

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 5, 2020

1:51 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Chuck Kopp
Representative Harriet Drummond (via teleconference)
Representative Louise Stutes
Representative Gabrielle LeDoux
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 15

Proposing an amendment to the Constitution of the State of Alaska relating to actions upon veto.

- HEARD & HELD

HOUSE BILL NO. 133

"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 15

SHORT TITLE: CONST. AM: VOTES NEEDED FOR VETO OVERRIDE

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

04/15/19 (H) READ THE FIRST TIME - REFERRALS
04/15/19 (H) STA, JUD, FIN
01/23/20 (H) STA AT 3:00 PM GRUENBERG 120
01/23/20 (H) Heard & Held
01/23/20 (H) MINUTE(STA)
01/28/20 (H) STA AT 3:00 PM GRUENBERG 120
01/28/20 (H) Moved HJR 15 Out of Committee
01/28/20 (H) MINUTE(STA)
01/29/20 (H) STA RPT 5DP 2DNP
01/29/20 (H) DP: HOPKINS, THOMPSON, STORY, FIELDS,
KREISS-TOMKINS
01/29/20 (H) DNP: VANCE, SHAW
01/31/20 (H) JUD AT 1:30 PM GRUENBERG 120
01/31/20 (H) -- MEETING CANCELED --
02/05/20 (H) JUD AT 1:45 PM GRUENBERG 120

BILL: HB 133

SHORT TITLE: JUVENILES: JUSTICE, FACILITES, TREATMENT
SPONSOR(S): REPRESENTATIVE(S) SPOHNHOLZ

04/15/19 (H) READ THE FIRST TIME - REFERRALS
04/15/19 (H) HSS, JUD
04/23/19 (H) HSS AT 3:00 PM CAPITOL 106
04/23/19 (H) Heard & Held
04/23/19 (H) MINUTE(HSS)
04/25/19 (H) HSS AT 3:00 PM CAPITOL 106
04/25/19 (H) Moved HB 133 Out of Committee
04/25/19 (H) MINUTE(HSS)
04/26/19 (H) HSS RPT 4DP
04/26/19 (H) DP: TARR, DRUMMOND, ZULKOSKY, SPOHNHOLZ
02/05/20 (H) JUD AT 1:45 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE JONATHAN KREISS-TOMKINS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HJR 15.

JOSIAH NASH, Intern
Representative Jonathan Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 15 on behalf of
Representative Kreiss-Tomkins, prime sponsor.

CRIS EICHENLAUB

Eagle River, Alaska

POSITION STATEMENT: Testified in opposition to HJR 15.

REPRESENTATIVE IVY SPOHNHOLZ

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 133.

MEGAN HOLLAND, Staff

Representative Ivy Spohnholz

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 133 on behalf of Representative Spohnholz, prime sponsor.

MATT DAVIDSON, Social Services Program Officer

Division of Juvenile Justice

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Answered questions relating to HB 133.

TRACY DOMPELING, Director

Division of Juvenile Justice

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Answered questions relating to HB 133.

ACTION NARRATIVE

[1:51:01 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:51 p.m. Representatives Claman, Kopp, Stutes, LeDoux, and Shaw were present at the call to order. Representatives Drummond (via teleconference) and Eastman arrived as the meeting was in progress.

HJR 15-CONST. AM: VOTES NEEDED FOR VETO OVERRIDE

[1:51:36 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 15, Proposing an amendment to the Constitution of the State of Alaska relating to actions upon veto.

[1:52:12 PM](#)

REPRESENTATIVE JONATHAN KREISS-TOMKINS, Alaska State Legislature, as prime sponsor, introduced HJR 15. He introduced his intern, Josiah Nash.

[1:52:30 PM](#)

JOSIAH NASH, Intern, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, presented HJR 15 on behalf of Representative Kreiss-Tomkins, prime sponsor. He stated that HJR 15 proposes a constitutional amendment that would lower the veto vote threshold for appropriation bills from three-fourths of legislators, which is 45 votes, to two-thirds, which is 40 votes. He stated that currently vetoes of non-appropriation bills in Alaska require two-thirds of legislators for an override. He explained that HJR 15 creates a uniform veto override vote threshold, for both appropriation and non-appropriation bills. He stated that Alaska's veto vote threshold for appropriation bills is disproportionate to every other U.S. state and territory. Alaska is the only state requiring three-fourths of legislators; every other state has a two-thirds, three-fifths, or simple majority vote threshold. He explained that 38 states have a two-thirds vote threshold, 6 states have a three-fifths vote threshold, and 5 states have a simple majority vote threshold.

[1:54:27 PM](#)

REPRESENTATIVE KREISS-TOMKINS stated that HJR 15 is a simple resolution. He expressed that he thinks the previous year's budget process was traumatic for most legislators and Alaskans. He stated that the veto power of the governor of Alaska is, for all intents and purposes, unilateral, only requiring 25 percent of legislators' support for a veto to go through. He asserted his belief that it is important to keep in mind that "this is a blade that goes both ways." He gave as an example a hypothetical future governor, who is a strong environmentalist, that wants to end mining in Alaska. He stated that in this hypothetical situation, the governor could achieve an end to mining in Alaska by vetoing out the Alaska Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) with only 25 percent of legislators' support. He stated that the effective policy making power associated with a line item veto is profound, and he thinks the separation of powers is slightly unbalanced in Alaska. He expressed that he thinks this topic is worth keeping in mind for broader consideration. He added that he thinks having different override thresholds, for policy bills

and appropriation bills, creates a non-uniform complexity. As an example, he referenced a line item veto by Governor Tony Knowles in the 1990s regarding a transfer of land to a university. He explained that Governor Knowles asserted that this was an appropriation, whereas the legislature asserted it was not an appropriation. The legislature did not have the required three-fourths vote for an override, but it would've had a two-thirds vote. Ultimately, this case went to the Alaska Supreme Court, which could have been eliminated by a uniform threshold for all veto override votes.

[1:57:11 PM](#)

REPRESENTATIVE LEDOUX asked whether the Alaska Supreme Court provided an answer to the case during Governor Knowles' administration, as she doesn't think there has been much ambiguity regarding the veto override vote threshold since then.

[1:57:26 PM](#)

REPRESENTATIVE KREISS-TOMKINS answered that he thinks the Alaska Supreme Court answered the question as to whether or not land transfers constitute appropriation, but he doesn't think a comprehensive delineation has been issued by the Alaska Supreme Court in terms of what is and is not an appropriation. He added that he thinks it is worth noting that there have been very few veto overrides attempted; mostly the legislature knows that it cannot get the required three-fourths vote to accomplish an override. He stated that he thinks, since Alaska's statehood, there have only been six or seven successful veto overrides. He expressed that nearly every time the governor wins, while the legislature loses because of such a high threshold.

[1:58:21 PM](#)

CHAIR CLAMAN stated that the six or seven overrides referenced earlier were finance overrides, and he asked whether Representative Kreiss-Tomkins has any indication of how many times there have been overrides of legislative matters subject to the two-thirds override threshold.

[1:58:38 PM](#)

REPRESENTATIVE KREISS-TOMKINS replied that he does not know but would like to find out. He clarified that he was mistaken, and only five vetoes have been overridden since Alaska's statehood, approximately one per decade.

CHAIR CLAMAN asked for clarification that these were five vetoes that required the three-fourths threshold.

REPRESENTATIVE KREISS-TOMKINS stated that that is correct.

CHAIR CLAMAN asked for clarification on how the Alaska Supreme Court ruled regarding the land issue.

REPRESENTATIVE KREISS-TOMKINS replied that the Alaska Supreme Court ruled that land did not constitute appropriation; therefore, Governor Knowles' veto was overridden because it fell under the two-thirds vote threshold.

[1:59:29 PM](#)

REPRESENTATIVE EASTMAN stated that he noticed in the presentation it was pointed out that Alaska is unique. He remarked that typically this is viewed as a positive thing. He said he expected to have heard some discussion regarding why Alaska chose to be unique during the establishment of its constitution, the silence on which he finds to be notable. He asked whether Representative Kreiss-Tomkins could enlighten the committee as to why Alaska chose to be unique.

[2:00:10 PM](#)

REPRESENTATIVE KREISS-TOMKINS answered that he could "create some noise on the matter." He said that through review of the minutes from the constitutional convention, he saw that this very question was considered. He explained that there were two camps of delegates; the camp that proposed a three-fourths threshold desired to form a strong as possible executive office, which is a theme that can be seen throughout the constitution. He pointed out that the attorney general and all constitutional officers are appointed by the governor and not elected positions. He expressed that this creates the strongest executive office of all 50 U.S. states. He stated that the other camp of delegates highlighted the fact that it would be unrealistic for the three-fourths veto vote to ever be achieved, and this requirement would effectively hand the governor a semi-unilateral budget veto power. This camp of delegates sought out a more moderate balance of power. He expressed that after seeing a track record of so many unsuccessful veto overrides over the past half a century, it might make sense to bring the balance of power between the executive and legislative branches in Alaska more in line with that of other U.S. states.

2:01:55 PM

REPRESENTATIVE EASTMAN stated that Representative Kreiss-Tomkins mentioned it has only been six or seven times the legislature has reached the threshold for a veto override.

2:02:06 PM

CHAIR CLAMAN clarified that the testimony was that it was five times the vote threshold was reached.

REPRESENTATIVE EASTMAN asked Representative Kreiss-Tomkins whether he could offer the committee the number of vetoes attempted, that were not overridden.

CHAIR CLAMAN asked Representative Eastman to clarify whether he was asking how many times the legislature met and attempted to override and failed, or asking the "total number of vetoes that were done, each line item counting as one veto, and out of the total number of vetoes of Alaska history was a veto overridden?"

REPRESENTATIVE EASTMAN said that he is looking for an answer to how many times there have been appropriation vetoes, and how many of those vetoes the legislature has attempted to override.

2:03:15 PM

REPRESENTATIVE KREISS-TOMKINS stated that he does not know how many times the governor has vetoed an appropriation since Alaska's statehood, but he can see how that would be helpful to the conversation and he will try to have an answer by the next hearing. He stated that the legislature has attempted to override a veto, and failed, 16 times since Alaska's statehood; therefore, 5 out of 16 veto overrides have failed. He expressed that he thinks it is important to bear in mind that an attempt to override a veto, given a joint session and all of the procedure involved, takes a lot of energy, and it seems quite clear that the legislature doesn't even attempt to override vetoes it sees as hopeless.

2:04:38 PM

REPRESENTATIVE LEDOUX asked whether a high override threshold of three-fourths is meant to protect the rights of not only the governor, but the rights of the minority as well. She expressed that she doesn't see much of a difference between the three-

fourths requirement for a veto override, and the three-fourths requirement for the Constitutional Budget Reserve Fund (CBR), which it is not considered to be in need of change.

2:05:35 PM

REPRESENTATIVE KREISS-TOMKINS answered that the issue of two-thirds versus three-fourths is more abstract in terms of the balance between majority and minority. He expressed that it is a great question to consider and expressed that more than half of his time working in the legislature has been spent in the minority and not the majority. He stated that although he is currently in the majority, he is very aware that roles can flip, and that it is foolish to make short term decisions which are beneficial for only one side. He stated that he believes this proposal does not unduly infringe on the rights of the minority.

REPRESENTATIVE KREISS-TOMKINS gave an example of a veto override from a couple of weeks prior, in which a veto override could not muster the two-thirds required vote. He said that even if this constitutional amendment were adopted, and Alaska's override threshold was in line with the rest of other U.S. states, the override vote would have failed, and the minority would still have expressed its will. He expressed that even though he does not agree with the minority's perspective on policies in the veto override vote from a couple of weeks before, he respects the outcome. He said that the other 49 states in the U.S. all have minority caucuses, whereas Alaska has a unique minority which is less empowered than those in other states. He said that he thinks there is a better balance struck in the other states between the executive and legislative offices and, by extension, the minority caucuses and the legislature.

2:08:08 PM

REPRESENTATIVE KREISS-TOMKINS addressed the other side of Representative LeDoux's question, regarding the CBR. He expressed that he thinks taking funds out of the CBR is, in a way, an additive action, whereas vetoing an action of the legislature is a subtractive one. He explained that he thinks it makes sense to have a higher threshold to take money out of a bank, than it does to have a high threshold to preserve a decision made by the legislature. He expressed that he thinks if the legislature were to use a three-fourths vote as the gold standard for a balance of power between majority and minority, in a hypothetical situation, it follows that the veto override threshold for policy bills should increase from two-thirds to

three-fourths. He said that he thinks a historical look at the balance of power between the majority and minority throughout Alaska's statehood shows that it is statistically uncommon to see minority caucuses smaller than one-third, which would not have the power to be relevant in a veto override vote.

[2:10:09 PM](#)

REPRESENTATIVE EASTMAN asked for clarification on the example Representative Kreiss-Tomkins gave regarding the CBR and taking money from the bank.

[2:10:36 PM](#)

REPRESENTATIVE KREISS-TOMKINS replied that he would try to explain the distinction in another way. He stated that the power of the legislature to draw funds from the CBR is relevant, necessary, and frequently used to balance the budget. He said that because there is a general fund and other revenue coming to the state annually, it should be possible to balance the budget without CBR revenue. He added that if the minority doesn't want to grant the three-fourths vote to approve the withdrawal of funds from the CBR, the results shouldn't be catastrophic in a way that disrupts operations. He expressed that a line item veto is different because it allows entire programs to be terminated; the stakes are considerably higher than those of the CBR. He pointed out that several programs could be ended tomorrow by line item vetoes to their budgets, including: the Alaska Marine Highway System (AMHS), the Alaska State Council on the Arts (ASCA), and the Division of Mining, Land, and Water (DMLW). He expressed that the power of a line item veto is far greater than the ability to take money from a savings account. He explained that he sees it as a matter of proportionality; the ramifications of being denied access to the CBR funds, by a three-fourths override vote requirement, do not carry the same weight as the consequences of a three-fourths override vote requirement for a line item veto that can potentially eliminate entire state programs. He summarized that given what is at stake with a line item veto override vote, perhaps it does not make sense to have a threshold that is as high as that of the vote requirement for the CBR.

[2:12:44 PM](#)

CHAIR CLAMAN expressed that considering the current discussion, it seems to him that the question of a three-fourths vote requirement to draw funds from the CBR is quintessentially a

question of legislative function. He explained that the power of appropriation, under the constitution, is exclusive to the legislature; the governor cannot appropriate any funds, regardless of whether he wants to or not. He said the three-fourths requirement for how the legislature appropriates funds is a way for the legislature to restrict its own power. The governor could line item veto what the legislature withdraws from the CBR, but he/she can't make the decision to appropriate it. He stated that in contrast, the question of overriding a veto is a question of the power relationship between the executive branch and the legislative branch.

[2:14:13 PM](#)

CHAIR CLAMAN opened public testimony on HJR 15.

[2:14:32 PM](#)

CRIS EICHENLAUB testified in opposition to HJR 15. He expressed that he thinks special interest groups have currently taken over Alaska. He said that he feels HJR 15 circumvents the will of the people by changing the constitution. He explained that it seems to him like special interest groups are trying to change the rules in order to get one over on the majority. He expressed that the House, as constructed, does not represent the will of the people. He stated that he thinks the Senate has also taken power from the Senators who represented the people's voice. He said that he thinks HJR 15 intends to take power from the governor, who was elected by the people and represents their will. He summarized that essentially, he wants to see a government that is of, by, and for the people.

[2:16:18 PM](#)

CHAIR CLAMAN, after ascertaining that there was no one else who wished to testify, closed public testimony on HJR 15.

[2:16:38 PM](#)

REPRESENTATIVE EASTMAN asked Representative Kreiss-Tomkins why HJR 15 includes a change to the threshold for new tax bills, which wasn't discussed in his presentation.

[2:17:13 PM](#)

REPRESENTATIVE KREISS-TOMKINS answered that the discussion on the threshold change for new tax bills was omitted because it

has not ever been a factor in Alaska's statehood; all five of the successful veto override votes have been related to appropriation items. He expressed that Alaska seems to have a history of failing to enact revenue bills to begin with, much less allow them to be vetoed. He said that it makes sense to have a uniform threshold more in line with many other states. He asked the committee to consider the question: What is it that makes Alaska so exceptional as to have the highest override threshold in the entire country for appropriation and revenue bills?

[2:18:13 PM](#)

REPRESENTATIVE EASTMAN asked Representative Kreiss-Tomkins whether both issues addressed in HJR 15 are equally important to him. He expressed that he thinks the resolution might have a better chance of passing, in the current political environment, if he were to choose one or the other. He said if the increase to taxes were dropped, there might be less opposition, at least from his district.

[2:18:53 PM](#)

REPRESENTATIVE KREISS-TOMKINS answered that he is willing to be flexible; given the political history, appropriation vetoes are likely to be far more relevant in the future than revenue bills. He stated that as an observer of Alaska's politics, if a revenue bill manages to make it across the finish line from the legislature "it's probably going to be pretty shot up, and limping, and dragging a leg, and maybe two votes over a simple majority." He said that at that point, if the revenue bill gets vetoed, it will likely be dead regardless of whether there is a two-thirds or three-fourths vote requirement. He reiterated that he is willing to be flexible and open to the possibility of changes to the resolution, if it will engender a broader base of support. He summarized that from an academic constitutional perspective, a uniform vote threshold seems cleaner, simpler, more straightforward, and makes sense.

[2:20:42 PM](#)

CHAIR CLAMAN remarked that if a revenue measure came up that was a modification of oil and gas taxes, the public perception and desire for the governor to have a stronger veto authority would be different than if it were an income tax modification. He predicted that some of Representative Eastman's constituents wouldn't be opposed to a two-thirds override for an oil and gas

tax bill but would probably prefer a three-fourths override for an income tax bill.

[2:21:25 PM](#)

REPRESENTATIVE EASTMAN remarked that Chair Claman made an important distinction about constituencies. He reiterated a concern raised earlier by Representative LeDoux, and he said that HJR 15 wouldn't change the governor's power to line-item veto, it would only change the ability of a minority vote to affect the outcome of an override vote. He said that he is sensitive to the fact that that is where the main issue lies.

[2:22:09 PM](#)

REPRESENTATIVE KREISS-TOMKINS remarked that he would dispute this characterization but acknowledges that this is the way Representative Eastman views HJR 15. He expressed that the bottom line is that the governor is the one who puts ink on the paper of a budget bill, and it becomes the legislature's decision to either sustain the governor's decision or override it. He said that the legislature is secondary to the governor's decision, and the legislature ultimately becomes a referendum on the governor's will. He expressed that he sees the veto power as an executive power and the legislature as "the tail on the dog," but he understands what Representative Eastman is saying.

[2:23:25 PM](#)

REPRESENTATIVE KOPP commented that he thinks personality should be taken out of this discussion entirely and the focus should be on what the balance of power should look like in the structure of government between the legislative, executive, and judiciary branches. He said that in 1997 the legislature overrode Governor Knowles' veto of the parent notification bill on abortion. He expressed that he imagines the legislature was very glad this was not an appropriation bill and they could reach the two-thirds limit. He added that if there were an appropriation bill to fund Planned Parenthood, there would be many people happy for a two-thirds vote on an appropriation bill.

REPRESENTATIVE KOPP expressed that he thinks it is important to think larger than specific issues, such as ferries and abortion, and focus on what is a fundamentally fair and balanced threshold, which would represent the will of the majority of Alaskans. He remarked, "It's easy to think about how you want

the council shaped if you have the king in place that you want. But then, when you don't have the king that you want, you think, 'Oh, I wish that we'd never messed with that.'" He expressed that he could see uniformity being very desirable, depending on the issue, on both appropriation and non-appropriation bills. He summarized that he appreciates the sponsor bringing HJR 15 forward and thinks it presents an important discussion.

[2:25:39 PM](#)

CHAIR CLAMAN announced that HJR 15 would be held over for further review.

HB 133 - JUVENILES: JUSTICE, FACILITES, TREATMENT

[2:25:53 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 133, "An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

[2:27:00 PM](#)

The committee took an at-ease from 2:27 p.m. to 2:29 p.m.

[2:29:17 PM](#)

REPRESENTATIVE IVY SPOHNHOLZ, Alaska State Legislature, as prime sponsor, introduced HB 133. She stated that she was introducing HB 133 at the request of the Division of Juvenile Justice (DJJ) [within the Department of Health and Social Services (DHSS)]. She said the bill had been heard as House Bill 351 in the previous legislature. She pointed out that the three main purposes of HB 133 were to: close loopholes relating to the sexual abuse of a minor and sexual assault in the third degree, update terminology that defines and references DJJ facilities and staff, and codify in law some of the best practices the DJJ has undertaken in the past couple of decades.

REPRESENTATIVE SPOHNHOLZ stated that she thinks the most important aspect of the bill is that it would close loopholes relating to sexual abuse and sexual assault of a minor. She explained that this issue came to light in 2003 [during the Carey case] when a DJJ staff member had an inappropriate sexual relationship with a minor, in a DJJ facility, and was unable to be convicted due to loopholes in the law.

REPRESENTATIVE SPOHNHOLZ pointed out that there is some outdated terminology used to describe DJJ facilities, and HB 133 would update the statutes to accurately reflect the authorities and responsibilities of the DJJ. She explained that HB 133 would not substantially modify the way the DJJ operates, but the bill would work to improve the DJJ's ability to complete its mission. She stated that the majority of HB 133 would update language in Alaska's statutes, which describes facilities operated by the DJJ that is inaccurate, outdated, and obsolete. She explained that this language is used several times throughout the bill, which is one of the reasons it is so lengthy.

REPRESENTATIVE SPOHNHOLZ stated that in addition to updating definitions, HB 133 would make some policy clarifications which were raised due to issues that appeared over time and reflect the standard operations of the DJJ. She said that HB 133 would add DJJ staff and probation officers to the list of mandatory reporters of child abuse and neglect and would clarify that DJJ probation officers have the authority to file amended petitions in court. She stated that HB 133 would add secure residential psychiatric treatment facilities to the list of facilities for released juveniles. She said that the bill would correct language authorizing the DJJ to disclose confidential information related to the offence, when a minor has received an adjudication, rather than the offence a minor was alleged to have committed. She summarized that HB 133 would improve the DJJ's ability to complete its mission, by codifying best practices, ensuring juveniles are safe and secure when they're in the DJJ's custody, and closing loopholes relating to sexual abuse of minors supervised by the DJJ.

[2:33:06 PM](#)

MEGAN HOLLAND, Staff, Representative Ivy Spohnholz, Alaska State Legislature, presented HB 133 on behalf of Representative Spohnholz, prime sponsor. She offered a PowerPoint presentation titled, HB 133: Division of Juvenile Justice Clean-up Bill [hard copy included in the committee packet].

[2:33:47 PM](#)

MS. HOLLAND, referencing slide 2 of the PowerPoint presentation, said that HB 133 closes two loopholes regarding sexual assault in the third degree, as well as sexual abuse of a minor relating to the DJJ staff. She pointed out that these two changes can be found in section three and Section 6 of HB 133. Section 3 repeals the outdated definition of juvenile probation officer which, under current state statute, limits them to a person assigned to supervise another person of 18 or 19 years of age; this definition is outdated because the DJJ regularly oversees people ranging from 16 to 20 years old. She stated that the individual in the Carey case was 17 years old, which allowed the DJJ staff member to be acquitted of the charge. She explained that Section 6 of HB 133 closes the loophole related to sexual abuse of minors, which is accomplished by clarifying that the DJJ staff are in a position of authority over minors in their custody. She expressed that even though common sense might dictate that the DJJ staff are in a position of authority, the lack of clarification in statute allowed for the acquittal of the abuser in the Carey case. She expressed that Section 6 contains a statute that was written 30 years ago, which is a great example for why the statute needs to be updated.

[2:35:34 PM](#)

MS. HOLLAND, referencing slide 3, pointed out a comprehensive list of the definitions that would be repealed, amended, and put into place by HB 133. She said some of the definitions were 30 to 50 years old, and HB 133 would update them to reflect the many changes to the DJJ over that time period.

[2:36:08 PM](#)

MS. HOLLAND, referencing slide 4, pointed out the terms that would be repealed by HB 133. She said that Section 24 would repeal the position of youth counselor, which has not been a part of the DJJ since 2003. She explained that the duties currently described for a youth counselor are those of a probation officer, which is not a DJJ position. She stated that Section 3 of HB 133 repeals the inaccurate definition of juvenile probation officer, as mentioned previously. She said that multiple sections of HB 133 would repeal the terms juvenile detention home, youth detention facility, correctional school, and juvenile work camp. She explained that these terms are either antiquated or don't accurately describe the facilities

that the DJJ currently operates. As an example, she said that Alaska has never had a juvenile work camp and the DJJ does not currently operate a correctional school; HB 133 would replace those terms with "juvenile detention facility" and "juvenile treatment facility" to more accurately reflect the facilities the DJJ operates.

[2:37:40 PM](#)

MS. HOLLAND, referencing slide [5], she pointed out the definitions that would be amended by HB 133. Section 28 would amend the definition of minor to include a person who was under the age of 18 at the time he/she committed an offense and continues to be subject to the jurisdiction of the DJJ. She explained that this would not affect the definition of minor in other statutes; it would just clarify that after a convicted minor turns 18, he/she will continue to be treated as a minor for his/her crime, and not as an adult. Ms. Holland said HB 133 also amends the definition of the term juvenile detention facility, broadening it to be a secure facility for the detention of minors. She explained that the current definition in statute for this term limits it to separate quarters within a city jail, which does not accurately reflect the facilities the DJJ currently operates; some communities don't have a city jail that meets the standards for separation of sight and sound from adults.

[2:38:58 PM](#)

MS. HOLLAND, referencing slide 6, pointed out the new definitions that would be presented by HB 133. Section 29 would present the definition for juvenile treatment facilities. She said this was recommended by the DJJ to more accurately reflect some of the facilities that it operates. Current terminology in statute refers to juvenile treatment institutions; however, there is a difference between a treatment institution and a treatment facility. Section 29 also presents the definition for a temporary secure juvenile holding area. She said that the DJJ currently oversees over 30 temporary secure holding areas across Alaska, and it partners with local law enforcement officials to provide training and compliance for temporary holding areas before juveniles can be moved to a secure detention area. Section 24 would replace the definition for youth counselors with an updated definition for juvenile probation officers, which does not limit them to overseeing individuals of 18 and 19 years old, accurately reflects the positions, provides them with

the powers and authorities of probation officers, and describes their duties.

[2:40:39 PM](#)

MS. HOLLAND, referencing slide 7, pointed out the policy updates of the DJJ to codify its best practices and resolve issues that have arisen over time. She said that Section 5 of HB 133 would clarify that employees of juvenile treatment institutions and juvenile and adult probation officers qualify as legal guardians. She stated that Section 8 would clarify that secure juvenile treatment facilities are being added to the list of facilities excluded from compliance related to the definition of "private exposure," which is where an individual exposes his/her body under circumstances in which he/she would reasonably believe he/she would not be viewed or photographed. She explained that prisons and psychiatric institutions are also on the list of facilities excluded from compliance related to the definition of "private exposure". She stated that Section 9 would include the DJJ in the list of places where public education must be provided. Sections 16 and 17 of HB 133 would clarify that juvenile probation officers have the authority to file amendments and supplemental petitions; there have been instances in the past where it has been argued in court that the DJJ does not have this authority. Sections 22 and 23 of HB 133 would clarify that the authority to arrest and detain a minor rest with juvenile, not adult, probation officers.

[2:42:43 PM](#)

MS. HOLLAND, referencing slide 8, stated that Section 25 of HB 133 would add secure residential psychiatric treatment centers to the list of facilities from which, when a juvenile is released, the victim(s) will receive notification. Section 26 would correct language authorizing the DJJ to disclose confidential information related to an adjudicated offense, rather than the offense the minor was alleged to have committed. She said that Section 38 would add juvenile probation officers, the DJJ office staff, and staff of juvenile facilities to the list of mandatory reporters of child abuse or neglect. She explained that this is already a common practice of the DJJ; it regularly reports to the Office of Children's Services (OCS), and all DJJ staff are trained on detecting child abuse and neglect. She explained that in 2016 Senate Bill 165 repealed the revocation of juvenile driver's licenses for offenses involving controlled substances that were non-driving related. As an example, she offered her understanding that before Senate

Bill 165, a 14-year-old could be convicted with possession of marijuana and lose the privilege to have a driver's license for the rest of his/her life. She stated that Senate Bill 165 did not repeal the revocation of juvenile driver's licenses in cases that were handled informally by the DJJ, in which there was no proven guilt, thus creating an issue of unequal protection under the law.

[2:45:21 PM](#)

MS. HOLLAND, referencing slide 9, summarized the goals of HB 133. She reiterated that HB 133 would close existing loopholes regarding sexual assault in the third degree and sexual abuse of a minor, update terms and definitions pertaining to the DJJ facilities and staff, and codify the DJJ's best practices to improve it's ability to complete its mission.

[2:46:20 PM](#)

REPRESENTATIVE LEDOUX asked for clarification on the topic of the permanent revocation of driver's licenses for juveniles convicted of possession of an illegal substance.

[2:46:49 PM](#)

MS. HOLLAND answered that it was in relation to non-driving possession offenses.

REPRESENTATIVE LEDOUX asked for clarification on whether the repeal of the revocation of driver's licenses for juveniles was only for convictions that were handled through the courts. She also asked whether the revocations that were still being issued were handled through the Division of Motor Vehicles (DMV).

[2:47:36 PM](#)

MATT DAVIDSON, Social Services Program Officer, Division of Juvenile Justice, Department of Health and Social Services, replied that historically driver's license revocation was defined in two sections of statute: the DMV statute and DJJ statute. He clarified that the revocations that occurred for juvenile offenses were temporary; there were no lifetime revocations as previously stated by Ms. Holland. He explained that Senate Bill 165, which was passed in 2016, removed a crime called "habitual minor offending," which revoked driver's licenses for juveniles who were adjudicated delinquent for habitual minor offenses. He said that this was a very small

number of juveniles. Responding to a follow-up question from Representative LeDoux, he clarified that these revocations were not permanent and usually lasted six months to a year during the convicted juveniles' probation.

MR. DAVIDSON said that Senate Bill 165 also repealed the revocation of driver's licenses for juveniles who were adjudicated for substance abuse and possession of illegal substances unrelated to driving. He explained that what was mistakenly left in statute, which HB 133 would fix, is the revocation of driver's licenses for youth whose substance abuse cases were handled "informally." These were cases that never went to court; the youths were cited by the police and referred to the DJJ, and the statute still states juveniles' driver's licenses should be revoked, even for charges unrelated to driving.

[2:49:51 PM](#)

REPRESENTATIVE LEDOUX asked whether the DJJ was supposed to seek revocations through the DMV, and whether the DJJ did seek those revocations.

MR. DAVIDSON answered yes, the DJJ has revoked juveniles' driver's licenses for possession and habitual minor consumption offenses. He said that since the passage of Senate Bill 165 in 2016, when the issue was identified, the DJJ has tried to avoid seeking revocation because of the question of unequal protections.

REPRESENTATIVE LEDOUX clarified that what she meant to ask was whether the DJJ revoked licenses after the changes of Senate Bill 165.

[2:50:39 PM](#)

REPRESENTATIVE EASTMAN asked whether the informal system requires a plea agreement and whether - if the convicted minor protests the conviction - the DJJ still has the power to revoke his/her driver's license.

[2:51:04 PM](#)

MR. DAVIDSON replied that the juvenile system is different from the adult system. He explained that the DJJ tries to reach out to youths in order to meet them where they are and assess the nature of their substance abuse issues. He stated that it was

decided that revocation of a driver's license, for an offense that was unrelated to driving, was not an appropriate consequence and was an unnecessary burden. He explained that the DJJ has many ways to work with convicted minors and their families and help to set them on the right track; the revocation of driver's licenses was not a method the DJJ probation staff found to be effective or appropriate for offenses unrelated to driving. He stated that offenses related to driving are not handled by the DJJ; they are handled by the district courts.

[2:52:37 PM](#)

REPRESENTATIVE EASTMAN clarified that what he would like an answer for is whether it is required, in cases that are not going through the court process, for a minor to consent to the revocation of his/her driver's license.

MR. DAVIDSON replied that Tracy Dompeling, Director of the DJJ, was a former probation officer, who is probably in a better position to answer the question.

[2:53:22 PM](#)

TRACY DOMPELING, Director, Division of Juvenile Justice, Department of Health and Social Services, explained that the DJJ receives all the referrals from law enforcement for allegations of criminal offenses that are committed by juveniles. She clarified that the DJJ does not receive referrals for offenses related to status, alcohol, driving, and other similar offenses; it only receives referrals for criminal offenses. She said that the DJJ's position is that low-level offenders are best treated outside of the formal judicial system. The DJJ has the authority to work with youth and parents to informally adjust cases, with various levels of intervention, with the intent of preventing repeat offenses. She said the DJJ has an "intake interview" process involving a probation officer and the youth and his/her parents. She explained that if the youth is adamant that he/she did not commit an offense, the DJJ cannot impose any type of sanction, consequence, or requirement on the youth or his/her family. At this point, the DJJ can choose to either dismiss the charge, due to the lack of an ability to move forward with the case, or, if the DJJ strongly feels there is a case to be made, the youth will be appointed an attorney and the case will be taken to the courts to determine guilt or innocence.

[2:54:49 PM](#)

CHAIR CLAMAN opened public testimony on HB 133. After ascertaining that there was no one who wished to testify, he closed public testimony.

[2:56:05 PM](#)

REPRESENTATIVE LEDOUX asked, knowing now that the driver's license revocations are not permanent, how long they are being revoked.

[2:56:28 PM](#)

MS. DOMPELING reiterated what Mr. Davidson had stated before, and said the licenses are revoked for approximately six months. This process required the DJJ to send the paperwork to the DMV, which would either revoke the youth's current license or have an impact on the youth's ability to obtain a license in the future. She explained that Senate Bill 165 repealed the revocation of a youth's driver's license, when he/she was formally adjudicated delinquent through a court. She reiterated the point on inequality that Mr. Davidson had made previously and said that the DJJ recognizes it is not in compliance with the statute involving revocation of driver's licenses in informal cases; however, the DJJ understands it is not appropriate to revoke a license in an informal case, when a youth adjudicated through the courts is not subject to the same consequence.

REPRESENTATIVE LEDOUX asked what the consequences are for youths who are adjudicated through the court system.

MS. DOMPELING answered that youths adjudicated through the court system have several consequences, including: they are usually on formal probation, they may need to have a substance abuse assessment and follow up with recommendations, they may be placed in an out-of-home care facility, they could have to pay restitutions to a victim, they may have community service ordered, and they may have to meet other various requirements.

REPRESENTATIVE LEDOUX remarked that there are real legal consequences for those youths.

MS. DOMPELING replied that that is correct.

REPRESENTATIVE LEDOUX asked whether it were worth considering the possibility of revoking driver's licenses for shorter

periods of time, such as a couple of weeks, equating it to being like, "When you screw up at home, you get grounded."

MS. DOMPELING answered that she understands the idea behind what Representative LeDoux suggested, but she recognizes that a lot of administrative paperwork is involved in the process; however, she said that given her current understanding of the process, it would take longer than two weeks for the DJJ to even process the paperwork. She expressed that when working with youth involved in the cases handled informally, the DJJ can still require the same consequences as through a formal court, it is just not legally mandated through a court. She said that this gives the DJJ several ways to hold minors accountable when they are willing to work with the DJJ and its probation officers.

[3:00:33 PM](#)

CHAIR CLAMAN stated that Ms. Dompeling came with a statement on the DJJ's position on HB 133 and this would be the last thing the committee would hear this meeting.

[3:00:58 PM](#)

MS. DOMPELING stated that she had been given approval to say that the DJJ does support HB 133, and it believes the bill is important to reflect the work being done by the DJJ. She pointed out that the DJJ is seeing a positive change in recidivism rates from youth in its secure treatment; in Fiscal Year 2013 (FY 13) recidivism rates were at approximately 76 percent; in FY 19 that rate had decreased to approximately 36 percent. She summarized that the DJJ is doing positive work with youths and would like to see that work reflected in current statute.

[3:01:40 PM](#)

CHAIR CLAMAN announced that HB 133 would be held over for further review.

[3:02:11 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.