

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

March 7, 2017

3:03 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 127

"An Act relating to a permanent fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

- MOVED HB 127 OUT OF COMMITTEE

HOUSE BILL NO. 112

"An Act relating to sexual assault by a peace officer against a person who is a victim, witness, or perpetrator of a crime."

- HEARD & HELD

HOUSE BILL NO. 1

"An Act relating to absentee voting, voting, and voter registration; relating to early voting locations at which persons may vote absentee ballots; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 127

SHORT TITLE: CRIM. CONV. OVERTURNED: RECEIVE PAST PFD

SPONSOR(s): REPRESENTATIVE(s) KAWASAKI

02/15/17	(H)	READ THE FIRST TIME - REFERRALS
02/15/17	(H)	STA, FIN
02/28/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/17	(H)	Scheduled but Not Heard
02/28/17	(H)	STA AT 5:30 PM GRUENBERG 120
02/28/17	(H)	Heard & Held
02/28/17	(H)	MINUTE(STA)
03/07/17	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 112

SHORT TITLE: SEXUAL ASSAULT BY PEACE OFFICERS

SPONSOR(s): REPRESENTATIVE(s) CLAMAN

02/08/17	(H)	READ THE FIRST TIME - REFERRALS
02/08/17	(H)	STA, JUD
03/07/17	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 1

SHORT TITLE: ELECTION REGISTRATION AND VOTING

SPONSOR(s): REPRESENTATIVE(s) TUCK

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	STA, JUD
02/23/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/23/17	(H)	Heard & Held
02/23/17	(H)	MINUTE(STA)
02/28/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/17	(H)	Heard & Held
02/28/17	(H)	MINUTE(STA)
03/07/17	(H)	STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

FRANK TURNEY

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

MARVIN ROBERTS

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

NATASHA SINGH, General Council
Tanana Chiefs Conference (TCC)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

BILL OBERLY, Executive Director
Alaska Innocence Project
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 127.

REPRESENTATIVE SCOTT KAWASAKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 127, as prime sponsor.

SARAH RACE, Director
Permanent Fund Dividend Division (PFDD)
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions at the hearing on HB 127.

REPRESENTATIVE MATT CLAMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 112, as prime sponsor.

OWEN PHILLIPS, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information on HB 112, on behalf of Representative Claman, prime sponsor.

HILARY MARTIN, Attorney
Legislative Legal Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 112.

TERRA BURNS
Community United for Safety Protection (CUSP)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 112.

KENDRA KLOESTER, Staff
Representative Chris Tuck
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute (CS) for HB 1 on behalf of Representative Tuck, prime sponsor of HB 1.

JOSIE BAHNKE, Director
Division of Elections (DOE)
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 1.

ACTION NARRATIVE

[3:03:47 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:03 p.m. Representatives Tuck, Wool, Birch, Johnson, Knopp and Kriess-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 127-CRIM. CONV. OVERTURNED: RECEIVE PAST PFD

[3:04:48 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 127, "An Act relating to a permanent fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

CHAIR KREISS-TOMKINS opened public testimony on HB 127.

[3:05:31 PM](#)

FRANK TURNEY testified that he supports HB 127. He stated that there are a number of criminal convictions overturned due to newly discovered facts, suggesting a miscarriage of justice. He

said that those wrongly convicted have suffered punishment as a result. He asserted that "the Fairbanks Four" should be compensated with the permanent fund dividend (PFD) payments for the 18 years of incarceration as should others whose convictions have been overturned. He offered that wrongly convicted people face many hurdles when re-entering society, such as finding employment and housing, and needing psychological counseling. He opined that compensating these people would not remove the long years of incarceration but would help them "get back on their feet" and have a normal life. He mentioned that other states have set forth compensations for those who have been wrongly convicted and whose convictions have been overturned. He said that he spent nine years incarcerated in Oregon, after which he worked on a governor's task force and on a county community corrections advisory committee.

[3:07:59 PM](#)

MARVIN ROBERTS stated that he is from Canton, Alaska, and is one of the Fairbanks Four. He relayed that in 1997, he and three others were wrongly arrested and subsequently wrongly convicted for crimes that they did not commit. He said that "after 18 years, we were finally given back our lives," but were not given any compensation and are starting out with nothing. He said that they find themselves struggling without job experience, education, or money for professional counseling. He mentioned that he is working two jobs, which limits time with his family. He maintained that they were not allowed to file for PFDs in prison during the 18 years. He attested that he would have remained in Alaska during those 18 years and would have filed for all his dividends. He stated that the money would benefit the four of them immensely.

[3:10:10 PM](#)

REPRESENTATIVE TUCK thanked Mr. Roberts for his letter to the committee [included in the committee packet] and for his testimony.

CHAIR KREISS-TOMKINS wished Mr. Roberts the best as he transitions back into society.

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REPRESENTATIVE WOOL asked Mr. Roberts if he was ever offered a PFD application during his years of incarceration.

MR. ROBERTS replied that he was not offered a PFD application.

[3:11:19 PM](#)

NATASHA SINGH, General Council, Tanana Chiefs Conference (TCC), stated that 14 months ago TCC celebrated the release from incarceration of the four men known as the Fairbanks Four - Marvin Roberts, George Frese, Eugene Vent, and Kevin Pease. She relayed that these men maintained their innocence for 19 years and were vindicated after a five-week [hearing]. She said that they were released in exchange for signing an agreement releasing the State of Alaska from any civil liability related to the prosecution or investigation of their cases; therefore, they cannot seek compensation through the court processes available to most people.

MS. SINGH mentioned that the Fairbanks Four literally left prison with the shirts on their backs, and the state did not provide these men with assistance in transitioning back into the "real world." She added that despite one's proven innocence, re-entry into society is profoundly difficult for the wrongfully convicted. She maintained that the failure to compensate them adds insult to injury and opined that society has an obligation to compensate the wrongfully convicted.

MS. SINGH offered that for Alaska to guarantee true justice to innocent Alaskan men and women who are falsely incriminated, wrongfully convicted, or victimized by the Alaska criminal justice system, many areas of that system must be examined and rehabilitated. She mentioned that there are charging and sentencing disparities regarding both rural and urban Alaska Natives and to all Alaskans. She stated that prosecutorial misconduct and the mechanism for accountability of state officials need to be codified with real and meaningful sanctions available. She added that TCC will be seeking criminal justice reforms and statutory changes. She mentioned eye witness identification and access to post conviction deoxyribonucleic acid (DNA) testing as two areas in need of reform.

MS. SINGH relayed that she has personally witnessed Marvin, George, Eugene, and Kevin re-integrate themselves into the community of Fairbanks and try to make something of themselves. She maintained that they truly are doing it on their own. She expressed her belief that they are heroes who have her respect and the respect of the executive board of TCC.

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BILL OBERLY, Executive Director, Alaska Innocence Project, stated that the proposed legislation would correct an error made by the court and subsequently by the Permanent Fund Dividend Division (PFDD). He asserted that the men and women whose convictions have been vacated deserve the proposed statute. He proclaimed, "The money is there, and it is the right thing to do to give it to them. It is their money, in fact, wrongfully taken from them." He contended that it is the right thing to do morally, as they already have had years taken from their lives, and it is the right thing to do legally, since they should not have been in prison, and the PFD should not have been denied them. He asserted that HB 127 would correct that error. He added that this money could not be put to a better use. A person released after wrongful incarceration receives no help for his/her transition and no help to return to society. He urged the committee to pass HB 127 out of committee. He reiterated that these four men are truly heroes in that despite being wronged terribly, they approach each day with a positive attitude and continue to struggle each day in the face of many barriers.

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REPRESENTATIVE KNOPP asked if HB 127 is the right vehicle for compensation. He asked why someone, who knew his/her conviction was going to be overturned, would give up his/her right to civil litigation. He offered that the PFD money represents such a small component of the compensation truly due them because of wrongful conviction.

MR. OBERLY replied that he would attempt to explain the situation by relating what the presiding judge said after completion of the [five-week] hearing: The judge shared that he had not listened to any testimony from the first three trials or reviewed the two dozen motions and additional testimony submitted during reconsideration of the case. He said that it would take about six months to hear all the testimony and rule on all the motions. He stated that he would be allowed six months to decide on the case, but that six-month period would not start until the review of evidence was completed. He relayed that if he has not made a decision by the end of the six-month period, he would no longer be compensated for his work, but he stated that he would not be rushed into a decision and had no problem working without pay. Through his statements, the judge relayed to the men and those in the courtroom that it could be a year or more before his decision.

MR. OBERLY said that at that time, three of the men had been wrongfully imprisoned for 18 years - Mr. Roberts was out on parole. He said they were told they could "get out tomorrow and spend their first Christmas with their family in 18 years." He attested that it was a difficult decision but said that if it were him, he would not want to spend another day in prison.

MR. OBERLY emphasized that HB 127 is totally independent of the larger issue of compensation. The proposed legislation would give them money that was wrongfully taken from them because they were wrongfully imprisoned. He contended that it is their money; they are entitled to it; and it should never have been taken from them.

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CHAIR KREISS-TOMKINS closed public testimony on HB 127.

[3:23:38 PM](#)

REPRESENTATIVE KNOPP asked how much of the PFD money [for the Fairbanks Four] was received by the Department of Corrections (DOC) and if it would be more appropriate to repay it from DOC's budget rather than PFDD.

[3:24:08 PM](#)

REPRESENTATIVE SCOTT KAWASAKI, Alaska State Legislature, as prime sponsor of HB 127, explained that PFD criminal funds - funds that are withheld from someone incarcerated or having a felony conviction - are paid predominately to DOC and to a lesser extent to the Violent Crimes Compensation Board (VCCB), the Alaska Council of Domestic Violence and Sexual Assault (CDVSA), the Office of Victims' Rights (OVR), and non-profit victims' rights organizations.

REPRESENTATIVE KNOPP asked if it would be more appropriate to repay the funds from the DOC budget or the Alaska Court System budget, since otherwise PFDD would be paying the amount twice.

REPRESENTATIVE KAWASAKI replied that under HB 127, the source of funding would be the Reserve for Prior Year Dividend Liabilities - a fund reserved for PFDs denied in error and subsequently awarded. He said the fund currently has \$233,000.

[3:25:51 PM](#)

REPRESENTATIVE JOHNSON asked how the money would be paid to the four men and if there is enough money in the fund to do so.

REPRESENTATIVE KAWASAKI reiterated that the balance in the reserve is about \$233,000, and if the Fairbanks Four applied under the proposed legislation, they could receive up to \$103,000 for the 18 years. He maintained that it is very difficult to predict the number of cases that would be applicable under HB 127, but staff has estimated the following: two in 2011; two in 2012; zero in 2013; two in 2014; and 13 in 2015, which includes the Fairbanks Four. He mentioned that prior to 2011, there were about two to three cases per year that could potentially take advantage of HB 127 if passed.

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REPRESENTATIVE JOHNSON expressed her concern that there would not be enough money in the reserve fund for all the potential cases. She stated that another concern is whether the state has a responsibility to solicit potential applicants under HB 127.

REPRESENTATIVE KAWASAKI answered that Department of Law (DOL) staff informed him that if HB 127 passes, ignorance is not a valid argument for neglecting to apply for the PFDDs, and the state has no responsibility to solicit applications.

REPRESENTATIVE JOHNSON stated her belief that there should be a fiscal note attached to HB 127.

REPRESENTATIVE KAWASAKI commented that the proposed legislation is scheduled for the House Finance Standing Committee, and the fiscal note will be reviewed in that committee.

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CHAIR KREISS-TOMKINS asked for more information regarding the sufficiency of funds in the PFDD reserve fund for payouts, if HB 127 passes.

[3:31:50 PM](#)

SARAH RACE, Director, Permanent Fund Dividend Division (PFDD), Department of Revenue (DOR), stated that the amount set aside for the reserve account is calculated every year based on the available amount for calculating the per individual dividend. She explained that PFDD does an analysis that considers not only

prior year liabilities but the potential number of individuals turning 18 for whom their parents or sponsors did not apply. She said that regarding the proposed legislation, PFDD may either create another reserve account or may increase the amount available in the Reserve for Prior Year Dividend Liabilities.

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REPRESENTATIVE LEDOUX asked how the 120-day filing period in the proposed legislation was derived. She opined that it is a very short window.

REPRESENTATIVE KAWASAKI suggested that the longer the filing period, the larger the potential payout.

REPRESENTATIVE LEDOUX agreed that with a longer filing period, more people who are entitled to the payout would know that they are entitled to it. She expressed her concern that with the 120-day filing period, the Fairbanks Four may be the only people who would apply for the payment under the proposed legislation.

REPRESENTATIVE KAWASAKI said he is not sure if there are other people following the progress of HB 127 as closely as the Fairbanks Four.

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REPRESENTATIVE BIRCH asked if there are any conditions or provisions of the settlement agreement [signed by the Fairbanks Four] that would preclude payment under the proposed legislation.

REPRESENTATIVE KAWASAKI referred to the Alaska Superior Court settlement document, which lists eight stipulations of the agreement. He said that with the [signed] document, they agreed not to sue the state.

REPRESENTATIVE BIRCH referred to the sponsor statement and asked Representative Kawasaki if he truly believes the PFD is a defining characteristic of what it means to be an Alaskan.

REPRESENTATIVE KAWASAKI conceded that the language in the sponsor statement might have been "a little bit over the top." He said he didn't think the PFD was the defining characteristic of being an Alaskan.

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REPRESENTATIVE KNOPP asked if everyone who has had his/her conviction overturned or dismissed since the first payment year of 1982 would be eligible to apply for their PFDs under HB 127.

MS. RACE responded, "That is correct."

REPRESENTATIVE KNOPP suggested that the state has no idea of the number of people who would be affected by HB 127 or the length of incarceration per person, and he asked, "What happens when this fund runs dry?" He asked how the annual recalculation of the reserve was performed. He also asked for an explanation of payments reserved for those who did not receive their PFDs as juveniles because their parent didn't apply.

MS. RACE answered that every year PFDD calculates the amount of money to be put into the reserve account. That amount is deducted from the money that becomes available for paying dividends, thus reducing the individual dividend amount. She said that after the first year under HB 127, PFDD would have a better idea of the amount that should be put into the reserve.

MS. RACE, responding to Representative Knopp's second question, said that individuals turning 18 may apply up until their twenty-first birthday for any PFDs that may have been missed on their behalf. For these individuals, eligibility must be determined for the years of application.

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REPRESENTATIVE WOOL, paraphrasing the testimony of Deputy Commissioner Jerry Burnett, Department of Revenue, during the House State Affairs Standing Committee meeting of 2/28/17, said that if an incarcerated person applied for his/her PFD every year, then was released because of an overturned conviction, he/she could appeal previous PFD denials. Representative Wool asked Ms. Race if many prisoners apply for PFDs. He asked if they are given the opportunity and access to a computer.

MS. RACE replied that PFDD does receive applications from incarcerated individuals, and correctional facilities do request applications for prisoners.

REPRESENTATIVE WOOL expressed his understanding that those who are incarcerated are not eligible for a PFD. He asked why an incarcerated person would receive an application if ineligible,

and if some get applications, why wouldn't all of them be given applications.

MS. RACE responded that many ineligible people apply for PFDs, and PFDD encourages these applications, because that gives PFDD the opportunity to determine eligibility.

REPRESENTATIVE WOOL suggested that he may be mistaken in his assumption that anyone in a long-term correctional facility is ineligible for a PFD.

MS. RACE said eligibility, regarding incarcerated individuals, depends on timing. She stated that one criterion of ineligibility is that during the qualifying year, an individual has been sentenced because of a conviction of a felony. If a person is both sentenced and incarcerated in the same year, he/she may be ineligible for that year's PFD. If incarcerated for more years, then the ineligibility would be extended for those years.

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CHAIR KREISS-TOMKINS relayed that if someone was incarcerated for a felony but knew he/she was innocent, it would be in that person's best interest to apply every year until evidence might vindicate him/her. This would allow retroactive eligibility upon appeal of PFD denials and subsequent payments.

MS. RACE responded, "That is correct." She said that in this scenario, the applicant would have received a denial letter for every year of application, and the denial letter would have explained the reasons for denial. She confirmed that at the time the conviction was overturned, the person could appeal each year of PFD denial.

[3:43:43 PM](#)

REPRESENTATIVE JOHNSON asked if anyone eligible for the PFD under HB 127 would be paid a PFD for any period spent out of state.

MS. RACE answered that in that situation, the inmate would still be in the state's custody.

REPRESENTATIVE LEDOUX asked for clarification regarding the scenario of someone in prison filing a PFD application every year believing that he/she will ultimately be exonerated, and

the applications are denied. She asked if there is a time limit to appeal a PFD denial. She suggested that either the appeals would be denied because the person is still incarcerated, or the time would have expired for most of the years by the time the person has been exonerated. She offered that in that case, applying for a PFD for all those years would not put the person at any advantage.

MS. RACE confirmed that an individual has 30 days from the date of receipt of a PFD denial letter to start the appeal process. She added, however, that an additional regulation gives an individual, who is in the situation described by Representative LeDoux, 60 days from the time of an overturned conviction to begin the PFD appeal process.

REPRESENTATIVE LEDOUX asked if any of the 21 potential recipients of PFDs under HB 127 might have already appealed under the regulation cited by Ms. Race.

REPRESENTATIVE KAWASAKI responded that he did not know the answer.

REPRESENTATIVE LEDOUX asked how many people have taken advantage of the regulation - that is, were exonerated and then re-appealed their PFD denials.

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MS. RACE replied that she didn't have that number but could try to find out from the Dividend Enforcement, Review and Appeals Unit.

REPRESENTATIVE LEDOUX asked the sponsor to reconsider the 120-day period for PFD application under HB 127. She questioned whether that was an appropriate amount of time considering minors are given three years to apply after turning 18, if applications were not filed in their behalf.

CHAIR KREISS-TOMKINS asked if anyone has been reimbursed for PFDs after being exonerated.

MS. RACE responded that she is not aware of any such occurrence but could research the question.

[3:50:27 PM](#)

REPRESENTATIVE WOOL said that he fully appreciates the unreasonable expectation for someone in prison taking on the responsibility of requesting and completing a PFD application year after year, only to be denied. He offered that with the individual's involvement in all the legal processes necessary for having his/her conviction overturned and the many issues flooding his/her life after exoneration and release, finding the PFD denial letters and pursuing the PFD appeal process understandably might be delayed. He opined that the proposed legislation is needed, and he agreed that the 120-day period is too short.

[3:52:05 PM](#)

REPRESENTATIVE BIRCH said, "Somebody that isn't here is the person who ... started it all, and that's the deceased person." He cited one stipulation of the settlement agreement [signed by the Fairbanks Four] and said, "The petitioners stipulate and agree that the original jury verdicts and the judgements of conviction were properly and validly entered based on the proof beyond reasonable doubt." He agreed with Representative Wool's assessment of the difficulty of filing for PFDs while in prison, and he stated that HB 127 would be an appropriate remedy [regarding the wrongfully convicted]. He reiterated, "We shouldn't lose sight of the fact that ... there is somebody that's not here ... a young man that was lost in some crime, some time ago in the past."

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REPRESENTATIVE TUCK moved to report HB 127 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 127 was reported out of the House State Affairs Standing Committee.

HB 112-SEXUAL ASSAULT BY PEACE OFFICERS

[3:54:30 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 112, "An Act relating to sexual assault by a peace officer against a person who is a victim, witness, or perpetrator of a crime."

[3:54:46 PM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, as prime sponsor of HB 112, paraphrased from paragraph one of the sponsor statement, which read as follows [original punctuation provided]:

House Bill 112 adds specific language to AS 11.41.425 and AS 11.41.427 criminalizing sexual penetration and sexual contact with victims, witnesses, or defendants under active investigation by a law enforcement officer, effectively clearing up a gray area in the law. Current law criminalizes police sexual misconduct through two mechanisms: 1. coercion- it is considered sexual assault if an individual is coerced into sexual contact or intercourse by threat of arrest, or, 2. in custody-it is considered sexual assault for law enforcement to have sexual contact with a person who is in their custody or apparent custody. Neither of these instances addresses the use of sexual contact as an investigative tool. There have been reports of law enforcement officers engaging in sexual contact prior to arrest, especially in instance of undercover operations, without repercussion.

REPRESENTATIVE CLAMAN concluded by saying that passing HB 112 would clarify a gray area regarding misconduct to protect both law enforcement officers and the public.

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OWEN PHILLIPS, Staff, Representative Matt Claman, Alaska State Legislature, on behalf of Representative Claman, prime sponsor of HB 112, paraphrased from paragraph four of the sponsor statement, which read as follows [original punctuation provided]:

The goal in passing House Bill 112 is clarifying a gray area regarding misconduct to protect law enforcement and the public alike. This bill serves to protect potential victims of sexual assault, and provide clear guidelines to law enforcement to ensure integrity and public confidence.

MR. PHILLIPS went on to say that currently Alaska law does not explicitly prohibit the use of sexual contact as an investigative tool. He stated that a research study at the University of Alaska Fairbanks (UAF) demonstrated that a quarter of the study's 40 participants, comprised of current and former

sex workers, had been sexually assaulted by law enforcement officers. He referred to the Community United for Safety and Protection (CUSP) report, titled "Expanding Protection for Sexual Assault Victims A Report in Support of AK House Bill 112 2/23/17," which details some of those assaults.

MR. PHILLIPS expressed his belief that there is strong support for HB 112 and paraphrased from paragraph three of the sponsor statement, which read as follows [original punctuation provided]:

In addition, a Hays Research Group survey of 900 Alaskans showed that 92.9% were unaware that police were allowed to have sex during prostitution stings and 90.2% felt that it should be against the law for law enforcement to have sexual contact with people they are investigating.

[4:00:36 PM](#)

REPRESENTATIVE LEDOUX referred to the results of the UAF survey described in paragraph two of the sponsor statement, which read as follows [original punctuation provided]:

A research study at the University of Alaska Fairbanks surveyed a diverse group 40 people who had worked in Alaska's sex trade. Of those individuals, 26% said they had been sexually assaulted by a law enforcement officer. 60% of those who had been coerced or manipulated, and 50% of those who had been forced had been sexually assaulted by an officer.

REPRESENTATIVE LEDOUX asked if those who have been sexually assaulted by a law enforcement officer are "covered" under current law.

[4:01:50 PM](#)

HILARY MARTIN, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, answered that past instances of sexual assault are covered under the law as it read when the acts were committed. She added that HB 112 would apply to offenses that occurred on or after the effective date of the proposed legislation.

REPRESENTATIVE LEDOUX requested an explanation of the statistics in paragraph two of the sponsor statement and asked if all the

individuals represented by the percentages are covered under current law.

REPRESENTATIVE CLAMAN responded that it is a challenge to determine consensual versus coercive conduct in a sex worker population. He offered that the intent of HB 112 is to provide protection in instances where consent is a more complicated issue, rather than to address more violent sexual assaults.

REPRESENTATIVE LEDOUX offered that she does not understand what paragraph two [of the sponsor statement] has to do with the proposed legislation.

[4:04:08 PM](#)

TERRA BURNS, Community United for Safety Protection (CUSP), stated that she conducted the UAF research cited in the sponsor statement. She relayed that a quarter of those surveyed had been sexually assaulted by a police officer, and those surveyed used their own definition of sexual assault rather than a legal definition. She said that about 30 percent of the sex workers surveyed met the legal definition of a sex trafficking victim due to being victims of force, fraud, or coercion within the industry. Of those 30 percent, 60 percent reported being sexually assaulted by a peace officer.

REPRESENTATIVE LEDOUX asked what definition of sexual assault the survey used.

MS. BURNS answered that the survey respondents used their own definition, and no legal definition was given to them. She relayed two of the questions asked: "Have you had an officer collect a freebie from you during a prostitution sting operation?" and "Have you been sexually assaulted by a peace officer?" She asserted that there was a strong correlation between the two questions regarding the answers given.

[4:05:59 PM](#)

REPRESENTATIVE KNOPP referred to paragraph three in the sponsor statement and asked for verification that 10 percent of the 900 people surveyed thought it was acceptable for law enforcement officers to have sexual contact with individuals under investigation.

MS. BURNS replied that 6.4 percent of those surveyed said that [sexual contact in these instances] should not be illegal, and 3.5 percent said they did not know or refused to answer.

[4:07:26 PM](#)

REPRESENTATIVE WOOL referred to the title of the bill, which read, "An Act relating to sexual assault by a peace officer against a person who is a victim, witness, or perpetrator of a crime." He asked if HB 112 refers to any crime or just sex crimes.

REPRESENTATIVE CLAMAN answered that HB 112 refers to any crime. He gave as an example the Alaska Supreme Court case of 2014 [State of Alaska v. Public Safety Employees Association], which is described in the Alaska Dispatch News article, titled "Supreme Court: Trooper shouldn't have been fired for sex with domestic violence victim" and included in the committee packet. He explained that this case involved a trooper who responded to a domestic violence incident. The trooper returned the next morning, out of uniform, to talk to the victim, and he had sexual intercourse with her at that time.

REPRESENTATIVE WOOL posed the hypothetical situation: A liquor store is robbed, and the clerk is a witness to the crime. The police officer investigating the crime takes the clerk's witness account. The investigation is open for six months or longer. The officer happens to go into the liquor store six months later and strikes up a conversation with the witness of the crime. The case is still unresolved. He decides to date the witness as a private citizen. Representative Wool asked if under HB 112, it would be illegal for that police officer to have a relationship with the witness.

REPRESENTATIVE CLAMAN said that he and his staff are exploring options for addressing situations such as presented by Representative Wool, both regarding active investigations and dormant investigations. He expressed his belief that there is a gray area regarding the point at which an investigation is dormant. He said that the concern is regarding police officers using their positions of influence to engage in sexual relations at a time when they are still actively involved in the investigation.

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REPRESENTATIVE LEDOUX asked if HB 112 would apply to investigations of traffic accidents.

REPRESENTATIVE CLAMAN pointed out that Section 1 and Section 2 of HB 112 reference "a crime under investigation," and he stated that a traffic accident is not a crime.

REPRESENTATIVE LEDOUX mentioned that "reckless driving" is a crime. She expressed her concern that the proposed legislation be limited to truly egregious situations as opposed to more routine situations.

REPRESENTATIVE CLAMAN responded that it was for that reason HB 112 specifically refers to criminal situations in which police are involved, as opposed to civil situations.

REPRESENTATIVE LEDOUX offered the situation in which a police officer was investigating a vehicular assault. She conceded that while a police officer asking for a "freebie" was "a pretty tacky thing to be doing," asking a witness for a date weeks after the event "doesn't sound all that awful."

REPRESENTATIVE CLAMAN responded that Representative LeDoux raised good points. He said that there are many issues regarding employment place conduct and using positions of power and authority inappropriately. He opined that in the scenario described by Representative LeDoux, most people would agree that a public safety officer asking a witness out two weeks after the investigation would be too soon and would be considered using a position of authority inappropriately. He added that he did not know police departments' views on this.

[4:14:57 PM](#)

REPRESENTATIVE WOOL asked if it is appropriate for a police officer, in the course of an investigation, to have sex with a prostitute to prove that he/she is a prostitute.

REPRESENTATIVE CLAMAN answered that this is a gray area in the statute as it is currently written, and he attested that the intent of the proposed legislation is to make this clearly illegal.

REPRESENTATIVE WOOL asked if it is legal for a police officer to use drugs in the course of a drug sting operation. He added that he was not aware that it was legal for a police officer to

engage in sex with a prostitute in the interest of making an arrest.

REPRESENTATIVE CLAMAN said that his office has yet to receive a clear answer regarding the use of drugs by undercover officers. He maintained that the intent of HB 112 is to address just the one issue - sexual assault by a peace officer.

[4:17:12 PM](#)

REPRESENTATIVE KNOPP referred to Representative LeDoux's question about a car accident, and he maintained that until charges are actually filed, there is no crime, only a suspicion. He opined that a police officer should exercise discretion regarding relationships with anyone involved in the accident, if it is still being actively investigated. He asked if an incident is a crime, if charges have not yet been filed.

REPRESENTATIVE CLAMAN maintained that the existence of a crime is not dependent on charges filed. He offered that there are many incidents that everyone would consider a crime and for which no charges have been filed.

[4:19:44 PM](#)

REPRESENTATIVE WOOL referred to his scenario regarding the liquor store robbery. He suggested that over the course of an investigation, a relationship could develop between the police officer and the witness that is not exploitive or coercive, like a patient developing a relationship with his/her caregiver over time. He stated that under HB 112, the police officer would be committing a crime. He commented that although the intent of HB 112 is to prevent crimes against sex workers, it could apply to situations that are "more nuanced."

REPRESENTATIVE CLAMAN suggested that the liquor store investigation might conclude quickly.

REPRESENTATIVE WOOL agreed, but he suggested that it "seems kind of silly" for the police officer to have to wait for someone to be arrested to ask the witness out.

REPRESENTATIVE CLAMAN responded that his staff is reviewing issues such as have been presented.

[4:21:48 PM](#)

REPRESENTATIVE LEDOUX asked for someone from Legislative Legal and Research Services to give an opinion on whether a "gray area" exists in current statute [relating to the legality of sexual contact by a law enforcement officer with the victim, witness, or defendant under active investigation by the law enforcement officer].

[4:22:23 PM](#)

MS. MARTIN answered that she believes there are unanswered questions regarding active sting operations. She referred to the example of an undercover drug sting operation and said that law enforcement officers are not usually arrested for buying drugs during the operations. She maintained that the crime of prostitution does not require the act to be committed, but only the offering of [prostitution] services.

REPRESENTATIVE LEDOUX asked why HB 112 would apply only to police officers and not district attorneys. She suggested that district attorneys could conceivably date witnesses.

REPRESENTATIVE CLAMAN replied that the concerns that led to the introduction of HB 112 involved police officers. He stated that his office has not received any reports of similar issues with prosecutors. He added that if his staff receives information suggesting a similar problem regarding prosecutors, it could be added to the proposed legislation.

[4:25:13 PM](#)

REPRESENTATIVE LEDOUX asked why HB 112 would be limited to investigations. She added that when someone has been charged, the investigation is theoretically over, but a trial could last a long time.

REPRESENTATIVE CLAMAN responded that limiting the application of HB 112 to investigations was an attempt to exclude dormant investigations.

[4:26:54 PM](#)

REPRESENTATIVE TUCK asked if HB 112 would apply to Transportation Security Administration (TSA) agents.

REPRESENTATIVE CLAMAN answered that it is not entirely clear if TSA officers would be investigating crimes.

[4:27:42 PM](#)

REPRESENTATIVE BIRCH expressed his support for HB 112. He related an incident occurring in Anchorage involving a rogue police officer, Anthony Rollins, which cost the city \$5-10 million in legal fees. Representative Birch relayed that the officer was found in a compromising position in a police facility by a supervisor, who then walked out. He asked if HB 112 would make that kind of engagement clearly illegal.

REPRESENTATIVE CLAMAN mentioned that Mr. Rollins was charged and convicted with first degree and possibly second degree sexual assault, which are crimes under current statutes. He said that HB 112 would address third and fourth degree sexual assaults so would not have affected that case. He agreed with Representative Birch that HB 112 would provide additional tools for sexual assault convictions.

[4:30:02 PM](#)

REPRESENTATIVE KNOPP stated that he supports HB 112. He asserted that HB 112 would make the law "black and white" for police officers regarding contact with a witness, perpetrator, or victim during the active investigation of a crime.

[4:30:58 PM](#)

REPRESENTATIVE JOHNSON stated that she supports the proposed legislation as it relates to sex workers. She suggested that committee discussion has identified the need for additional language to clarify the statutes as they relate to other situations.

REPRESENTATIVE CLAMAN agreed and suggested that perhaps using the phrase "active investigation" would narrow down the scope of the proposed legislation so that it better addresses the scenarios presented by committee members.

[4:33:03 PM](#)

REPRESENTATIVE LEDOUX stated that she supports the intent of HB 112. She said that she has a problem with "just the investigation" portion of it. She said, "I can't imagine that it would be okay for a law enforcement officer to have sex, consensual or not, with somebody who's actually been charged and is on trial." She added, "Maybe the investigation is over, but

there's a trial" She suggested that situation might constitute an unintended loophole.

REPRESENTATIVE CLAMAN conceded that the committee has posed good questions, and he said his staff will be consulting with Legislative Legal and Research Services on the issues raised.

[HB 112 was held over.]

HB 1-ELECTION REGISTRATION AND VOTING

[4:34:52 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 1, "An Act relating to absentee voting, voting, and voter registration; relating to early voting locations at which persons may vote absentee ballots; and providing for an effective date."

[4:35:45 PM](#)

KENDRA KLOESTER, Staff, Representative Chris Tuck, Alaska State Legislature, on behalf of Representative Tuck, prime sponsor of HB 1, provided the committee with a sectional analysis of the proposed committee substitute (CS) for HB 1, labeled 30-LS0070\D, Bullard, 3/6/17 [hereafter referred to as Version D]. She reported the following: Section 1, which relates to same-day voter registration, would remain unchanged; Section 2, which relates to electronic signature and options for individuals with no Division of Motor Vehicle (DMV) licenses, would remain unchanged; and Section 3, which requires same-day voting registrants to vote on a questioned ballot, also would remain unchanged.

MS. KLOESTER relayed that Sections 4-7 would be new sections in HB 1 to make conforming changes to the sections of Chapter 15 related to same-day voter registration. She explained that Section 8 would change the term "absentee voting" to "early voting" to provide more clarity for the public regarding the voting terms - absentee-in-person voting, absentee voting, and early voting - and to promote understanding of the early voting process.

MS. KLOESTER said that Section 9 would be a new section requiring a voter, who registers and votes a questioned ballot, to sign a declaration of residency with the understanding that falsification of information on the voter registration is

considered a Class A misdemeanor. She stated that Sections 10 and 11 would address the requirements for submitting the declaration described in Section 9. She mentioned that Section 12-15 would change the terminology from "absentee voting" to "early voting".

MS. KLOESTER stated that Section 16, included in the original version of HB 1, would provide on the absentee ballot an option for the applicant to automatically receive an absentee ballot every year. She added that Version D would include language that an applicant could be taken off the list of recurring ballot mailings if his/her address became "bad."

MS. KLOESTER relayed the following: Section 17 would make conforming changes for voter registration; Section 18 would address the definition of electronic signature; Section 19 would clarify "early" versus "absentee voting" language; and Section 20 would amend AS 29.26.050 to add a new subsection (d) related to same-day voter registration. She explained that Section 21 would repeal AS 29.26.050(a)(3) due to the proposed addition of subsection (d) by Section 20. She said that Sections 22 and 23, providing an effective date and transitional language, would remain unchanged.

[4:42:05 PM](#)

REPRESENTATIVE BIRCH asked to what extent Version D has been coordinated with the Office of the Lieutenant Governor.

MS. KLOESTER replied that she has been working with Director Josie Bahnke and other staff in the Division of Elections (DOE). She offered that Ms. Bahnke could provide information about communication with Lieutenant Governor Byron Mallott and his staff regarding Version D. She added that before introduction of HB 1, Representative Tuck's staff met with the lieutenant governor, his staff, Claire Richardson, and the Alaska Native Claims Settlement Act (ANCSA) Regional Association to review the changes and provide updates.

[4:43:36 PM](#)

JOSIE BAHNKE, Director, Division of Elections (DOE), Office of the Lieutenant Governor, responded that the lieutenant governor has been briefed on HB 1. She added that DOE staff has not had the opportunity to fully analyze Version D and attended this hearing to better understand it. She asserted that after briefly reviewing Version D, she has identified some significant

and interrelated administrative and drafting issues but added that her staff will continue working with Representative Tuck's Office to resolve these issues.

[4:45:10 PM](#)

REPRESENTATIVE KNOPP said that he has issues with same-day registration, and he asked if same-day registration would mean a person could vote the same day as he/she registered to vote.

MS. BAHNKE answered affirmatively and added that currently one must register 30 days before voting in an election.

REPRESENTATIVE KNOPP stated that he is not comfortable with requiring only an affidavit declaring residency for same-day voting. He asked if the proposed legislation could require documentation to demonstrate residency, such as a current utility bill, a bank statement, a local paycheck, or a government check. He added that he would prefer a six-month residency requirement for voting eligibility in a district, as that would give the voter more familiarity with the candidates and issues.

MS. KLOESTER replied that there are states that require a person to show a utility bill or identification to register to vote on the same day. She suggested that Representative Tuck's staff could explore that possibility with Representative Knopp's staff and DOE.

[4:48:31 PM](#)

REPRESENTATIVE TUCK, as prime sponsor of HB 1, reminded the committee members that a person must be a resident 30 days before the election to vote, and that would not change under the proposed legislation. He stated that he is open to changes to the proposed legislation regarding how and when residency is established for voter registration.

[4:49:08 PM](#)

The committee took an at-ease from 4:49 p.m. to 4:50 p.m.

[4:50:27 PM](#)

CHAIR KREISS-TOMKINS stated that HB 1 was held over.

[4:51:33 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:51 p.m.