

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 1, 2018

3:03 p.m.

MEMBERS PRESENT

Representative Geran Tarr
Representative David Eastman
Representative Jennifer Johnston
Representative Colleen Sullivan-Leonard
Representative Matt Claman (alternate)
Representative Dan Saddler (alternate)

MEMBERS ABSENT

Representative Ivy Spohnholz, Chair
Representative Bryce Edgmon, Vice Chair
Representative Sam Kito

COMMITTEE CALENDAR

HOUSE BILL NO. 290

"An Act relating to the membership of the Alaska Criminal Justice Commission; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 336

"An Act relating to supported decision-making agreements to provide for decision-making assistance; and amending Rule 402, Alaska Rules of Evidence."

- HEARD & HELD

PRESENTATION: KEY COALITION

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 290

SHORT TITLE: CRIMINAL JUSTICE COMMISSION: MEMBERSHIP

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/18	(H)	READ THE FIRST TIME - REFERRALS
01/19/18	(H)	HSS, JUD

03/01/18 (H) HSS AT 3:00 PM CAPITOL 106

BILL: HB 336

SHORT TITLE: SUPPORTIVE DECISION-MAKING AGREEMENTS

SPONSOR(S): MILLETT

02/07/18 (H) READ THE FIRST TIME - REFERRALS

02/07/18 (H) HSS, JUD

03/01/18 (H) HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

VALERIE DAVIDSON, Commissioner
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Presented HB 290 on behalf of the sponsor.

HANS RODVIK, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 336 on behalf of the bill sponsor, Representative Millett.

ANNE APPLGATE, Program Coordinator
Governor's Council on Disabilities and Special Education
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

RICK BENJAMIN, Director of Organizational and Spiritual Wellness
Hope Community Resources
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

IAN MINER
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

JEANNE GERHARDT-CYRUS
Governor's Council on Disabilities and Special Education
Kiana, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

LINDA GOHL
AARP
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

ART DELAUNE
Fairbanks, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

HEIDI KELLY, Executive Director
Governor's Council on Disabilities and Special Education
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of HB 336.

MILLIE RYAN, Board Member
Key Coalition of Alaska
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint titled "Welcome to Key Campaign 2018."

SHELLY VENDETTI VUKOVICH
Key Coalition of Alaska
Anchorage, Alaska

POSITION STATEMENT: Shared her personal experiences with the Key Coalition.

ACTION NARRATIVE

[3:03:25 PM](#)

REPRESENTATIVE GERON TARR called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m. Representatives Tarr, Johnston, Saddler (alternate), and Claman (alternate) were present at the call to order. Representatives Sullivan-Leonard and Eastman arrived as the meeting was in progress. [Representative Tarr was the acting chair in the absence of Chair Spohnholz]

HB 290-CRIMINAL JUSTICE COMMISSION: MEMBERSHIP

[3:04:18 PM](#)

REPRESENTATIVE TARR announced that the first order of business would be HOUSE BILL NO. 290, "An Act relating to the membership of the Alaska Criminal Justice Commission; and providing for an effective date."

[3:04:34 PM](#)

VALERIE DAVIDSON, Commissioner, Office of the Commissioner, Department of Health and Social Services (DHSS), stated that HB 290 had been introduced by the governor's office, and she paraphrased from the Sectional Analysis [Included in members' packets], which read:

Section 1: This section amends AS 44.19.642(a) to increase the number of members of the Alaska Criminal Justice Commission from 14 to 15 by adding as a member a resident of the state who has been the victim of a felony crime under AS 11. The governor will appoint this individual for a three-year term. This bill further amends this section to include the Commissioner of Health and Social Services on the Alaska Criminal Justice Commission as a voting member.

Section 2: This is a conforming amendment to recognize that the member of the Commission who is the victim of a felony crime serves at the pleasure of the governor and may be reappointed, as is currently the case for the municipal law enforcement and victims' rights advocate members.

Section 3: Allows for an immediate effective date under AS 01.10.070(c).

COMMISSIONER DAVIDSON explained that the addition of the Commissioner of the Department of Health and Social Services (DHSS) as a voting member on the commission was necessary as there was influence and correlation between the DHSS and Criminal Justice. She pointed out that the Division of Juvenile Justice was within the purview of the DHSS, and not within the Department of Corrections (DOC). She stated that law enforcement worked closely with the division and that any changes to criminal justice laws would have an impact on juvenile justice practices, needs, and resources, particularly for discretionary waivers.

COMMISSIONER DAVIDSON added that changes in juvenile justice laws could have an impact on the likelihood of juveniles entering the adult criminal system. She stated that experience in Alaska, as well as other states, had shown that a key aspect for reducing recidivism was the availability of treatment services for substance use disorders. Both the Division of Behavioral Health with behavioral health grants and the Medicaid program with payments for behavioral health were sources for treatment funding. She reported that the Alaska Criminal

Justice Commission was required by statute to consider treatment and rehabilitation programs during its deliberations. She shared that when people left the criminal justice system, the opportunity for access to medically assisted treatment or health care had a significant impact on the reduction of recidivism.

[3:08:27 PM](#)

REPRESENTATIVE SADDLER asked if the Commissioner of DHSS had recently been added to the commission as a non-voting member.

COMMISSIONER DAVIDSON offered her belief that this had been a result of Senate Bill 54 during the special session.

REPRESENTATIVE SADDLER asked on how many boards Commissioner Davidson currently served.

COMMISSIONER DAVIDSON said that she currently served on the Alaska Housing Finance Corporation board and on the Council for Domestic Violence and Sexual Assault, as well as the Alaska Criminal Justice Commission board. She reported that a designee would attend when she was unable.

REPRESENTATIVE SADDLER asked if this was all the boards.

COMMISSIONER DAVIDSON reported that DHSS had the Suicide Prevention Council, and that others participated on that council.

REPRESENTATIVE SADDLER said that he wanted to make sure that this additional responsibility was not adding too many more duties. He asked which meetings she attended and which meetings she had a designee attend.

COMMISSIONER DAVIDSON said that she would provide that information.

[3:10:25 PM](#)

REPRESENTATIVE EASTMAN asked for clarification on the victims.

COMMISSIONER DAVIDSON replied that victim was defined under AS 12.55.185, a person against whom an offense has perpetrated, or a person who is a minor, incompetent, or incapacitated that is living in a spousal relationship, a parent, an adult child, a guardian or a custodian. If the victim is deceased, then it is the person living in the spousal relationship, an adult child, a

parent, a sibling, or a grandparent or grandchild of the deceased.

REPRESENTATIVE SADDLER asked if criminal activity was a behavioral issue or a moral issue.

COMMISSIONER DAVIDSON offered her belief that criminal activity was both, and she directed attention to the corrections system in Alaska where individuals were dealing with behavioral health issues and substance use issues.

[3:13:05 PM](#)

REPRESENTATIVE SADDLER suggested the addition of someone from the faith-based community to the commission in order to share a moral perspective.

REPRESENTATIVE TARR asked if this had been considered. She pointed out that the suggestion to have the Commissioner of DHSS on the board had been a recommendation from the Criminal Justice Commission.

COMMISSIONER DAVIDSON expressed her agreement that the Commissioner of DHSS be added as a voting member.

REPRESENTATIVE TARR asked if there were any other recommendations.

COMMISSIONER DAVIDSON said that was the only recommendation to add members to the commission.

[3:14:15 PM](#)

REPRESENTATIVE SADDLER asked if there was anyone from the commission to testify regarding the intent. He questioned the decision to move the Commissioner from a non-voting to a voting member in such a short time.

REPRESENTATIVE TARR said that there was not anyone on-line but it could be suggested as a follow-up request.

REPRESENTATIVE SADDLER expressed his agreement.

COMMISSIONER DAVIDSON offered that the recommendation to become a voting member had been forwarded at the request of the Behavioral Health Sub-Committee to the Alaska Criminal Justice Commission.

COMMISSIONER DAVIDSON, in response to Representative Tarr, reported that the Chair of the Commission was Greg Razo, and the Chair of the Behavioral Health Sub-Committee was Steve Williams.

REPRESENTATIVE TARR said that there should be public minutes from the commission meeting.

COMMISSIONER DAVIDSON expressed her agreement, although the minutes from the meeting at which this was discussed may not have yet been approved.

[3:16:15 PM](#)

REPRESENTATIVE EASTMAN directed attention to page 2, line 25, which specifically stated that the new position being created would serve at the pleasure of the governor, and he asked if this was duplicative language and would it still be the case even if this language was deleted.

COMMISSIONER DAVIDSON replied that, typically with boards and commission, those positions were nominated and appointed by the governor's office unless specifically outlined as designated by positions or other appointment.

[3:17:27 PM](#)

REPRESENTATIVE EASTMAN offered his belief that this language would allow the government to terminate the position if displeased.

COMMISSIONER DAVIDSON read from the proposed bill, page 2, line 13: "a resident of the state who has been the victim of a felony crime under AS 11 appointed by the governor for a three-year term." She allowed that most governors recognized that reasonable people can disagree, and she pointed out that there had been instances in which members of a commission voted differently than the governor, but that she had not seen this governor replace people "willy-nilly." She declared that the benefit of a state-wide commission or advisory committee was to get a balanced perspective from across the state.

[3:19:13 PM](#)

REPRESENTATIVE EASTMAN suggested that, when serving at the pleasure of the governor, an appointee would vote with the Governor's desires.

COMMISSIONER DAVIDSON asked whether she was referring to a different version of the bill, and she read: "appointed by the governor for a three-year term."

[3:19:55 PM](#)

REPRESENTATIVE TARR offered her belief that Representative Eastman's reference to page 2, line 25 of the proposed bill referenced the existing statute which created the Alaska Criminal Justice Commission and was not what was being addressed by the proposed bill. She relayed that during her work with the commission, one of the representatives had been very independent with their positions.

[3:21:16 PM](#)

REPRESENTATIVE EASTMAN directed attention to the position described on page 2, line 13, and stated that this position was characterized on page 2, line 25, as one that "serves at the pleasure of the governor."

REPRESENTATIVE TARR opined that, as this was part of the executive branch, the legislature could not be involved in executive branch appointments. She suggested that Representative Eastman contact Legislative Legal Services for advice.

REPRESENTATIVE EASTMAN asked if this was duplicative language. He offered his belief that the governor "could just swap them out with somebody that he likes more."

[3:22:54 PM](#)

REPRESENTATIVE JOHNSTON opined that this was standard in all the advisory commissions. She suggested that he discuss this with Legislative Legal Services to determine the reason for this language.

[3:23:19 PM](#)

REPRESENTATIVE SADDLER said that, according to the State Constitution, the governor had the right to replace any person on a board or commission for any reason. He said that there were very few boards or commissions with specific rights to membership.

3:24:21 PM

REPRESENTATIVE JOHNSTON pointed out that the public members of the permanent fund were protected.

REPRESENTATIVE TARR asked if Representative Eastman was satisfied.

REPRESENTATIVE EASTMAN mused that it could be open for discussion for change in the future.

3:24:39 PM

REPRESENTATIVE SADDLER asked what Commissioner Davidson could contribute to the board as a voting member that she would not be able to accomplish as an ex-officio non-voting member.

COMMISSIONER DAVIDSON explained that the state should have a vote for the direction to the role of treatment for recidivism and criminal justice. She declared that a voting position was worthwhile. She pointed out that she would choose to attend any meetings in which she was statutorily required to participate. She pointed out that, as the topic of treatment was discussed at "every, single Criminal Justice Commission meeting" and the recidivism reduction funds had been directed to the DHSS, it would be a missed opportunity not to have the Commissioner of DHSS as a voting member.

REPRESENTATIVE SADDLER asked if she was aware that the intent was to make her a voting member when she was appointed as a non-voting member.

COMMISSIONER DAVIDSON said that the recommendation to be a voting member of the commission happened before Senate Bill 54 designated her as a non-voting member of the commission. She noted that prior to that, she was not even a member of the commission. She reported that the role of treatment for reducing recidivism in criminal justice endorsed her participation in those meetings. She offered her belief that the change in language to add the Commissioner of DHSS was the result of a vote on the House floor.

REPRESENTATIVE SADDLER reiterated that she was involved prior to becoming even a non-voting member. He asked when she became aware that the intent was for her to become a voting member.

COMMISSIONER DAVIDSON offered to review the notes of the commission, and she opined that there was a vote in August 2016 to add the Commissioner of DHSS as a voting member of the commission.

REPRESENTATIVE SADDLER asked if there had been the intention all along for the Commissioner of DHSS to become a voting member of the commission.

COMMISSIONER DAVIDSON stated that she would not speculate on the legislative intent throughout the process. She reiterated the facts.

REPRESENTATIVE SADDLER recapped that she believed it was good to be involved as a voting member.

COMMISSIONER DAVIDSON stated that, as a voting member, the Commissioner of DHSS would be able to vote on the deliberations before the Criminal Justice Commission.

REPRESENTATIVE SADDLER asked if she intended to attend personally or would she designate someone to attend and vote in her place.

COMMISSIONER DAVIDSON declared that she had been participating in the meetings and expected to attend all the meetings although she did not anticipate going to meetings if she was incapacitated.

[3:31:01 PM](#)

REPRESENTATIVE JOHNSTON asked if the meetings were teleconferenced.

COMMISSIONER DAVIDSON said that options for both personal and teleconference attendance were available.

[3:31:25 PM](#)

REPRESENTATIVE TARR declared that the addition of a member who was the victim of a felony crime was very important. She expressed her hope that this would increase the collaboration between departments, an efficient and effective use of dollars.

REPRESENTATIVE EASTMAN offered his belief that the reasons stated by Commissioner Davidson for becoming a voting member of the commission were equally valid for the other non-voting

members of the commission. He asked if there was an objection to making those voting members, as well.

COMMISSIONER DAVIDSON replied that the other non-voting members were appointed by the Speaker of the House and the Senate President. She expressed confidence in the Alaska State Legislature to make that determination.

[3:33:19 PM](#)

REPRESENTATIVE TARR opined that, as this was an executive branch commission and there was a separation of powers, the legislators could not be voting members.

REPRESENTATIVE EASTMAN said that, if it was put in statute, "then it is so."

REPRESENTATIVE TARR said that this could be reviewed. She pointed out that members appointed by the legislature, in statute, as opposed to the governor, created this separation of powers.

[3:34:51 PM](#)

REPRESENTATIVE SADDLER offered his belief that the Alaska Criminal Justice Commission was a creation of the legislature, and he reiterated his earlier question for the increased effectiveness as a voting member of the commission. He suggested that she had said she would be more powerful and her opinions would carry more weight.

COMMISSIONER DAVIDSON, in response to Representative Saddler, emphasized that she had not used the word "powerful," as this was a word that she generally did not use when she described herself. She declared that having a vote "gets your position on the record and you're able to actively take a stand on a position in a way that a non-voting member does not."

[3:36:01 PM](#)

REPRESENTATIVE TARR opened public testimony and after first determining no one wished to testify, closed public testimony on HB 290.

[3:36:44 PM](#)

REPRESENTATIVE TARR announced that HB 290 would be held over.

HB 336-SUPPORTIVE DECISION-MAKING AGREEMENTS

3:36:54 PM

REPRESENTATIVE TARR announced that the next order of business would be HOUSE BILL NO. 336, "An Act relating to supported decision-making agreements to provide for decision-making assistance; and amending Rule 402, Alaska Rules of Evidence."

3:38:18 PM

REPRESENTATIVE CLAMAN moved to adopt the proposed committee substitute (CS) for HB 336, labeled 30-LS1239\J, Bannister, 2/26/18, as the working draft.

3:38:37 PM

REPRESENTATIVE TARR objected for discussion.

3:38:44 PM

HANS RODVIK, Staff, Representative Charisse Millett, Alaska State Legislature, paraphrased from the Sponsor Statement [Included in members' packets], which read:

With over 100 wards per public guardian Alaska has one of the highest rates of full guardianship in the nation. Studies concerning individuals under full guardianship have found that such individuals were significantly less likely to have any kind of paid employment and are less likely to be integrated into their community, than people provided less restrictive options to full guardianship.

Policy makers should engage in efforts to provide adults with intellectual and developmental disabilities (IDD) the needed tools to experience lives with the most autonomy, freedom and independence as possible. The Supported Decision-Making Agreements Act does just that.

Designed as a mechanism to enable adults with IDD to enter into newly created legal structures called supported decision-making agreements (SDMA), House Bill 336 will provide a less restrictive alternative to full guardianship for adults with IDD. Guided by

the experience of other states, HB 336 will enable adults with disabilities to maintain their rights to make decisions currently being taken away from them by guardianship orders.

The philosophy underpinning HB 336 contends that adults with IDD do have and should retain their constitutional and civil rights to live as freely and autonomously as possible. HB 336 will help change the current system in which one person tends to make every decision for adults with IDD, even though those adults have capacity to make many decisions on their own; to a system where adults who can make life decisions with support from others no longer have the right to make those decisions taken away from them by the government.

HB 336 will enable OPA to focus its efforts on adults who truly need full guardianship, while providing Alaskans experiencing varying levels of IDD an avenue to live happier and healthier lives.

MR. RODVIK pointed out that Alaska had one of the highest rates of full guardianship in the nation, as currently, the Office of Public Advocacy was overwhelmed with a ratio of about 100 wards to 1 guardian. He reported that there were more than 1500 wards in Alaska. He explained that, under full guardianship with a such a high caseload, there was a potential for failure to meet monthly with the ward, potential for abuse, and loss of independence, ambition and self-expression on behalf of the ward. He stated that these concerns were compounded, reporting that individuals with intellectual and developmental disabilities (IDD) under full guardianship experienced significantly less paid employment than those who were independent. In Alaska, he added, there were very few options for those adults who did not need full guardianship to receive any other support in their lives. He declared that the proposed bill would help Alaskans with IDD and the elderly to retain their inherent right to make decisions for themselves and would ensure that the Office of Public Advocacy would be able to spend its time with those who needed the full guardianship.

[3:41:25 PM](#)

MR. RODVIK paraphrased the changes to the proposed committee substitute (CS), Version J [Included in members' packets] [original punctuation provided], which read:

Section 13.56.010, Page 1, Line 9: Deleted "another adult" and added "one or more adults"

Section 13.56.010(c), Page 2, Line 1-4: Changed language to clarify that an adult cannot enter into a SDMA if that agreement infringes on the authority of any guardian or conservator - but still gives principal the ability to enter a SDMA IF the guardian/conservator approves of it in writing

[3:42:28 PM](#)

REPRESENTATIVE SADDLER asked that one term be used consistently.

MR. RODVIK replied that he would use the word "principal" and he continued to paraphrase from the changes to Version J, which read:

Section 13.56.030(a)(2), Page 2, Line 18: Changed the word "the" after "assistance that" to "each" to clarify that a SDMA may have multiple supporters

Section 13.56.030(b), Page 2, Line 20-22: Inserted this new subsection to mandate that SDMAs contain 3rd party notification of the rights and obligations of supporters in SMDAs

Section 13.56.030(c), Page 2, Line 23-27: Renumbered the section, following insertion of subsection b

Section 13.56.040, Page 2, Line 30-31: Removed subsection 3 referencing a form provided by the Department of Health and Human Services. DHSS will not be required to create SDMA forms. Governor's Council on Disabilities and Special Education has agreed to take this on. Also, under subsection 2, line 31 added language "the agreement..."

[3:44:13 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked for clarification on Section 13.56.030(b) that SDMA referred to supported decision making agreements.

MR. RODVIK said that was correct.

[3:45:04 PM](#)

MR. RODVIK returned to the explanation of changes, which read:

Section 13.56.040, Page 3, line 2-6: Renumbered subsection "4", to subsection "3."

Section 13.56.040, Page 3, line 8-9: Added new subsection "4," which provides safeguards by ensuring that a principal who also has a guardian or conservator must notify them of the SDMA for the agreement to be valid

Section 13.56.060(b), Page 3, line 22-24: Added "supported decision-making" before "agreement"

Section 13.56.070, Page 3, Line 25-30: Grammar edits in this section. Keeping consistency throughout bill, by adding "supported decision-making" before "agreement"

Section 13.56.080, Subsections A-D, Page 3, Line 31-Page 4, Line 14:

Removed subsection "c" referencing the superior court's ability to terminate or limit a SDMA, as these are private agreements and decision-making right are retained by the principal. Capacity is inherently retained by principals under SDMAs. SMDAs do not grant decision making authority away. Superior Court doesn't have authority over these agreements

a) Clarifies that either a principal or supporter may terminate all, or a portion of a SDMA - at any time

b) Termination process of all or part of a SDMA must be in writing, signed, and such signing must be presence of two witnesses who also sign the termination paperwork, or the signature must be notarized

c) Renumbered as subsection "c" from "b" - includes language noting that a principal or supporter can terminate all or a portion of a SDMA

d) New subsection. If certain parts of a SDMA are terminated, the entire SDMA is not terminated, and the untouched parts remain in effect

Section 13.56.100(2), Page 4, Line 24-25: Strikes out "to manage the principal's affairs", replaced with "for the principal to manage the principal's affairs". Supporter isn't managing principal's affairs - principal is managing their own affairs with assistance by supporter in specific areas

Section 13.56.110, Page 5, Line 11: Inserted new subsection "3." Prohibits a supporter from signing or providing an electronic signature for the principal. Renumber other subsections accordingly

Section 13.56.140(3), Page 6, Line 14-15: Removed the language "conscience or" on concerns that this language might have been unconstitutional/discriminatory

[3:48:30 PM](#)

REPRESENTATIVE TARR asked to describe the changes on page 6, line 12.

MR. RODVIK read the language in the original bill, "declining to comply with an authorization related to health care in a supported decision-making agreement if the person is declining because the action proposed to be taken under the agreement is contrary to the conscience or good faith medical judgement," and he shared that "to the conscience" was removed.

REPRESENTATIVE TARR asked why this was removed.

MR. RODVIK replied that there were concerns that this might create avenues of discrimination and some constitutional questions.

[3:50:29 PM](#)

MR. RODVIK returned to the explanation of changes, which read:

Removed Section 13.56.150 "Principles for providing decision-making assistance," Page 6 of original bill (Version D), Line 11-24 - and renumbered sections accordingly. This language is stated better in the

Shared Vision bill and shouldn't have to be stated -- we are talking about people with full agency, so these are already inherent rights

[3:51:18 PM](#)

ANNE APPLGATE, Program Coordinator, Governor's Council on Disabilities and Special Education, offered her belief that this section was about stating some general principles for the underlying mission for this change of direction. She reported that this was better stated in the shared vision and that it was determined to be unnecessary and overly burdensome to be written into the proposed bill.

REPRESENTATIVE TARR stated that this was removed in Version J.

MR. RODVIK returned to the explanation of changes, which read:

Section 13.56.150, Page 6, Line 19-27: Removed subsection "a" referencing the superior court for same reasons state previously, and renumbered subsections accordingly

MS. APPLGATE, in response to Representative Tarr, explained that this resulted from a conversation with Nancy Meade, General Counsel for the Alaska Court System, and it was decided to remove it as this was a private agreement and the court would not supervise the relationships involved.

REPRESENTATIVE SULLIVAN-LEONARD suggested that this "opens up the question then if something does happen where there's a certain sense of liability or maybe injury to a principal, that does not exclude then the Superior Court's involvement with judicial oversight." She asked if this was correct.

MS. APPLGATE said that it did not because the opinion after analysis of other statutes was that there could be a tort action for negligence on the part of a supporter, if there were damages that resulted to a principal from a failure to comply with what they had agreed to and declared to support in that agreement. She opined that would be a standard, ordinary negligence, and would have to be determined by a court. She added that, although there was not a legal opinion, this was the direction it would go. She acknowledged that, although the court would have authority, that authority did not need to be stated in this proposed bill as it was well established in other places.

[3:54:47 PM](#)

MR. RODVIK returned attention to the explanation of changes, which read:

Removed Section 13.56.185 "Regulatory authority; forms," Page 8 of original bill (Version D), Line 9-11: Deleted this section as DHSS won't be necessary to create forms or regulate these private capacity agreements. Governor's Council on Disabilities has offered to produce SDMA forms

REPRESENTATIVE TARR directed attention to page 6, line 28, and asked for discussion.

MR. RODVIK replied that that no changes were made, that this section dealt with the affairs of a principal that an SDMA could cover, and anything related to work, health care, support services, education, finances, living arrangements and more were all discussed.

REPRESENTATIVE TARR said that this was important to the proposed legislation. She asked how this became the comprehensive list for an SDMA.

MR. RODVIK explained that this list had been compiled from examples from other states and successful SDMA projects.

[3:57:20 PM](#)

MS. APPLGATE clarified that this list had come from the Delaware statute and that Massachusetts had created an agreement in the absence of a statute authorizing it. She said that the Delaware statute was based on a non-profit study and was now used as a template. This was a description to offer suggestions for what might be included, and she declared that none of the agreements had to include any or all of these, as they were individualized to the needs, preferences, and circumstances of the person in the center. She compared this to a laundry list or menu for choice.

[3:58:38 PM](#)

REPRESENTATIVE SADDLER said that he did have some general questions about the proposed bill once the changes were discussed.

[3:59:04 PM](#)

REPRESENTATIVE TARR asked about Section 13.56.170 [page 7, line 14 of Version J].

MR. RODVIK explained that this contained the list of support services, as referenced in the previous section, that supporters may provide the principal as agreed upon by the SDMA. He pointed out that this was not a fully inclusive or exclusive list, but individualized agreements which could be narrow or broad in scope.

[3:59:52 PM](#)

MR. RODVIK, in response to Representative Tarr, said that Section 13.156.185 was removed in Version J. He explained that Department of Health and Social Services was not needed to create the forms or regulate the private capacity agreements.

REPRESENTATIVE SADDLER directed attention to page 7, line 14, and asked for clarification that these were not exclusive, and the list could be expanded.

MR. RODVIK said, "that is correct."

REPRESENTATIVE TARR mused that the regulations were not necessary because there was a sample form available.

[4:01:07 PM](#)

MR. RODVIK returned attention to the proposed changes, which read:

Section 13.56.190 (4), Page 8, Line 7-8: Added new definition of "conservator" to include a conservator in another state

Section 13.56.190(6), Page 8, Line 10-11: Added new definition of "decision-making assistance"

Section 13.56.190(7), page 8, Line 12-13: Added new definition of "guardian" to include a guardian in another state

[4:02:16 PM](#)

MR. RODVIK directed attention to page 8, line 28, the short title of the proposed bill, the Supported Decision-Making Agreements Act. He discussed page 8, line 30, and the Alaska Rules of Evidence to clarify that the execution of a supported decision-making agreement cannot be used as evidence of a principal's incapacity. Moving on to page 9, line 6 of Version J, he stated that it was necessary to receive a two-thirds vote of each house to go into effect.

REPRESENTATIVE TARR pointed out that everything in the proposed bill was found in Section 1, and that none of the provisions could be adopted without the two-thirds majority vote.

[4:03:49 PM](#)

REPRESENTATIVE TARR removed her objection. There being no further objection, Version J was adopted as the working draft.

[4:04:06 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked about the effective changes in [Court] Rule 402.

MR. RODVIK explained that Court Rule 402 was a five-paragraph information piece related to exceptions and admissible evidence [Included in members' packets].

REPRESENTATIVE SULLIVAN-LEONARD said that she would continue her review and that she supported the intent of the proposed bill. She declared that it was "pretty convoluted between the two bills, between the initial one and the committee substitute."

[4:05:22 PM](#)

REPRESENTATIVE SADDLER asked about the universe of Alaskans who would qualify for SDMA's.

[4:05:38 PM](#)

MS. APPLGATE replied that there were two discreet categories. The first was people who did not have any guardianship, limited guardianship, or conservative order that they were the ward under. This group of people could create an agreement with one or more supporters which described in detail, specific to their circumstance, what kind of help they may desire. She explained that the second category were people who had "some kind of order, whether it's a guardianship order or a conservatorship

order." She stated that these people, with the signed authorization of their guardian, could engage in the process of creating the document and experience the process of decision making although in a shared decision-making encounter and under the oversight of that guardian.

REPRESENTATIVE SADDLER offered his belief that the "thrust of the bill is to provide support for those who are not in a position to make every decision for themselves." He stated that inclusion in the proposed bill for people with no guardianship issues raised it to "a very interesting level." He suggested that this might be a lot to do.

MS. APPLGATE explained that they did not want to exclude the senior trying to plan for advancing age, while trying not to rely on a single individual; but, to instead, plan their process of needing more support as they aged. She opined that the requirement of verification of disability put people in the position of validating their needs. She stated that this was "not extending any additional rights to some protected group" and should not require any proof of that need.

[4:08:43 PM](#)

REPRESENTATIVE SADDLER asked if other states, jurisdictions, or countries were employing this type of agreement.

MS. APPLGATE replied that Texas has had a supported decision-making agreement act since 2015 with no criminal or civil actions, and no full guardianships. She added that Delaware, British Columbia, and Australia also used this program. She pointed out that, in Australia, there was a second tier of supporters.

REPRESENTATIVE SADDLER asked if these all included people without any guardianship or conservatorship.

MS. APPLGATE offered her belief that this was the case in Texas, and, even if the statute articulated for people with disabilities, people were using them prior to diagnosis and as a part of planning for the aging process.

[4:10:21 PM](#)

REPRESENTATIVE SADDLER asked if this would be difficult for people to understand who were already having a difficult time assessing and making decisions.

MS. APPELEGATE opined that it was necessary to educate families and other supporters, while describing the process for support. She shared that this process would begin by articulating long term goals and helping someone understand what was currently being done for the decision making. This would lead to a creation of a statement in conjunction with a personal centered plan. She offered her belief that, as people knew what help they needed and wanted, it was just a matter of helping them articulate that.

REPRESENTATIVE SADDLER suggested that, as the legislature would need annual feedback to see how it could be made better, he might offer an amendment to include that requirement.

[4:12:44 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD shared that the proposed bill offers a sense of ease for family members to aid in gathering information for their loved one and the extra set of hands to assist in the stages of their loved one. She asked Ms. Applegate to offer examples.

[4:13:45 PM](#)

MS. APPELEGATE explained that in some government processes the interview process was deemed confidential and, in that circumstance, the only accompanying people were a guardian or a formal interpreter. If someone merely needed help articulating or sequencing a set of events, this could create obstacles for many government processes.

REPRESENTATIVE SULLIVAN-LEONARD asked if someone could opt in or opt out as a supporter.

MS. APPELEGATE said that she was not sure, but she offered her belief that it would be necessary to give notice for termination of obligation.

REPRESENTATIVE SULLIVAN-LEONARD mused that there would be a provision for multiple caregivers in the proposed bill.

MS. APPELEGATE stated that there was a provision for a substitute supporter.

MS. APPLGATE said that the majority of members of the Governor's Council either experienced disabilities or were parent guardians of people with disabilities.

[4:18:42 PM](#)

RICK BENJAMIN, Director of Organizational and Spiritual Wellness, Hope Community Resources, explained that Hope Community Resources was doing a pilot project in collaboration with the Governor's Council and the Disability Law Center. He stated that supported decision making was based on the simple concept that everyone had people we trusted for medical, financial, and other advice. He stated that these agreements just made it formal, official, and legal. He opined that, although Alaskans liked to be independent, we did rely on others that we trust. He shared that Hope Community Resources had chosen the Massachusetts model, and he read a few supportive quotes for that model. He declared that he was very excited for this proposed bill.

[4:21:40 PM](#)

IAN MINER shared a personal anecdote about his parents taking guardianship for him when he turned 18 years of age. He reported that, when he attempted to remove the guardianship order when he turned 23 years of age, it took more than 2 years of hearings to accomplish. He shared that, had the option for supported decision-making agreements been available when he was age 18, he would have chosen it. This would have given him both the help and advice he wanted as well as the rights when he wanted them back at age 23. He stated that he now recognized that he had not needed a full guardianship, only some guidance.

[4:24:28 PM](#)

JEANNE GERHARDT-CYRUS, Governor's Council on Disabilities and Special Education, shared a personal anecdote, stating that she was the parent of multiple children with pre-natal exposure to alcohol. She relayed the story of her 19-year-old daughter, Ivy. She reported that her daughter had some decision-making instances for which she was not comfortable or did not currently have the skills, related to major financial purchases, health, benefits, and her future. She noted that her daughter consulted with others having more knowledge to receive their input and did not have the need for a full guardian. She pointed out that she could not participate in some of these discussions, or act in her daughter's behalf, without legally sanctioned, supported

decision making. She noted that with this sanction, she could help her daughter to remain calm, reduce her anxiety, and effectively articulate her desires and needs. She explained that, although her daughter did not require a full guardian, she was not yet totally independent. She declared that there should be an option "to flex her support as she matures, and her independence increases" as currently the option was all or nothing. She explained that there should be the option for her daughter to decide what she needs, and this should be adaptable to her needs as she matures.

[4:27:42 PM](#)

LINDA GOHL, AARP, said that the proposed bill could be beneficial to older Alaskans and their family members, as it would allow the principal person to have a choice for whom they designate to support and assist them. She pointed out that a family member may not always be the one selected, as this decision was based on trust. She shared some anecdotes. She clarified that the proposed bill did not replace a durable power of attorney. She noted that the principal person could also have a team of people for support. She pointed out that an older person who never married may be in a situation of needing help and the public guardianship system "may not be exactly appropriate and this would give them some other options."

[4:31:42 PM](#)

ART DELAUNE shared a personal anecdote and expressed his concern that, as he aged, his son with fetal alcohol spectrum disorder would not have the opportunities for a supported decision-making process. He declared his support for a team of advocates. He stated his support for the proposed bill.

[4:36:16 PM](#)

REPRESENTATIVE SADDLER asked if there was any downside to a supported decision-making agreement.

MR. DELAUNE offered his belief that it was important for his son to choose the right people to be on his team.

[4:37:31 PM](#)

HEIDI KELLY, Governor's Council on Disabilities and Special Education, stated that she, her son, and her daughter were all on the autism spectrum. She declared that autism did not define

who she was or who she would continue to become, and that she used her voice on the Governor's Council as an autistic speaker advocate. She shared her accomplishments, stating that she hoped these would inspire others. She pointed out that, as full guardianship takes away your voice and would not have allowed her to make her own decisions with proper education, she would not be who she had become. She stated that full guardianship did not work for her family, but a supported decision-making agreement allowed them to have a voice over their own lives. She declared that they deserved a community that helped with everything possible to achieve their very best. She stated her support for the proposed bill. She emphasized that it was "illogical to not use the power you have to do the job you signed up for, which is to make a difference for all Alaskan people."

[4:41:21 PM](#)

REPRESENTATIVE TARR opened public testimony on HB 336 and stated that she would keep it open.

REPRESENTATIVE TARR announced that HB 336 would be held over.

PRESENTATION: KEY COALITION

[4:42:50 PM](#)

REPRESENTATIVE TARR announced that the final order of business would be a presentation by the Key Coalition.

[4:42:51 PM](#)

MILLIE RYAN, Board Member, Key Coalition of Alaska, presented a PowerPoint titled "Welcome to Key Campaign 2018." She directed attention to slide 1, "Thanks for your support," and thanked the legislature for increasing the day habilitation "soft cap" from an average of 8 hours weekly to an average of 12 hours weekly. She stated that this service got people out into the community to contribute. She shared slide 2, "Priority 1, Pass SB 174" which she described as a shared vision bill that laid out a flexible system in which individuals were able to direct their support based on their strengths and abilities to allow for a more meaningful life. She added that it was important to support family, have a professional staff, and have services available into the future. She noted that SB 174 was on its way to the House after passing out of the Senate.

MS. RYAN moved on to slide 3, "Priority II, "Put in Place a Stable and Sustainable Fiscal Plan." She emphasized that a stable, sustainable fiscal plan was necessary to ensure that those with intellectual and developmental disabilities received the necessary services to be productive, contributing members of the community, as this would reactivate the commitment by the state to reduce the waitlist by 200 people each year, instead of the current 50 people. She pointed out that when waiver services outstripped the available resources, Medicaid would allow states to maintain a waitlist. She reported that there were 652 Alaskans waiting for services. She addressed slide 4, "BENEFITS," and explained that when benefits were provided prior to a crisis, there was a reduced cost to the state and it increased the probability for a family to remain together. She shared a personal anecdote about the loss of a younger sister in an institution without any services.

MS. RYAN directed attention to slides 5 and 6, "WHY," and reported that the Key Campaign had provided the legislature with recommendations to reduce the costs of home and community-based waivers and for the use of technology to allow greater independence. She reported that the State of Kansas had a return of \$3.15 on every \$1 spent on its re-use program. She declared that individuals with intellectual disabilities and their families had already contributed to efforts to reduce the State budget. She pointed to research which showed that the out-of-pocket expenses for a family to care for a child with developmental disabilities was estimated at \$8,000 annually beyond the cost to raise a child without a disability.

[4:49:33 PM](#)

SHELLY VENDETTI VUKOVICH, Key Coalition, introduced her daughter, Claire, and she shared anecdotes of her work with Claire in support of Key. She directed attention to slide 8, "WHAT," and stated that waiver services for families allowed the opportunity to become more independent. She declared that she wanted children to stay with families, and there was a need to take care of this population. She shared that, although the types of therapy were not covered by insurance or Medicaid, they brought so much improvement that the family paid out of pocket. She listed special equipment and summer programs as other needs from out-of-pocket expenses, and she estimated that these expenses were closer to \$20,000 each year.

[4:56:15 PM](#)

MS. RYAN directed attention to slide 8, "WHAT:" and spoke about the two bills supported by the Key Campaign, SB 80, a telecommunication bill that would require telephone utilities to provide services for those who were deaf, hard of hearing, or speech impaired and HB 336, the bill heard by the committee earlier in the day.

REPRESENTATIVE SADDLER stated that the Key Campaign focused on a few things and was willing to work with the legislature to attain achievable goals.

[5:00:32 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:00 p.m.