldn't do in a situation, but would say that the court's data shows that petitions for ex parte protective orders are granted at about a 53 percent grant rate. The data could be viewed in different ways, such as the judges should be granting more or that the judges are seeing allegations that are not true, but the short-term protective orders are granted at about 53 percent of the time. The long-term protective orders are in the 20 percent grant range, for many reasons, and one is that many of them are dropped by the petitioner and do not show up for the hearing. Initially, the petitioner checks the box for both the short-term and long-term protective order and after the 20 days they just do not attend the hearing, and that happens at least 33 percent of the time.

3:59:45 PM

REPRESENTATIVE KELLER asked whether probable cause is a standard each judge would decide for themselves in cases, where one judge might say if there's smoke, there's fire and the order is granted, wherein another judge might say they need more information.

MS. MEADE responded that it is a subjective call as to whether there is probable cause to believe a crime of domestic violence

occurred and Alaska's judges make those sorts of determinations all day long. The plain answer is, yes.

4:00:24 PM

REPRESENTATIVE KREISS-TOMKINS referred to a situation of a restraining order being violated and questioned whether that constitutes an act of domestic violence.

MS. MEADE clarified that the definition of domestic violence in AS 18.66 does include an instance of violating a domestic violence protective order.

CHAIR LEDOUX asked whether domestic violence includes a situation where a physical assault does not occur, such as yelling at someone.

MS. MEADE answered yes, because a common crime of domestic violence is a "fear assault" which does amount to a crime of assault if a person has a reasonable fear for their own safety. Short of a punch, there is an assault that could be found, she said.

4:01:56 PM

CHAIR LEDOUX referred to the domestic violence restraining order petitions and asked whether some are brought pro per and others with the assistance of counsel.

MS. MEADE explained that the domestic violence protective order brought by petitioners are almost always brought without an attorney, although an attorney could be brought in. She said they are heard by the court after filing within 24 hours and most petitioners do not retain an attorney in that time period, but they may.

CHAIR LEDOUX asked whether Ms. Meade has ever had the idea, based upon the way the allegations may be written in some of the petitions that, someone has had the assistance of counsel in making the allegations.

MS. MEADE opined that it might happen, but in dealing with the magistrates and judges who hear these matters, it is mostly a handwritten petition. She explained that the court system provides a blank form petition that is a few pages long, and people often, in certain courts, have the assistance of a domestic violence advocate to help them complete the form

because sometimes the petitioner is in such a state that it is difficult to complete that document.

4:03:42 PM

REPRESENTATIVE KREISS-TOMKINS noted that the goal is to find the balance of two valid scenarios, and it would be helpful to know how many times the rebuttable presumption is invoked and when it ends up being the trump card in a custody dispute. Absent that information, he commented, he does not feel well equipped to try to say where on the spectrum is the sweet spot. He added that he sees both compelling scenarios but has difficulty knowing how to proportionally weigh each.

4:05:13 PM

MS. MEADE acknowledged that the court system does not have the data because the CourtView system does not keep data on things that are said in a case or the sorts of things discussed or brought into issue in a case. She offered that the rebuttable presumption in child custody cases is not rarely invoked, and anecdotally after speaking to just a few judges, it is less than one-half the time but it is not uncommon and it is not every case. At which point, once invoked, the judge has to determine whether it is found. She offered that it could be that one parent in the custody dispute claims that it had happened, and thereafter there is fact finding and a discussion of whether it did, and of course it is found in many fewer times than it is invoked.

4:06:24 PM

REPRESENTATIVE KREISS-TOMKINS referred to Ms. Meade statement, "it is often found much fewer times than it is invoked," and because the discussion is a rebuttable presumption everything is inverted. He added that, it's found the presumption is rebutted ...

MS. MEADE responded that she may have misspoken. She related that in a custody dispute one parent tells the judge that there is domestic violence and at that point it is invoked, then there is fact finding that occurs within the custody case and the judge asks questions, at which point the judge makes a determination whether to find that there is a history of domestic violence and; therefore, that the presumption attaches. Once the presumption attaches, a person goes under AS 24.25.150(h) to say how the parent who is now rebuttably

presumed to have committed the domestic violence can nonetheless get custody of the children. She explained that the presumption is not that a person committed domestic violence, it is a rebuttable presumption that if it is found a person can't get sole legal custody, joint custody, etcetera. The presumption attaches and yes, the person is presumed to have committed this domestic violence and, now, to get custody there are way to overcome the presumption [subsection (h], she explained.

4:08:24 PM

REPRESENTATIVE KREISS-TOMKINS referred to the presumption attaching and becoming incumbent upon the party against whom allegations of domestic violence were made to overcome that presumption, and asked what percentage of the time is that presumption, once attached, overcome.

MS. MEADE reiterated that once the presumption attaches, which means the person is a perpetrator of domestic violence for purposes of this case, that person can only get custody if they overcome the presumption. She explained that this is not overcoming the presumption that a person committed the domestic violence because it is attached now. The person then has to overcome the presumption to have some custody of the children. She again reiterated that the percentage is not something the court system tracks or keeps data on. Anecdotally and roughly, she noted, the presumption could be invoked in less than one-half of the cases, and the same sort of anecdote in about 20 percent of those that the judge does indeed find that the presumption applies.

4:09:50 PM

REPRESENTATIVE KREISS-TOMKINS returned to the restraining order being violated scenario which is, by definition, an instance of domestic violence, and asked that even if there is no physical domestic violence would a judge ever overcome that presumption of domestic violence since there is a by the book definition of an act of domestic violence.

MS. MEADE responded that the definition of a history of perpetrating domestic violence, which is what has to be found, is one incident of domestic violence with serious physical injury, or more than one incident of domestic violence. Therefore, she said, violating a protective order would be an incident of domestic violence, but if it didn't include serious

physical injury the person would need a second instance for the judge to find that there was a history of domestic violence.

4:11:08 PM

CHAIR LEDOUX used the example of someone throwing a book that doesn't hit anyone, and asked whether that is an instance of domestic violence, or if someone could say that they were in fear of their lives because someone threw the book at them. Then, a person violates the domestic violence protection order because they run into the person at McDonald's and tries to explain that they weren't trying to hurt them. She surmised that that could be the history of perpetrating domestic violence.

MS. MEADE offered that the judge could find a history of domestic violence based on that hypothetical.

4:12:14 PM

MS. KOENEMAN responded to Representative Claman's question regarding the superior court looking at the domestic violence custody cases versus the district court. Under AS 25.20.060(a) [Petition For Award of Child Custody], which read:

> (a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors, including those factors enumerated in AS 25.24.150 (c), and the presumption established in AS 25.24.150 (g). In a custody determination under this section, the court shall provide for visitation by a grandparent or other person if that is in the best interests of the child.

MS. KOENEMAN advised Representative Claman that she wanted him to know there is an option, it's not a definitive up to the superior court for that.

4:13:03 PM

REPRESENTATIVE CLAMAN expressed that he certainly is aware of that statute, and explained that that section arises in a child custody proceeding because it appears in Title 25, and not Title

18 which is the domestic violence protective order statute. He offered that the domestic violence protective order petition has a box to check in dealing with child custody issues and when a person goes to court with the ex parte 20 day order and checks both boxes there is place where they can ask the district court to make custody determinations. While technically, there is a place in the statute, the notion that the typical pro se petitioner understands their options, or that when the person served with the 20 day order that advises them of the hearing date understands that they could then petition the superior court to hear that matter, in the world of the average person is pretty far afield.

MS. MEADE noted that she wanted to put on the record that the Alaska Court System is neutral on this bill, and whatever is decided, the judges will apply.

4:15:23 PM

The committee took an at-ease from 4:15 to 4:25 p.m.

4:25:58 PM

CHAIR LEDOUX opened invited and public testimony.

4:26:32 PM

KIRSTEN SWANSON, Attorney, advised that she is an attorney and is concerned about this bill. She said she has done criminal defense for many years and also has defended cases for the Alaska Network on Domestic Violence and Sexual Assault. She opined that this bill is an attempt to even out the playing field because, as she has seen in her practice, there have been unintended consequences over the years with the way the presumption is applied and this is an attempt to try to take away some of those problems. The most important people are the children and there are situations where people are encourage to go nuclear from the get-go because they are trying to get an advantage in their case. When considering the best interests of the children, part of the statute still incorporated in this bill allows judges to go back to that best interests of the children and concentrate on that, which should be the important part of this bill. She referred to Representative Kreiss-Tomkins question, why alcohol isn't a part of this, the substance abuse is also clear and convincing. She explained that the difference, specifically, is in the domestic violence statute. It puts a person into the rebuttable presumption that,

allegedly, there is a history of domestic violence and under that statute the alleged perpetrator will have to go to a batterer's program, can't have overnight visits, and ends up in a situation where they can only have visitation with somebody from Catholic Community or some other person. She pointed out that those do not come into being if there's an allegation that someone is drinking or using drugs. She would not be opposed to actually raising it to clear and convincing, she expressed, but it's because that doesn't invoke the same thing as an allegation of domestic violence and is specifically to that question.

4:29:22 PM

MS. SWANSON continued that in the real world when someone files a short-term domestic violence ex parte they are generally with an AWARE advocate or family member. The alleged victim tells their side of the story which is not evidence based because it is ex parte, and the alleged perpetrator is not present. The judge may agree and grant a 20 day order, within those 20 days the other parent usually cannot see their children, can't go to the school, can't talk to their school teacher and are cut out of the children's lives for 20 days. She remarked that 20 days may not seem like a long time, except she has had cases where the other parent locked the doors, emptied out the bank accounts, and sometimes told the children how the other parent is a bad parent. She expressed that 20 days is a big deal.

4:30:21 PM

MS. SWANSON related a case where a client, on the other side of the house banged their head into the door and put a hole in the door. The other spouse called the police and her client was charged with criminal mischief, domestic violence having never said anything, or in the same room. Her client received an invitation from the police for a short-term domestic violence hearing in 20 days. Within that 20 days her client found an apartment and everything was fine except they sent out a group email to their family and friends with a picture of them in their new apartment with their cat, and the alleged victim was included in the group mailing. Even though it was not intentional, the police came and her client was charged with violating a criminal domestic violence order because he sent out that email. She said she could give the committee a list of cases such as this.

4:32:41 PM

CHAIR LEDOUX interjected that she wanted to be sure she understand this, and related that there is a domestic violence restraining order ...

MS. SWANSON clarified that it was the short-term restraining order.

CHAIR LEDOUX continued that it was a short-term restraining order and within that 20 days they got back together again.

MS. SWANSON clarified that her client found a new place to live because they were going to file for divorce, and when her client was in the new place sent out a group email to everyone saying, "Here's my new house and here's the cat ..."

CHAIR LEDOUX asked who is "they."

MS. SWANSON explained that it was her client, the one who had the restraining order filed against them in the short-term.

CHAIR LEDOUX surmised that he sent out the email, to who.

MS. SWANSON responded that it was sent to his mother, his father, his sister, a bunch of his friends, and the wife, in one group stream which technically violated the restraining order due to the contact. She said she has also had clients that dialed someone where it is clear when listening to the recording later that there are driving sounds with no voice and it is clear someone accidentally hit it. She said she tells her clients whenever there is a restraining order to delete the person making the allegation from their Facebook, text, email, and the phone so there is no accidental contact. In itself, that is a violation as it is contact at that point and, she stated these things do happen in real world situations.

4:34:33 PM

MS. SWANSON commented that there is no data as to how many of these have been filed. She understands that prior to 2005 there's not a way to go back in CourtView to determine how many short-term and long-term domestic violence orders have been filed. Also, she offered, sometimes people don't show up, the couple gets back together before the long-term so there is no long-term, sometimes both parties attend the long-term hearing with attorneys and the attorneys stipulate to try to steer the people out of the domestic violence court and into mediation to deal with this matter in other ways. She opined that statistics

do not necessarily show what happens in the real world with some of these cases. She stressed this is not to pick on victims of domestic violence, and the bill as written protects people and it also, more importantly, protects children so a father or mother is not allowed to see their children for 6-12 months while fighting about whether or not there was domestic violence. She advised that the bill gives judges more leeway.

4:36:04 PM

REPRESENTATIVE KREISS-TOMKINS noted two changes in the bill: deleting the rebuttable presumption; and the bill ratchets up the evidentiary standard to clear and convincing evidence. He asked whether he was correct.

MS. SWANSON responded that the short answer is yes and explained that the standards of proof are: beyond a reasonable doubt for criminal; and then preponderance of the evidence, which many times it is short handed to "as more likely than not." Currently, when a district court judge is making a determination as to whether or not there was domestic violence, the judges will frequently say they have to determine whether there was a 51 percent probability there was an act of domestic violence, whether criminal mischief or placed in fear assault, that's enough. When discussing raising the standard of proof, it is being raised from 51 percent to "clear and convincing evidence," it is not being raised to "beyond a reasonable doubt," but it is a bit higher than the 51 percent. Technically, yes the standard is being raised up but not so much that it becomes completely burdensome, but there still has to be more proof as to what happened, she explained.

4:37:50 PM

REPRESENTATIVE KREISS-TOMKINS commented that 51 percent strikes him as reasonable because domestic violence is serious and if it is more likely than not that a judge finds there is domestic violence, it seems like a good reason not to award custody to the party the judge deems likely to have committed domestic violence.

MS. SWANSON responded that when discussing domestic violence most people think of someone slammed up against walls, strangled, hit, punched, kicked, type of violence. Domestic violence statutes cover more than that and as an example, an angry person throws a plate and it breaks, that's criminal mischief because the other person could be placed in fear. She

commented that she recently had another case with an allegation of a placed in fear assault. Two parents didn't want to fight and argue in front of the kids, they got in their vehicle, drove a block away, and started talking about the divorce and custody. They both got upset and ended up yelling at each other. She demanded to go back, he drove her back and let her out. In court she said she was placed in fear because he was angry with her, even though he did not threaten her or look like he was going to punch her. The judge kept pushing her to explain what happened and she said she thought that if she got out of the car he might run her over and under cross-examination admitted that he had never hit her, or done anything violent, and had never threatened to hurt her. Ms. Swanson advised that she got the case dismissed but that is an example of placed in fear assault.

MS. SWANSON continued that another placed in fear assault charge against a client was an allegation that the woman thought the man was going to hit her when they were yelling at each other. He clinched his fists and glared at her, even though he did not hit her or move toward her. When discussing the 51 percent, to add in what is currently considered domestic violence, she said.

4:40:24 PM

REPRESENTATIVE KREISS-TOMKINS said that strikes him as an excellent point because maybe it isn't so much the evidentiary standard, but rather the definition of domestic violence.

MS. SWANSON interjected that that is another thing that needs to be fixed.

REPRESENTATIVE KREISS-TOMKINS continued that it seems as though the way the committee has discussed proposing to fix it is not actually fixing it because it is taking a more encompassing solution, and separating out technical violations or accidental contact or violation of restraining orders, non-physical contact. He suggested that those should be differentiated and put into a different class than more clearly physical domestic violence. In those instances it seems that clear and convincing evidence is doing a disservice to those that have actually been on the receiving end of physical domestic violence, he remarked.

4:41:18 PM

MS. SWANSON respectfully disagreed with Representative Kreiss-Tomkins statement. She opined that this does, in part, start taking care of those problems specifically because the judge is

now given more of an ability to look at the best interests of the children, and the judge is not being forced in a presumptive case where the presumption is to immediately have to go back ...

REPRESENTATIVE KREISS-TOMKINS interjected that is not what he was suggesting. Aside from the rebuttable presumption, he said he was talking about the evidentiary standard in terms of separating out physical domestic violence. He commented that when there is a 51 percent likelihood that someone has been physically abused, to him it seems like a reasonable standard to work from. And, he further commented, separating out more technical or non-physical forms of domestic violence that possibly have a different evidentiary standard.

4:42:20 PM

CHAIR LEDOUX interrupted Representative Kreiss-Tomkins and reminded him that many people would like to testify, and these are philosophical discussions that can take place within the committee.

4:42:38 PM

DEBORAH HOLBROOK said she has practiced law in Juneau for 40 years and during that time has practiced in the area of civil law and family law. Ms. Holbrook supports the bill in its original form, she said, because it is a cleaner line to require a conviction rather than changing the evidentiary standard. She explained that she comes from an era when women had no power in domestic violence situations and now they have too much because the pendulum has swung so far that just the allegation alone can ruin someone. She said she does not like to see women abuse the law because it ruins it for the true victims that have definitely suffered. Unfortunately, she noted, she sees that happening all the time in custody situations and the best way to have healthy well-adjusted happy children and a well-adjusted future generation is for children to have open and frequent access to both of their parents, which is what all the sociological studies reveal. The language in the custody statute is being used as a weapon and it's become as though there is a presumption of guilt rather than a presumption of innocence and attorneys end up in the middle of custody cases litigating domestic violence crimes. The accused person doesn't receive the safeguards required in a criminal case, doesn't get a right to a jury trial, doesn't get the right to counsel, and doesn't have the higher burden of proof. Denial of access to a parent's child is at stake here and she remarked that she has

had several cases where the father, typically it is a father, has been relegated to no contact with their children under five, even in cases where the father was the primary caretaker. With regard to child development, if a parent is gone for a week they are basically gone from the child's life because they do not have the concept of permanence.

4:46:09 PM

MS. HOLBROOK related that she agrees with Representative Claman, in that the district courts are making custody determinations because the ball gets rolling against these fathers with the issuance of these ex parte orders. The district court judges hear the allegations from the mother and nothing from the father during the ex parte hearing. Judges regularly issue the domestic violence orders based on texting, repeated telephone calls, and yelling because the definition has gotten so broad. A lot of these young dads appear to be very naïve, they don't have a lot of money and do not realize the repercussions of not appearing at the long-term hearing. For example, the 20 day hearing order is served on them and they may think that because they are splitting up they don't need to talk to the mother any longer, but the district court judges are issuing custody determinations. She said she had a case where the judge ordered that there would only be visitation as the mother chose to allow. The mother chose to not allow any visitation and years went by because he didn't have a retainer to hire private attorney. The root of the problem is the cost and she pointed out that if there are allegations of domestic violence and it's going to morph into this huge case, it's going to cost a fortune because it will take a lot of her time no matter what side she is on. Therefore, if they don't have the money time goes by, months and years with no contact with the children.

4:48:26 PM

MS. HOLBROOK opined that the legislature needs to focus on removing obstacles to having, particularly, fathers involved in their children's lives. It is absolutely imperative that, as a society, everything is done to support that contact continuing, and there is a major problem right now with this domestic violence language in there. She reiterated that she prefers the original bill requiring a conviction, because then it's clear they have the right to counsel, and they can get the public defender if they need to, when being charged with this crime. She pointed out that that should be required before taking the draconian step of removing that person from their child's life.

The committee should look at it from the perspective of the children, they are losing a parent who is concerned about them. She commented that she testified before the first committee and doesn't want to beat a dead horse.

MS. HOLBROOK responded to Chair LeDoux that she didn't realize the members of this committee had not heard her testimony.

4:50:03 PM

CHAIR LEDOUX asked whether an attorney would need to be appointed if the parent is indigent and the Office of Children's Services (OCS) is trying to remove a child from the home.

4:50:30 PM

MS. HOLBROOK opined that the indigent parent has a right to get an attorney, and what is more important in that situation is that the state has protocols about how much contact there still has to be between the child and the parent. When they've intervened due to safety issues ...

CHAIR LEDOUX continued her scenario that things are so terrible in the household that OCS is intervening and they get a lawyer. Although, she noted, if it's simply a dispute between two people, even though a parent could totally lose their rights to their children, there is no right to a court-appointed attorney.

MS. HOLBROOK responded that she listened to testimony at the first hearing and she brought up the issue about the right to counsel. She opined that Mr. Hough, from Petersburg, testified that in the cases where he represented someone, because he was working for the Council, that the other side got an attorney. She offered that she doesn't know what he is talking about other than, there is a Flores v. Flores, 598 P.2d 893 (1979) that said if one side was represented by Alaska Legal Services and the other side was indigent that they were entitled to counsel in a custody case, and she can't remember a case where she has actually seen that happened. The problem here is that by the time the parent gets to the custody case, it's too late. If they haven't had an attorney to defend against the domestic violence TRO and a long-term order has been entered, then they are in a hole and they are going to be spending a lot of money trying to dig out of that hole and they usually don't have it, she explained. That's the problem.

4:52:36 PM

ANDY HARRINGTON, Attorney, advised he has performed a lot of pro bono representation work in domestic relations cases, he was formerly the head of Alaska Legal Services Corporation (ALSC), although, he is speaking solely on behalf of himself. He said Ms. Holbrook is correct, if ALSC is representing one parent in a custody dispute there is a Flores right to an appointed attorney on the other side. That also applies to a situation in which the free attorney is provided through a pro bono program of either the Alaska Legal Services Corporation or the Alaskan Network on Domestic Violence and Sexual Assault (ANDVSA). The right to that attorney is an issue ANDVSA, in particular, has been quite forward in trying to make sure the other side should get an attorney, even if it is an ANDVSA attorney, or an ANDVSA pro bono attorney who is representing one party, he said.

MR. HARRINGTON pointed out that the CSHB 334, [Version I] is much different than the original HB 334, [Version H], and he acknowledged that he wasn't in favor of the original but likes [Version I] even less. He said that to take the nine factors listed in AS 25.24.150(c) and to single out the only one with any kind of evidentiary standard attached to it and require clear and convincing evidence before that factor becomes relevant to a superior court trying to decide custody issues unduly deprioritizes it and makes it the last among equals. He opined that a person cannot say that is necessary in order to create any kind of remedy to the presumption because this version of the bill does away with the presumption in its entirety. He reiterated that making one factor require clear and convincing evidence, particularly where it is known that so many divorce litigants are pro se and have no idea what that standard means or how to establish it, would be a big step in the wrong direction.

4:55:27 PM

MR. HARRINGTON related that it is important to make the point that the Alaska Supreme Court has been hearing cases involving this presumption for several years and has issued many rulings. Those ruling do significantly cut back on any potential for abuses or misuses of the presumption in the statute and the discussion of this issue should take those into account. Going through a divorce where there is no domestic violence is traumatic, he remarked, but it is a quantum level higher to be going through the divorce or representing someone going through a divorce when there is domestic violence present. He noted an historical point and said this discussion reminds him of an

earlier era when he was practicing law when the shared child custody presumption was put into statute, immediately afterwards there were situations in which people were trying to misuse, misapply, and misinterpret those statutes as well. The legislature did not respond by getting rid of that presumption, it made fine tuning types of amendments to that so it continued to function as it was originally intended and tried to minimize those potentials for abuse or misuse. That is the approach he said he would suggest here because [Version I] is too much of a sledgehammer and not enough of a scalpel to deal with whatever problems people feel may exist.

4:57:32 PM

MR. HARRINGTON referred to Representative Claman's comments regarding district courts deciding child custody cases and said it is important to note that the district court can decide the domestic violence petition, which can include a custody decree and it is good for up to a year. He commented that the district courts in his experience are "always, always, always" pushing the parties to try to file a superior court case and get a permanent custody arrangement put in place for the children. The extent to which the superior court has to defer or not defer to the district court finding that there has been domestic violence, he opined that the Alaska Supreme Court said that falls under the heading of collateral estoppel, and the superior courts are given a great deal of discretion to decide whether or not to accord any collateral estoppel to these protective order proceedings. The latest ruling is a case from August 2015. Another case law point, when a superior court, in the custody case, places a limitation on visitation, it has to establish a plan for how that supervision requirement of limitation is going to be listed. It is automatically supposed to be a part of what a superior court does when it says it is imposing a restriction on visitation, and the judge explains the steps necessary to get that remedied, he explained. In his experience, he said, there are two types of parents when they receive such an order, one type goes through whatever hoops are necessary to have a relationship with their children and the other parent decides they will not let anyone tell them what they have to do before they can reestablish a relationship with their children. He remarked that it is the latter situation that tends to draw on for inordinate periods of time. People willing to go through the hoops can get the limitations lifted, usually within a shorter period of time, he said.

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MR. HARRINGTON opined that if someone is served with a 20 day order they do not have to wait for the court's scheduled follow-up hearing and they can ask to have the hearing moved up if they feel it is necessary to get the issues for the long-term protective order remedied earlier. He offered appreciation to the legislature for putting this much thought into the subject and is grateful that everyone is focusing on these issues because it is such a significant problem in Alaska. He stated he does not support the approach taken by this bill and in particular, the committee substitute currently before this committee.

5:01:30 PM

CHRISTIN PATE, Legal Program Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), advised that ANDVSA is in opposition to HB 334. She explained that the program offers civil legal assistance, primarily in family law cases, to victims of domestic violence and sexual assault statewide. Additionally, it provides legal advice and counsel to advocates at its 23 member programs and affiliates who work with victims and children through daily and legal proceedings. She advised she has been practicing family law since 1994 and has worked with thousands of victims of domestic violence (DV) who were litigating through the custody process. She advised she had submitted a lengthy written opposition to the original bill and that ANDVSA has even more concerns about the committee substitute before the committee. She offered that she echoes everything Mr. Harrington stated and does not want to repeat his points, but the committee substitute makes domestic violence, child abuse, and neglect, harder to prove in a custody case than any other issue and it brings the state to a standard lower than prior to 2004. The rebuttable presumption law was enacted to protect Alaskan children from the harmful effects of exposure to domestic violence. The Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) wholeheartedly agrees with the sponsor's statement that fathers are a critical part of a child's life, but most importantly it is vital for a child to have two healthy parents. In homes where there has been domestic violence that is not possible. She noted that Alaska ranks in the top ranks for domestic violence and sexual assault nationwide, and as of 2013 there are 1.4 times the national average for child abuse and neglect. It is known that the children who grow up in homes where domestic abuse is present are subject to the intergenerational cycle of abuse. Additionally, when children witness domestic violence in their home they are at risk that

they will be killed or injured by the violence, and their emotional, physical, and mental health will be detrimentally affected. The effects of this violence includes a wide range of physical, social, mental, and educational defects which take a heavy financial and emotional toll on Alaska. Violence doesn't end when the relationship ends, separation is often the highest time of lethality risk for victims and their children because abusers are struggling to maintain the power and control they have exerted in the relationship, she said.

5:04:24 PM

MS. PATE explained that the rebuttable presumption against awarding a parent joint or sole custody passed in 2004, and was enacted to ensure that courts made consideration of domestic violence a priority in deciding custody of children. Prior to the enactment of the law, domestic violence was just one of the nine best interest's factors that courts could consider. The best interest's factors are things that the court is supposed to review and make findings about if there is evidence of it before the court. The court then has discretion to apply those "so by making domestic violence by clear and convincing evidence, the hardest factor to prove, we've made domestic violence harder to prove than anything else in the case." The 2004 legislature heard testimony regarding victims and children killed by abusers during a custody case, given the enormity of the problem in Alaska, making DV one of the nine best interest's factors was not adequate protection for Alaska children. Now, by making it harder to prove than anything else, it is less protective. Previously, courts sometimes failed to hear evidence of domestic violence, minimize the importance of it, or failed to put in place rehabilitative programs for a parent who has committed domestic violence. She opined that it is surreal for her to hear some of the testimony today because having litigated these cases in courts for so long, ANDVSA has found it is hard to prove domestic violence. It is still a private issue, it's clouded in shame and fear, many victims never report to law enforcement, they don't tell family or friends, they don't go to a doctor, they make excuses for their injuries when they go to a doctor, and they're not great at preserving evidence. Often it is the abusive partner who might be savvy at building a history of evidence to show that the other party is crazy, or destroy any evidence of the violence. Therefore, when a victim goes to custody court she often doesn't have an arsenal of evidence to corroborate her story. Many of these cases rely upon "he said, she said" so a clear and convincing evidence standard, even in

the best interest's factors, will make it especially hard to prove domestic violence, she advised.

5:06:56 PM

MS. PATE referred to Sec. 7 of the bill and said the committee substitute not only removes protections for children, it makes it harder to prove domestic violence. As an advocate, they are often asked why victims stay in violent relationships, it is known that victims stay because they believe they have no way out, no financial means, fear of being killed if they leave, or they've been told by their abusive partner they will lose custody of their children if they leave. By making it harder for victims to reach out for help and obtain a custody order that is protective of children, the state is ensuring that children will grow up exposed to domestic violence. ANDVSA urges the committee to oppose this legislation.

5:07:34 PM

MS. PATE referred to Mr. Harrington's testimony regarding case law since 2004 regarding rebuttable presumption, and agreed there has been no less than 20 cases by the Alaska Supreme Court interpreting it, and many have restored some discretion to the courts. She said in order to overcome the presumption, basically a parent has to show that they are not abusing substances, that they've done some type of rehabilitative program - there is not a requirement that they do a batterer's program or a certified batterer's program because it was taken out under Stephanie F. v. George C., [270 P. 3d 737 (2012)]. They just have to do some type of program such as counseling, alcohol or anger management programs, it is whatever the court believes is necessary for the parent to overcome whatever their history of domestic violence is. And that it's in the best interests for that parent to have custody based on the history of domestic violence. Also, she related, if there is not a batterer's program in a certain location, the court does not have to put that requirement in place. She said she has heard about the high cost of supervised visitation and how hard it can be, and pointed out that in most of their cases it is a family member or friend performing the supervised visitation. Courts can be incredibly liberal in their interpretation of what supervised visit is, for example, she recently spoke with a DV victim involved in a custody case who advised that the judge had ordered that the presumption applied. She explained that this was a case where the abusive parent had come to the house drunk and started strangling the victim in front of her mother and

some other people, and their 3 year old child took a stick and started hitting the parent who was strangling the mother. When the police were called [the abuser] hid under the bed in the house, and was arrested. At the custody hearing the judge found that it was a serious incident of domestic violence and applied the rebuttable presumption, but allowed that parent to go to an alcohol program as their rehabilitative program, and allowed the father's live-in girlfriend to be the supervisor of his 3 day visit each week, which included over-nights.

5:10:10 PM

MS. PATE related that there as a wide range of what is considered supervised visitation in this state. Alaska has too few attorneys representing victims of domestic violence and sexual assault, her agency has three attorneys and a small army of pro bono attorney to assist, but the agency still has to turn away one in two cases. If someone does not have an attorney it is difficult to prove domestic violence, if the agency is involved in a case and the other parent is indigent, they have a right to a free attorney. She said her agency believes that is incredibly important, that these cases involve very fundamental rights, rights to your child, rights to the upbringing of your child, and that everyone should have due process in court when that decision is being made. In addressing the jurisdictional statement, she said that one of the important things that has happened over the last few years, especially in Anchorage, is when there is a domestic violence protection order filed, that case is consolidated with the divorce or custody case so the divorce or custody judge, who is making decisions about the children in the long term, makes the decision about the domestic violence protection order. Therefore, she pointed out, the judge has the full information about the family in making a decision as to whether domestic violence has occurred and how that will affect the custody case down the road. She thanked the committee for its time and expertise.

5:11:57 PM

BRENDA STANFILL, Executive Director, Interior Alaska Center for Non-Violent Living, noted that [Version I] Sec. 2 and Sec. 7, appears to still include a conviction, so it is either clear and convincing or has been convicted of a crime of domestic violence. She referred to Sec. 2 [AS 25.20.061, page 1, lines 13-15, and page 2, line 1] which read:

If visitation is awarded to a parent who **the court finds by clear and convincing evidence** has **a history of perpetrating** [COMMITTED A CRIME INVOLVING] domestic violence **or been convicted of a crime involving domestic violence**, against ...

MS. STANFILL said the same language is located in Sec. 8, and opined this is taking out the rebuttable presumption, it's moving it into something the court can consider, and it's moving it to clear and convincing evidence or a conviction. Both of those create some challenges, she explained, when trying to prove domestic violence has occurred, or oftentimes as the sponsor said, the state does not want people to be considered to be a domestic violence offender because something has happened. Putting someone in fear is a domestic violence crime that could happen one time and a person could plead "no contest" because they believed they put someone in fear and now this would automatically go against a person as now being a domestic violence offender. She said she disagrees that this changed much from the first bill which required a conviction. In 2004, this rebuttable presumption was important to her agency because she had two wonderful women dead. She related that in 2001, the two women within six weeks of each other were both murdered by their abusive partner while trying to accommodate visitation with their children. The first woman's final words in court, begging the judge, to please put something in place to help protect her in these exchanges because she was very fearful that she was going to be killed." This judge told her that she and her abusive partner were both adults and to work it out. She was murdered three days later and her child was in the next room. She said these are the types of issues where each judge rules on the bench having their own perspective, and their own history and belief system. One of the reasons for the presumption was to make sure the court prioritizes the issue of domestic violence. Currently, the presumption reads that after reviewing all of the evidence, the person does have the presumption of being a domestic violence offender, the judge sets out what the person must accomplish before sole or joint custody can be awarded to the person. She pointed out that it is known that domestic violence and divorce is one of the most dangerous time due to the legalities, and that person losing control over the person [technical difficulties]. Ms. Stanfill opined there could be a discussion regarding what constitutes history and what timing should be considered, but she likes this version of the bill even less than the original version. She urged the committee to go back to the bill drawing board to be certain non-abusive parents do not lose contact with their

children. Along those same lines, she said, it is important to ensure a priority is kept, when it comes to protecting Alaska's children, to not live in homes where children will learn and grow up to be a future generation of batterers.

5:17:42 PM

CORRINE VORENKAMP, Lead Staff Attorney, Alaska Center for Non-Violent Living, said she shares the concerns and comments of Mr. Harrington, Ms. Stanfill, and Ms. Pate, and she is also concerned about the impact of HB 334 on the victims of domestic violence, including children who are substantially affected by domestic violence in their homes. She referred to the requirement that there be a conviction and acknowledged that this version does away with what had been raised before, but she opined raising the standard of proof to a clear and convincing standard singles out and elevates the burden of proof on what is already a substantially under-reported and extremely difficult crime to prove under any standard. One of the issues Ms. Stanfill discussed was the lethality risk, and she noted that the Center for Non-Violent Living as with Ms. Pate's program, represents victims of domestic violence often in custody cases, and most of their clients have a high risk of being killed by abusers. The risks they face can include histories of having been strangled, threatened with firearms, and repeatedly threatened that they would be killed if they ever left their abusers, and/or having their pets harmed or killed. She said that only a couple of their clients have ever reported the abuse to anyone and they served 56 clients last year, with only one client's abuser convicted of a crime of domestic violence even though there have been horrific abuses in the majority of the cases they represent. Ms. Vorenkamp related that just last year, Mandy Clemons applied for a protective order on her own, but the court found that she had not proven there was domestic violence, and even the ex parte order she sought was denied. Ms. Clemons did later obtain counsel through Alaska Legal Services Corporation and her attorney was capably attempting to establish that the domestic violence presumption was applicable and that visitation with her children should be supervised for her safety and her children's safety. Meanwhile, her abuser had unsupervised visitation before the custody trial on those issues could be held. Ms. Clemons was killed in her child's presence during the custody exchange. She advised that the trial has not yet taken place, but pointed out that Ms. Clemon's batterer had never been charged with a crime of domestic violence and had no prior history. Ms. Clemons was unable to prove, even at the ex parte level, an obviously true threat, she expressed.

5:21:30 PM

MS. VORENKAMP underscored the concern that these are already tough cases, and singling out and elevating the burden of proof will significantly impact real victims of domestic violence. She urged the committee to reconsider the goals here and what the legislation is trying to accomplish. She noted that the rebuttable presumption is two prior crimes of domestic violence proven to judge by a preponderance of the evidence standard, or one that has caused serious physical injury, which is a high standard under Alaska's statutes. It is defined in criminal law statutes and basically requires severe and protracted impairment of health or loss or function of a body member or organ. She described that as a high level of injury, not necessarily a broken bone, but one that significantly impacts someone's life for a substantial period of time and the problem is in the proof, she explained. She noted that Fairbanks judges consolidate protective order proceedings, rarely apply collateral estoppel to the protective order proceeding hearings when those issues are contested in a custody case, and are still having a difficult time establishing even sometimes severe domestic violence.

5:23:23 PM

MS. VORENKAMP said the presumption statute currently requires both a proof of those two crimes by the preponderance of the evidence standard. She pointed out that even when that's been proven, the judges have discretion, under the rebuttable presumption statute, to not order supervised visitation if they do not think it is necessary, or in the child's best interests. The National Council of Juvenile and Family Court Judges in 1994, noted there should be a presumption that it's detrimental to a child to be placed in a sole or joint custody with a perpetrator of family violence. She explained that Alaska's rebuttable presumption comes from research and information that legal shared custody can be detrimental to the children, harmful, and dangerous. When there is proven domestic violence, the judges have discretion to fashion something different if they do not think supervised visitation is appropriate. She urged the committee to reconsider the changes here that would make it so hard to prove domestic violence.

5:25:47 PM

ALLEN BAILEY, Law Offices of Allen Baily, said that he has 42 years of experience working with domestic violence victims, is a former member of the American Bar Association Commission on Domestic and Sexual Violence, and was chair of that commission's Domestic Violence Committee. He related that he posted an article from the House Health and Social Services Standing Committee hearing on the website. He remarked, the original HB 334 [Version H] was a bad option with no reality-based purpose, it appears to have been based on anecdotes for which the committee only heard one side. However, he said, the committee substitute for HB 334 [Version I] is truly a horrible idea because it makes intimate partner violence, that can harm children and its direct victims in long lasting ways, the least important criterion for child custody under AS 25.24.150(c). He said he found it amazing that that could be done by simply inserting a clause requiring proof by clear and convincing evidence of every part of the statute that refers to domestic violence. It's interesting, he noted, that it goes from being almost impossibly difficult under the original HB 334, to something that degrades domestic violence to the least important criterion, in statute, for the selection of child custody simply by requiring a higher burden of persuasion of the court. He noted there are few other kinds of civil litigation in which that level of proof is required, one is child in need of aid litigation, and certain parts of the court's findings. The important issue here is that no order regarding custody of children will be made without findings concerning whether or not allegations of domestic violence have been proved by a preponderance of the evidence. In the event the court makes the finding that it is so proved, then the court takes some action in pursuit of whether or not there's going to be a presumption. He pointed out that the court must find at least two incidents of domestic violence have occurred, or one incident involving serious physical injury. The statute was written that way to relieve people in the circumstances described by Ms. Koeneman where she said she threw something in a moment of anger in a domestic dispute. First of all, he related, if you throw something and it isn't thrown at someone, it would only be a domestic violence crime if it caused physical damage to the object that is thrown or some other object - that would be destruction of property. If it is thrown at a person, that is a legitimate definition of a fourth degree assault if that person is in fear. He drew the committee's attention to the materials he deposited on the legislature's website for this bill, dated March 24 and March 29, 2016, including an article published in a peer reviewed journal, The Family Law Quarterly, entitled "Prioritizing Child Safety as the Prime Best Interests Factor."

He described it as an accurate discussion of current research concerning children in custody litigation.

5:32:28 PM

ALLEN LEVY, Physiological Associate, advised he is a recognized expert on domestic violence and the effects of domestic violence on children. When discussing domestic violence it is important to not treat it as a unitary phenomenon because there are four recognizable types, and he agreed with supporters of the bill that the current definition of domestic violence in the law is completely inadequate. If the problem is to be solved, he stressed, it is not with HB 334 as currently written in that it requires a serious new look at domestic violence in making Alaska's statutes accurately reflect the reality of domestic violence. Mr. Levy read his testimony into the record, as follows:

> I testified previously on this bill in front of the Health & Social Services Committee. I am deeply troubled my testimony and the testimony of so many others, experts on domestic violence and the victims of domestic violence appear to have been ignored. This bill still has legs and it is walking steadily in the wrong direction. If this bill passes in its current form, or with the substitution being considered before this committee today, then I say "Heaven forgive you for you know not what you do." It seems as if there is momentum from a vocal special interest group to support this bill. Please listen to the real experts, those who are standing up to protect the vulnerable and voiceless, the children who have had to cower in the night listening to the violence, and the survivors who at great cost and risk have struggled to free themselves and their children from this reign of terror. If you are inclined to ignore those voices, if you find yourself tempted and even seduced by the voices of those who are crying because they can no longer batter and terrorize those whom they should have been loving. The apologies of those who are really only sorry that they got caught. The voices of those who falsely play the victim then I say to you, go ahead, pass this bill, pass this bill please. Ignore the fact that Alaska has the highest rate of domestic violence in the nation. Ignore the fact that domestic violence costs this nation $5.8 billion annually. Ignore the fact that statistics

show that more than one in ten women in relationships experience domestic violence every year. Ignore the fact that those statistics significantly underreport the actual number of domestic violence incidents. Ignore the fact that homicide is the eighth leading cause of death in Alaska and that 69 percent of those deaths were linked to sexual assault or domestic violence. This bill was put forward to support a father who quote "inadvertently violated a restraining order." Excuse me, ignore the fact that nobody inadvertently violates a restraining order. Ignore the fact that the sponsor of this bill apparently did not bother to speak to this man's victims and that ... victims at a court after hearing evidence found actually needed protection. Ignore the fact that this is special interest's legislation of the worst kind. And please ignore the voices of the victims as the supporters of this bill are.

I will share with you now the voice of one victim I encourage you to ignore. The voice of one survivor of domestic violence at the sentencing of the batterer ... the man who battered her and her children. This is a woman who managed to get free of that batterer, although he had previously never been convicted, she was able to get some measure of protection for her children under the statutes that this bill is seeking to eliminate. But after the father successfully rebutted the presumption under the current statute, one of her sons came back from his father covered in bruises from being beaten with a belt. The father was able to plead to a significantly reduced charged.

Here are her words at the sentencing hearing: I am here to speak on behalf of the victims of this man's crimes, my sons, my husband, and myself. His charges are on the record but he is pleading to less than what he is charged with and much less than what he has actually done. Two of his crimes were assaulting my husband and assaulting my son. A key element of an assault charge is fear in the mind of the victim. I am here to say that our fear of this man is real and present every day. Although today's hearing will put a close in the formal proceedings, my life and the life of my family will go on, and it will go on with fear. He has put fear in our hearts and we fear that it will not stop. The man you see before you is a man

of many faces. In court and to his many friends he is charming, eloquent, a smooth talker, likable, charismatic, and apparently sincere. But he has shown in the past, and we fear he will continue to show to us faces that he feels entitled by right to inflict on us. To the son he beat black and blue he showed the face of force, violence, and terror. To my husband, he showed the face of threats and violence. To me, he shows the face of domination and control. He stands before you now, your honor, contrite and respectful but we know in fear in our hearts that he is keeping his other less honorable and more chilling faces reserved for us in the future. He is a batterer and such men known to the experts for what they truly are do not easily give up their violent controlling ways. Apparently the deal is done and my family and I must accept the verdict of the court. But hear us, your honor, and know that we will live in fear, and we fear that we will be standing before you again on some unknown future date, again the victims of this batterer's unrelenting need to inflict domination, violence, and control of those he has selected to be his victims.

So please, committee, go ahead, pass this bill and make it impossible for victims of domestic violence to get protection and safety. Pass this bill and make a parent's right to batter and terrorize more important than a child's right to live in safety and security, that "might makes right," and that the system favors the powerful and cruel.

5:40:01 PM

FRED TRIEM, Attorney, advised he is 75 years of age, and is actively practicing law, often in the area of domestic relations law. He said he supports the original version [Version H] and opposes the committee substitute [Version I], which was undermined by the House Health and Social Services Standing Committee. Thereby, violating the Satchel Paige law - "if it ain't broke, don't fix it," which the House Health and Social Services Standing Committee violated. He explained the wisdom of legislation, as follows: Good laws express standards of conduct in language that is concise and not ambiguous; bad laws are ambiguous, loosie-goosie, amorphous and subject to misinterpretation and disputes about the meaning. The original version, he said, cured some major problems in Alaska's domestic

relations law in that it eliminates the bad vague phrase "a history of perpetrating" and replaces it with a concise phrase "convicted." Everyone knows the meaning of the word convicted, it is a precise term. When a judge has a case with the issue of whether a person has been convicted of a crime, a legal assistant can go to CourtView and answer that question immediately, he said.

5:43:40 PM

MR. TRIEM said that legislatures should try to refine the language in laws to allow people interpreting them to know exactly what is meant and avoid lengthy litigation. He advised, within the Alaska Digest, Section "Words and Phrases," is part of Alaska's legal history in which little snippets are listed from Supreme Court decisions. He then turned to the meaning of "clear and convincing evidence" and read a sound bite from an Alaska case in 1994, which gives one meaning to clear and convincing evidence. He then turned to the supplement from 2011, and said two more decisions are reported that give different interpretations of clear and convincing, so it is not a precise term. Within Black's Law Dictionary for every definition in the dictionary, the Alaska Supreme Court has issued three or four more. Therefore, clear and convincing evidence, as used by the committee, is not an exact term and; therefore, takes the state back to re-infecting Alaska's law with an even worse version than before the original bill was introduced. He offered that by introducing clear and convincing just exacerbates the problem of vagueness. He said he is advocating turning back to the original version of the bill and use that as a launching pad for the discussion. The version forwarded to the House Judiciary Standing Committee from the prior committee, Sec. 7, would amend subsection (6) of AS 25.24.150(c) by removing one of the most important pillars of Alaska's domestic relations child custody law. He explained it is the requirement that the court consider the willingness and ability of each parent to facilitate and encourage visitation with the other parent. That's a major factor when giving custody to one parent, to be sure other parent will be able to see the children and, he described that as a terrible mistake.

CHAIR LEDOUX asked whether that was in Sec. 6.

MR. TRIEM said he is working off the committee substitute Version N, page 4, Sec. 7.

CHAIR LEDOUX related that the committee is on Version I.

REPRESENTATIVE MILLETT noted that it is the same in both versions, page 4, lines 29-31, to page 5, lines 1-5, which read:

> (6) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child [, EXCEPT THAT THE COURT MAY NOT CONSIDER THIS WILLINGNESS AND ABILITY IF ONE PARENT SHOWS THAT THE OTHER PARENT HAS SEXUALLY ASSAULTED OR ENGAGED IN DOMESTIC VIOLENCE AGAINST THE PARENT OR A CHILD, AND THAT A CONTINUING RELATIONSHIP WITH THE OTHER PARENT WILL ENDANGER THE HEALTH OR SAFETY OF EITHER THE PARENT OR THE CHILD];

5:47:35 PM

MR. TRIEM, in response to Chair LeDoux, agreed it is still there, and offered that everything he said applies to Versions I and N. He stressed to not emasculate this law by taking out the words that would allow a court to consider the willingness ...

CHAIR LEDOUX interjected that is where she is getting confused.

REPRESENTATIVE MILLETT referred to page 4, line 17, "Sec 7. AS 25.24.150(c) is amended to read" and that everything in capital letters is removed has been removed from this bill. Therefore, on page 4, line 31, "EXCEPT THAT THE COURT MAY NOT CONSIDER THE WILLINGNESS AND ABILITY IF ONE PARENT SHOWS THAT THE OTHER PARENT HAS SEXUALLY ASSAULTED OR ENGAGED IN DOMESTIC VIOLENCE AGAINST THE PARENT OR A CHILD, AND THAT A CONTINUING RELATIONSHIP WITH THE OTHER PARENT WILL ENDANGER THE HEALTH OR SAFETY OF EITHER THE PARENT OR THE CHILD]." It has been changed to read ...

5:48:56 PM

CHAIR LEDOUX interjected that she saw that, but surmised that Mr. Triem was confused because he believes the court was no longer able to consider the willingness. She said she still thinks Mr. Triem may be confused.

MR. TRIEM said he was not willing to admit confusion, and referred to the importance of this provision noting that the language has been bracketed and that the committee is taking out the prior committee's recommendation, which is to remove the language Representative Millett read.

CHAIR LEDOUX agreed, except that that is taking out that the court may not consider the willingness and ability if one parent has engaged in domestic violence, and it's going back to just plain, "(6) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child."

MR. TRIEM confessed error because Version N, which he received from the other committee, deletes more of the good language. He then realized that the drafting error had been cured and he withdrew his objection to the language. He thanked Chair LeDoux for pressing him on that issue.

5:50:52 PM

MR. TRIEM stated that "this hurriedness that you're experiencing here illustrates that the problem that 90 days is not enough, and I respectfully urge you ..."

CHAIR LEDOUX interrupted and said the committee is staying on HB 334.

5:51:0 PM

STEVEN SAMUELSON offered that he has experience with people working with him on a boat, or away from families, going through a divorce, and the effect it has on them. Alaska is a resource state and people can be out on the water for a month at a time. He said the bill pertains to the child which is the most important, and he likes that it puts both individuals on the spot and makes it a level playing field. He said he could see someone out in the field trying to work with a lawyer and set dates could hinder their effectiveness to fight in court and defend themselves. People in the field have expressed frustration and tears because the other parent plays games, and they are out in the middle of the ocean trying to bring in income to pay for the proceedings, pay for the divorce, and pay to be sure they can see their child. He pointed out that the first person that runs out of money is done. He related that people in bad relationships, or were in previous domestic violence relationships, tend to continue to get into those relationships. He continued that just because the parent with the child was in a bad relationship that doesn't mean they are not going to get back into another relationship, which affects the child from a different individual.

MR. SAMUELSON said he could have been charged with domestic violence but because his wife was honest, he was not charged.

5:58:24 PM

CARMEN LOWRY, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), advised that as the representative of the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) it is opposed to the original bill (Version H) and is further opposed to the committee substitute (Version I).

5:59:13 PM

REPRESENTATIVE LYNN asked what she is in favor of.

MS. LOWRY responded that that answer "would take more time than I have right now."

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

[HB 334 was held over.]

5:59:47 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:59 p.m.