

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 14, 2021

1:06 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Liz Snyder, Vice Chair  
Representative Harriet Drummond  
Representative Jonathan Kreiss-Tomkins  
Representative David Eastman  
Representative Christopher Kurka  
Representative Sarah Vance

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S) :

Public Defender

Samantha Cherot - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 66

"An Act relating to voting, voter qualifications, and voter registration; relating to poll watchers; relating to absentee ballots and questioned ballots; relating to election worker compensation; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 116

"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: HB 66

SHORT TITLE: ELECTIONS, VOTING, BALLOTS

SPONSOR(s): REPRESENTATIVE(s) TUCK

02/18/21	(H)	PREFILE RELEASED 1/15/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD
04/09/21	(H)	STA REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED
04/12/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/21	(H)	Heard & Held
04/12/21	(H)	MINUTE(JUD)
04/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 116

SHORT TITLE: JUVENILES: JUSTICE, FACILITES, TREATMENT

SPONSOR(s): REPRESENTATIVE(s) SPOHNHOLZ

02/24/21	(H)	READ THE FIRST TIME - REFERRALS
02/24/21	(H)	HSS, JUD
04/09/21	(H)	HSS REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED
04/12/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/21	(H)	Heard & Held
04/12/21	(H)	MINUTE(JUD)
04/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

SAMANTHA CHEROT, Appointee  
Public Defender  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as Appointee to Public Defender.

CARRIE JOKIEL, President  
Chemtrack Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Samantha Cherot, Appointee, Public Defender.

JEFF ROBINSON

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Samantha Cherot, Appointee, Public Defender.

JOHN CASHION

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Samantha Cherot, Appointee, Public Defender.

BEN MUSE

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Samantha Cherot, Appointee, Public Defender.

CHARLES MCKEE

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Samantha Cherot, Appointee, Public Defender.

REPRESENTATIVE CHRIS TUCK

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, answered questions during the hearing on HB 66.

GAIL FENUMIAI, Director

Division of Elections

Office of the Lieutenant Governor

Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions during the hearing on HB 66.

Paddy McGuire, Mason County Auditor

Mason County, Washington

**POSITION STATEMENT:** Provided testimony and answered questions during the hearing on HB 66.

THOMAS FLYNN, Assistant Attorney General

Labor and State Affairs Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 66.

MATT DAVIDSON, Social Service Program Officer

Division of Juvenile Justice  
Department of Health and Social Services  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 116.

TRACY DOMPELING, Director  
Division of Juvenile Justice  
Department of Health and Social Services  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 116.

MIKE MASON, Staff  
Representative Chris Tuck  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 66 on behalf of Representative Tuck, prime sponsor.

#### **ACTION NARRATIVE**

[1:06:47 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Drummond, Kreiss-Tomkins, Snyder (via teleconference), and Claman were present at the call to order. Representatives Eastman, Kurka, and Vance arrived as the meeting was in progress.

#### **Confirmation Hearing(s): Public Defender:**

[1:07:26 PM](#)

CHAIR CLAMAN announced that the first order of business would be the confirmation hearing for consideration of the governor's appointee to Public Defender.

[1:07:42 PM](#)

CHAIR CLAMAN opened public testimony for the confirmation hearing for appointee to public defender.

[1:07:53 PM](#)

SAMANTHA CHEROT, Appointee, Public Defender, informed the committee that she was born and raised by a single mother in

Alaska and resides in Anchorage. She cited her mother's career in practicing law for nearly 50 years as inspiration for her work ethic, independence, and the value of giving back to those in need. She stated that she has been married to an Alaskan for nearly 15 years and they have a three-year-old, who they adopted at birth. She explained that she sought her undergraduate degree in California where she practiced employment law and represented public governmental entities. She said that she and her husband relocated back to Alaska in 2009.

MS. CHEROT explained that, following her return to Alaska, her career has been within the Public Defender's office in the Criminal and Civil Divisions. She determined that it was her desire to work with the indigent with aspirations to become a trial attorney. She recalled her time of employment at Cashion Gilmore LLC as a criminal defense and family attorney, and where she received mentorship from prior public defenders. She stated that she returned to public service in 2015 until 2019 before assuming her current role. During that time, she worked in the Civil Division with families and Child in Need of Aid (CINA) cases, she represented family members and worked towards reunification. She stated that she had represented adults with great mental health challenges including participation in psychiatric hearings, forced medication, and involuntary commitment proceedings. She stated that she considered her work to be a privilege in which she observed clients working to achieve stability, maintain sobriety, maintain mental health, achieve long term housing, and become healthier and safer in their communities. She stated that in September of 2019 she was appointed to her current position as Acting Public Defender.

[1:11:19 PM](#)

MS. CHEROT highlighted some of the challenges she encountered in assuming her current role, which included significant staff vacancy and retention. She indicated that the nature of the work performed is rewarding yet stressful, and that staffing shortages had negative impacts on workload and morale. She said that she developed and executed a plan for recruitment, retention, and training that resulted in gains to staff with only three positions left vacant, and attorneys had been selected to fill those positions. She noted that many recruits are very recently graduated from law school, and the workload is difficult, complex, and increasing for felony cases.

MS. CHEROT also described challenges in balancing adjustments made necessary under COVID-19 and the agency's clients' rights

and noted that jury trials have been suspended for over a year, except when the agency argued for a jury trial for defendants with extenuating circumstances, but that those cases had been met with little success in securing a jury trial. She expressed her hope that jury trials would soon resume because of a mounting backlog of cases. She stated that, until very recently, the agency had had no in-person access to clients in custody at the Department of Corrections (DOC), and that, while phone and electronic access had been granted by DOC, in-person contact would be necessary to bring a proper level of service to clients. She added that resumed in-person visits included mitigation measures such as vaccine confirmation and quarantine.

MS. CHEROT emphasized that the agency's mission centers on protecting the rights of indigent citizens. She complimented her staff and colleagues as hardworking and dedicated. She stated that, if confirmed, it would be her honor to continue to serve in her current role.

[1:15:25 PM](#)

CARRIE JOKIEL, President, Chemtrack Alaska, testified in support of Samantha Cherot, Appointee, Public Defender. She offered that she had known Ms. Cherot for more than two decades and expressed her pleasure at Ms. Cherot's 2009 relocation to Anchorage and predicted that she would have a positive impact on the community. She exemplified Ms. Cherot's leadership skills and civic involvement while serving on the board of the YWCA and suggested that Ms. Cherot exercised fiscal prudence and had the ability to make difficult decisions.

[1:17:24 PM](#)

JEFF ROBINSON stated that he had served as a public defender for approximately ten years, five or six of which Ms. Cherot was also employed there. He complimented her dedication and work ethic and described her intelligence as uniquely befitting of her position. He recalled that she quickly rose to a supervisory position. He complimented her skills at trial including her courtesy to opposing counsel, other litigants, court staff, and victims of crimes, among others. He stated his belief that her ability to work with administrators and her even temperament are among the greatest strengths she brings to her position.

[1:19:12 PM](#)

JOHN CASHION stated that he had worked for 13 years as a public defender in Alaska and has known Ms. Cherot for more than 10 years. He said her success in criminal and civil trial experience in the public defender agency distinguishes her from her peers. He complimented her leadership, diplomacy, and mentorship skills. He complimented her success in leading the public defender agency since 2019. He emphasized that Ms. Cherot has a deep commitment and passion for public service.

[1:22:17 PM](#)

BEN MUSE stated that he had been a public defender for almost nine years and had known Ms. Cherot for his entire tenure. He complimented her work in improving the public defender agency, including having overcome a 20 percent vacancy rate that had resulted in a caseload which he described as "staggering" and that had had a negative impact on morale. He described her execution of a plan for improvement that included priorities in recruitment, retention, and training. He complimented her experience, understanding of policy, and advocacy of clients. He complimented her communication, management, and interpersonal skills. He urged the committee to advance her confirmation.

[1:25:16 PM](#)

REPRESENTATIVE KURKA recalled that Ms. Cherot had indicated that clients in DOC custody had been subject to quarantine following in-person visits with attorneys. He asked to confirm whether it was Ms. Cherot's belief that in-person consultation is critical.

MS. CHEROT confirmed this as correct.

[1:26:09 PM](#)

REPRESENTATIVE KURKA asked whether Ms. Cherot had experienced pressure to obtain the COVID-19 vaccine not based on its merits.

MS. CHEROT offered clarification that, if both the attorney and the client are vaccinated, then no mandatory quarantine exists. She added her understanding that there does not exist any mandate to obtain a vaccine and the choice to vaccinate remains a personal one.

[1:27:25 PM](#)

REPRESENTATIVE KURKA referred to the challenges [under COVID-19] in requesting jury trials and asked whether requests for trials under extenuating circumstances had been denied.

MS. CHEROT answered that motions and requests for jury trials for extraordinary circumstances had been filed for some cases and that, to her knowledge, all of those requests had been denied. She stated that she would need to conduct additional research to confirm her understanding that no jury trials had been granted.

[1:28:24 PM](#)

REPRESENTATIVE KURKA requested that Ms. Cherot provide to the committee the number of [jury trial] requests that had been denied. He asked whether clients had been offered a choice of a jury trial after some time or a [bench] trial and whether a result of defendants facing those choices had denied clients of their rights.

MS. CHEROT answered that many clients had waived their rights to a speedy trial for a variety of reasons and, should a client request a speedy trial, the agency will pursue that on the client's behalf. She offered to provide the committee with the number of cases in which a jury trial had been requested and was subsequently denied. She added that there existed cases in which a client had requested a jury trial and [reluctantly] agreed to a bench trial. She opined that the rights afforded through a jury trial were critical.

[1:30:15 PM](#)

CHAIR CLAMAN directed Ms. Cherot provide statistics of jury trial requests and denials to his office for distribution to the committee.

[1:30:26 PM](#)

REPRESENTATIVE KREISS-TOMKINS complimented Ms. Cherot's achievements during her tenure as acting public defender, lauding the complimentary public testimony and her achievements as exemplary in state government. He asked what changes she had implemented regarding retention and recruitment.

MS. CHEROT answered with assigning credit to the office's management team and described its efforts for recruitment as an aggressive, nationwide campaign targeting law schools, job

fairs, and included expedient interviewing processes. She added that there had been availed a position designation to long-term, non-permanent positions to allow for new recruits to join the agency at non-benefitted and lower pay ranges that would poise the new hire for permanent employment status as vacancies open. She added that this approach had eliminated vacancies following resignation being subject to lengthy recruitment periods, and the resulting caseload burden on existing attorneys was thereby reduced. She explained that a mentorship and training program exists to increase retention.

[1:32:53 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Ms. Cherot if he was correct in his restatement in his own words regarding the concept of recruiting nonpermanent employees in order for them to be "on deck" and ready to accept permanent employment as a pipeline of pre-vetted, onboarded, and trained recruits.

MS. CHEROT affirmed this as correct.

REPRESENTATIVE KREISS-TOMKINS asked whether she considered current caseloads for attorneys to be sustainable or constitutionally tenable, including minimum sufficient amounts of attorney/client time. He further asked for her comments regarding a proposed increase in the number of prosecutors and its effect on her agency.

MS. CHEROT answered that disposition of cases had been diminished under COVID-19 and, should additional prosecutor positions receive funding, there would be an immediate impact on cases, particularly those involving sexual assault. She stated that an increase in prosecutors would result in additional cases being brought to trial and the very serious nature of the workload associated with experts and investigations would require more experienced staff.

REPRESENTATIVE KREISS-TOMKINS asked Ms. Cherot to provide a numerical context of the average number of cases and what a sustainable number of cases would be according to any national standard.

MS. CHEROT answered that there exists a "cases waiting" system to reflect the total number of cases based on the National Advisory Commission standards in 1973, which she described as outdated. She explained the standard was that no attorney should have felony cases in excess of 150 per year and no more

than 400 misdemeanor cases per attorney per year. She indicated that the caseload varies from office to office with the caveat that some offices require additional training to effectively and efficiently execute the standard number of cases. She further added that she monitors caseloads based on quarterly and monthly reports and adjustments were made constantly, with the most drastic measure being rejecting cases, and other measures include outsourcing cases.

[1:38:30 PM](#)

REPRESENTATIVE KREISS-TOMKINS stated he was not aware that rejecting cases was the prerogative of the office and asked for more explanation.

MS. CHEROT answered that there exists an option to litigate cases through the court system and that [case rejection] existed in the American Bar Association's Standards Guide, should cases become excessive upon review, and the direction would be to take every available measure before [rejecting a case].

REPRESENTATIVE KREISS-TOMKINS asked Ms. Cherot to explain "litigate through the court system."

MS. CHEROT answered that there exist different filings either at the court of appeals or at the supreme court in which the court could request that cases stop being assigned to the public defender until workloads revert to ethical levels.

[1:40:11 PM](#)

CHAIR CLAMAN added his recollection that, under Public Defender Steiner, it had been indicated that the workload had come dangerously close to that level.

MS. CHEROT confirmed this as correct.

[1:40:44 PM](#)

REPRESENTATIVE EASTMAN asked what Ms. Cherot's response would be should the state appoint 10 additional prosecutors, as was currently being discussed in the budgeting process.

[1:41:12 PM](#)

CHAIR CLAMAN stated that that question had been earlier asked and answered and allowed Ms. Cherot to briefly restate her previous answer for the benefit for Representative Eastman.

[1:41:36 PM](#)

MS. CHEROT stated that the most serious cases such as those of a sexual nature would increase the attorneys' workload. She further explained that her office is in communication with the Department of Administration regarding workload.

REPRESENTATIVE EASTMAN asked whether the Office of the Public Defender may influence the process [of increased workload] going forward.

MS. CHEROT answered that she had been working with the Department of Administration and the Office of Management & Budget on the impact to workload and positions required to meet the demands of increased caseload. She added that, at the time of budget development, she had not been aware that additional prosecutors may be added to the Department of Law.

[1:44:04 PM](#)

CHAIR CLAMAN asked Ms. Cherot to provide an estimate of the percentage of defendants who are represented by the Public Defender Agency.

[1:44:23 PM](#)

MS. CHEROT answered that she would estimate that to be 85 percent of indigent [defendants] who are referred to her office.

[1:44:49 PM](#)

REPRESENTATIVE KURKA asked for clarification regarding the estimate of 85 percent of indigents, and what proportion of all cases are referred to her office.

[1:45:13 PM](#)

MS. CHEROT answered that she could speak only to publicly appointed counsel to her office and offered to provide additional data to aid in answering the question.

[1:45:33 PM](#)

CHAIR CLAMAN added that the [remaining] 15 percent of cases are represented by the Office of Public Advocacy and in general there exists some sort of conflict requiring alternate representation [than that of the public defender.].

[1:46:25 PM](#)

CHARLES MCKEE indicated an experience he had had with the Public Defender Agency.

[1:48:48 PM](#)

CHAIR CLAMAN, after ascertaining that there was no one further who wished to testify, closed public testimony on the confirmation hearing for appointee to public defender.

[1:49:18 PM](#)

REPRESENTATIVE SNYDER thanked Ms. Cherot for her testimony and her achievements in resolving staffing issues.

[1:49:30 PM](#)

REPRESENTATIVE DRUMMOND lauded Ms. Cherot's dedication to public service.

[1:49:48 PM](#)

CHAIR CLAMAN echoed the compliments from other members and lauded the [innovation] of the non-permanent positions and expressed his hope that this model could be used in other agencies to solve staffing and vacancy issues.

[1:50:33 PM](#)

REPRESENTATIVE SNYDER announced that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointee and recommends that the following name be forwarded to a joint session of the House and Senate for consideration: Samantha Cherot, Appointee, Public Defender. She stated that each member's signature on the committee's report in no way reflects intent by any member to vote for or against the individual during any further sessions for the purposes of confirmation.

**HB 66-ELECTIONS, VOTING, BALLOTS**

[1:51:15 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 66, "An Act relating to voting, voter qualifications, and voter registration; relating to poll watchers; relating to absentee ballots and questioned ballots; relating to election worker compensation; and providing for an effective date."

CHAIR CLAMAN announced that the committee would hear invited testimony.

[1:52:39 PM](#)

REPRESENTATIVE KURKA asked what process exists to verify citizenship of an individual registering to vote.

[1:54:04 PM](#)

REPRESENTATIVE CHRIS TUCK, Alaska State Legislature, as prime sponsor of HB 66, answered that the Electronic Registration Information Center (ERIC) is used to verify voter information via data matching involving voter records and eligible, but unregistered, citizens. He added that, should an individual's information not be able to be confirmed, then that individual would not be eligible to vote.

[1:55:05 PM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, answered Representative Kurka's question by adding that voters sign registration documents under penalty of perjury to certify that the information that they provide is true and correct. She said that there does not exist a verification of an individual's United States citizenship but that, through the permanent fund dividend (PFD) automatic voter registration process, the Division of Elections obtains a list on an annual basis of applicants who have indicated that they are not a U. S. citizen that is matched with the data in the voter information system. Should such a non-citizen appear on voter registration rolls, his/her registration is cancelled, and he/she is notified of the requirement to provide proof of citizenship to reactivate the record. She further stated that the division periodically receives information from federal courts of Alaska on jurors who have indicated to the courts that

they are not a U. S. citizen and are subject to the same cancellation and notification process.

[1:56:39 PM](#)

REPRESENTATIVE TUCK referred to page 2 of HB 66 that retains existing statutory language that requires information that a voter shall supply to request voter registration. He further added that in Section 2, on page 2, line 7, requires a declaration that the applicant is a citizen of the United States. He deferred to the division to elaborate on the subsequent verification process.

[1:57:22 PM](#)

REPRESENTATIVE EASTMAN asked what verification process exists within the Permanent Fund Dividend Division to ensure citizenship when it is claimed on a PFD application.

MS. FENUMIAI advised that the Department of Revenue, Permanent Fund Dividend Division should answer Representative Eastman's question.

REPRESENTATIVE EASTMAN asked whether citizenship information that the division receives from the courts has been verified.

MS. FENUMIAI recommended that the court system should answer Representative Eastman's question.

REPRESENTATIVE EASTMAN recalled prior testimony discussing signature verification in other states, and asked what procedures exist in Alaska to verify signatures on ballots.

MS. FENUMIAI answered that no statutory authority exists to conduct signature verification. She added that, to the best of her knowledge, the only signature verification procedure exists in the Municipality of Anchorage's vote by mail system.

[1:59:22 PM](#)

REPRESENTATIVE VANCE asked, regarding electronic signatures, what would be different when compared to how signatures are currently used. She asked whether the division has a way to accept electronic signatures currently.

MS. FENUMIAI answered that the Division of Elections does not have a way to accept electronic signatures and would be required

to investigate the implementation of electronic signatures as a new process.

[2:00:44 PM](#)

REPRESENTATIVE TUCK, in response to the line of questioning, said that 34 states plus the District of Columbia offer online [voter] registration, and the usual initial verification procedures involve signatures of prospective voters already on record, such as those at divisions of motor vehicles. Should a signature not match the one on file, further review or action is taken. He added that the State of Arizona innovated online voter registration in 2002. He offered to follow up with information regarding additional signature verification reviews or actions that exist in other states after the initial matching verification.

[2:01:46 PM](#)

MS. FENUMIAI offered that there exists an online voter registration process in Alaska in which a prospective voter is required to have a state issued identification. The signature on file with the Division of Motor Vehicles (DMV) is used for initial verification.

[2:02:13 PM](#)

CHAIR CLAMAN asked whether MyAlaska online would provide a means for voters to register online.

MS. FENUMIAI answered that MyAlaska is a separate system, and the two systems would be required to be merged.

CHAIR CLAMAN asked to confirm that a voter would not be able to register through MyAlaska but could register through the PFD application process.

MS. FENUMIAI confirmed this as correct.

[2:02:58 PM](#)

REPRESENTATIVE VANCE asked whether the signature on file with the Division of Motor Vehicles (DMV) could be used to verify online voter registration.

MS. FENUMIAI answered by clarifying that the signature on file at DMV is not an electronic signature but is rather a "wet"

signature of which the Division of Elections receives a copy. She added her understanding that an electronic signature could be similar to the online signature process for the PFD application.

[2:03:57 PM](#)

REPRESENTATIVE VANCE asked the bill sponsor what the fiscal impact of implementation of electronic signatures [for voter registration in Alaska] would be based on his research of other states' implementations of electronic signatures.

REPRESENTATIVE TUCK asked Representative Vance to clarify whether she was asking what the cost would be to the State to implement electronic signatures.

REPRESENTATIVE VANCE answered yes, and she requested a ballpark estimate for hardware and software that may be required.

REPRESENTATIVE TUCK suggested that MyAlaska exists as an electronic signature platform to allow the Division of Elections to make online voter registration, including electronic signatures, available and he suggested that the agency that controls MyAlaska be consulted.

[2:05:52 PM](#)

CHAIR CLAMAN asked whether additional fiscal notes existed for HB 66; he opined that additional costs would likely be required.

[2:06:21 PM](#)

REPRESENTATIVE VANCE added that the fiscal note [HB66-OOG-DOE-4-9-21, included in the committee packet] was indeterminate. She asked what the anticipated fiscal impact would be of 84,000 postage paid return envelopes.

MS. FENUMIAI answered that ballots are oversized and are estimated to cost 70 cents to return, with the caveat that costs could increase.

REPRESENTATIVE VANCE asked whether the post office provides a date of mailing for postage paid return envelopes.

MS. FENUMIAI answered that she is uncertain of the postal process but did offer her understanding that, if a ballot is

brought to a postal window and an individual requests it to be "hand cancelled" then a date would be stamped on the envelope.

[2:09:11 PM](#)

PADDY MCGUIRE, Mason County Auditor, answered questions during the hearing on HB 66. He stated that the State of Washington has offered prepaid postage on return envelopes since 2018. He stated that, normally, business reply mail is not postmarked; however, his office works closely with the postmaster, and it receives an approximate 98 percent postmark rate on ballots.

[2:10:02 PM](#)

REPRESENTATIVE VANCE asked whether there was a contract or informal request to the postmaster to obtain postmarks on ballots.

MR. MCGUIRE stated that his office works very closely with postal officials during election season, often daily. He added that demand for postal mail has been declining and opined that the post office officials welcome the business.

[2:11:23 PM](#)

REPRESENTATIVE DRUMMOND offered that she had requested an absentee ballot and had been offered the option to select absentee ballot for the primary only, or the primary and General, Elections. She further added that the Division of Elections website offered the option for her to grant permission to the division to compare her signature with that on file with the DMV. She explained that the website provided information such as when the ballot had been mailed to her and when the division had received her ballot. She suggested this was evidence that many of the systems are in place to allow for signature verification.

[2:13:05 PM](#)

REPRESENTATIVE VANCE referred to page 5, [Section 10] regarding the appointment and privilege of watchers and asked why the language, as follows, had been deleted:

[A WATCHER MUST BE A UNITED STATES CITIZEN. THE WATCHER MAY BE PRESENT AT A POSITION INSIDE THE PLACE OF VOTING OR COUNTING THAT AFFORDS A FULL VIEW OF ALL ACTION OF THE ELECTION OFFICIALS TAKEN FROM THE TIME

THE POLLS ARE OPENED UNTIL THE BALLOTS ARE FINALLY COUNTED AND THE RESULTS CERTIFIED BY THE ELECTION BOARD OR THE DATA PROCESSING REVIEW BOARD. THE ELECTION BOARD OR THE DATA PROCESSING REVIEW BOARD MAY REQUIRE EACH WATCHER TO PRESENT WRITTEN PROOF SHOWING APPOINTMENT BY THE PRECINCT PARTY COMMITTEE, THE PARTY DISTRICT COMMITTEE, THE ORGANIZATION OR ORGANIZED GROUP, OR THE CANDIDATE THE WATCHER REPRESENTS.]

[2:14:15 PM](#)

REPRESENTATIVE TUCK referred to language in Section 11, on page 6, line 16, which he described as "cleaner" and still inclusive of the citizenship requirement.

[2:15:19 PM](#)

REPRESENTATIVE VANCE referred to page 6, line 1 which would provide for one or "more" watchers and asked the intent of the sponsor to include this language and what complexities it may present.

REPRESENTATIVE TUCK answered that the language would allow for "more eyes" and the potential for alternates to participate in watching, and the intent was not to crowd the area.

REPRESENTATIVE VANCE asked what discretion the division would have to limit watchers due to space concerns or social distancing concerns as occurred during the 2020 election [under COVID-19].

[2:17:31 PM](#)

MS. FENUMIAI answered that it was her interpretation of the proposed language to mean that the division would have discretion to allow one or more watchers based on space and how many watchers requested to be present.

[2:17:53 PM](#)

REPRESENTATIVE VANCE asked whether candidates or parties had expressed any consternation regarding the division's discretion made necessary [during the 2020 election] and asked if there could be a potential for lawsuit.

MS. FENUMIAI stated that, due to COVID-19, the division had made significant changes to the numbers [of watchers] unlike previous

years. She referred to Mr. Flynn to speak to the potential for legal issues.

[2:18:50 PM](#)

THOMAS FLYNN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, stated that he was not aware of any legal issues regarding the number of watchers [during the 2020 election].

[2:19:05 PM](#)

REPRESENTATIVE VANCE asked whether a party or candidate might request more watchers that the division could deny at its discretion could lead to legal repercussions.

MR. FLYNN answered that his interpretation of the language being discussed is that the number of watchers would be open-ended and that he would need to conduct further research within Title 15 to confirm any limits that may exist or any division discretion which may exist in the proposed legislation.

[2:19:58 PM](#)

CHAIR CLAMAN offered a scenario in which a candidate would appoint five poll watchers and the discretion of the division could be to allow only one of those five appointees at any given time to watch. He stated his opinion that the proposed language did not require the division to allow all appointed watchers present at any given time. He asked whether Mr. Flynn's interpretation of the proposed language would require the division to allow all watchers present at any given time.

[2:20:45 PM](#)

MR. FLYNN opined that Chair Claman's scenario is likely a correct interpretation of how the proposed language would be enacted.

[2:21:04 PM](#)

REPRESENTATIVE VANCE recalled that there had been national media attention on poll watchers related to the 2020 election and that the proposed language would allow for in excess of five topics in any given election, and that each topic could allow for an unlimited number of watchers. She questioned the prudence of

the proposed language regarding what the division could allow when balancing the public interest for transparency.

MR. FLYNN opined that the question of prudence is one of policy rather than a legal one.

REPRESENTATIVE TUCK offered that the intent of the proposed language is that of fairness for all topics or candidates involved in an election.

[2:23:59 PM](#)

REPRESENTATIVE DRUMMOND noted that the Municipality of Anchorage offers livestreams of ballot counting.

CHAIR CLAMAN asked whether there existed anything that would prevent a video [stream] of ballot counting.

[2:24:35 PM](#)

MS. FENUMIAI offered her understanding that there does not exist any legal barriers to livestreaming ballot counting, only that there might exist financial considerations.

[2:24:57 PM](#)

REPRESENTATIVE KURKA expressed his support for increased transparency of elections by including poll watchers and allowing video coverage of ballot counting. He asked whether parties could have observers at any election or only one in which they have an interest in an item appearing on the ballot.

[2:26:49 PM](#)

REPRESENTATIVE TUCK stated that only people associated with a specific ballot item would be permitted to observe, and stated that the language in Section 10, on page 6, lines 2 and 3 codify this, reading: "An organization or organized group that sponsors or opposes a ballot proposition or recall may have one or more watchers at the polls."

[2:27:41 PM](#)

REPRESENTATIVE KURKA asked whether the sponsor would welcome an amendment that would codify existing policy in statute to allow observers at each counting table.

[2:29:01 PM](#)

REPRESENTATIVE TUCK welcomed a discussion to arrive at prudent language that reflects current practices. He added that the intent of the language was to allow for individuals to become pre-authorized to observe at the polls.

[2:29:48 PM](#)

REPRESENTATIVE SNYDER stated that she had direct experience during her own race recount and complimented the division's handling of the process and observers. She asked whether Ms. Fenumiai had any additional information regarding poll watchers and the use of space that she wished to bring to the attention of the committee.

MS. FENUMIAI stated that, in a non-pandemic year, the division is liberal in the number of observers allowed and recalled occasions in which 20 or more people were in the room. She stated that it was the intent of the division to allow for transparency. She stated that, under COVID-19, the division had worked with parties to arrive at a solution to allow for the most transparent observation to occur.

[2:31:49 PM](#)

REPRESENTATIVE TUCK shared with the committee that the State of Arizona's costs to transition from paper registration to online registration had decreased from 83 cents to 3 cents per registration.

[HB 66 was set aside and taken up again later in the meeting.]

**HB 116-JUVENILES: JUSTICE, FACILITES, TREATMENT**

[Contains discussion on HB 105.]

[2:32:46 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 116, "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."

CHAIR CLAMAN recalled that the committee had requested that HB 105 and HB 116 be compared, and for the Division of Juvenile Justice (DJJ) to provide the findings of the comparison to the committee.

[2:34:07 PM](#)

MATT DAVIDSON, Social Service Program Officer, Division of Juvenile Justice, Department of Health and Social Services, stated that DJJ's comparison of HB 105 and HB 116 had resulted in finding five sections of the two bills that would amend the same section of statute. He stated that each proposed bill has a separate purpose and offered to answer any questions or concerns.

CHAIR CLAMAN asked whether DJJ would recommend to either merge the bills or to keep them separate.

[2:35:32 PM](#)

TRACY DOMPELING, Director, Division of Juvenile Justice, Department of Health and Social Services, expressed her preference would be that HB 105 and HB 116 remain separate. She explained that HB 116 does not have the time constraints of HB 105 to bring the state into federal compliance.

[2:36:40 PM](#)

CHAIR CLAMAN ascertained that no additional discussion was sought by members of the committee or others present and announced that HB 116 was held over.

**HB 66-ELECTIONS, VOTING, BALLOTS**

[2:37:22 PM](#)

CHAIR CLAMAN announced that the final order of business would be to resume discussion of HB 66, "An Act relating to voting, voter qualifications, and voter registration; relating to poll watchers; relating to absentee ballots and questioned ballots; relating to election worker compensation; and providing for an effective date."

[2:38:31 PM](#)

The committee took an at-ease from 2:38 p.m. to 2:40 p.m.

[2:40:45 PM](#)

REPRESENTATIVE DRUMMOND asked Ms. Fenumiai to describe the ballot counting observation process for the 2020 election under COVID-19.

MS. FENUMIAI explained that the division worked with parties and candidates to provide names of the observers and allowed one person at a time due to social distancing requirements, and that all involved worked cooperatively.

[2:41:54 PM](#)

REPRESENTATIVE EASTMAN asked what requirements exist for observers and asked what "meaningful observation" means to the department.

MS. FENUMIAI explained that observers would be present in a room to observe the review of absentee and question ballots and are able to make challenges and ask questions as appropriate to such ballots. She further explained that observers are also in a room to witness the counting of ballots.

REPRESENTATIVE EASTMAN asked to what information an observer may demand access.

MS. FENUMIAI answered that observers have a list of voters for the district being reviewed at a certain table and may compare the information on the envelope to the information that exists on record, and they may challenge any discrepancy.

[2:44:06 PM](#)

REPRESENTATIVE VANCE referred to page 4 of HB 66 and asked how the division would handle a special needs, in-person absentee, or question ballot if the individual had registered on election day or within the 30-day registration window prior to the election.

MS. FENUMIAI replied that all those ballots would be handled in the same manner as question ballots and the process would not change [based on when a voter registered].

REPRESENTATIVE VANCE asked whether a voter is notified if his/her ballot is disqualified and not counted.

MS. FENUMIAI answered that, under state law, the division is required to notify a voter via letter if all or part of his/her ballot is not counted.

[2:46:44 PM](#)

CHAIR CLAMAN asked whether a voter is notified in the case that a ballot is challenged, or whether a voter is notified only if his/her ballot is not counted.

MS. FENUMIAI answered that voters are not notified if their ballots are challenged at the review board level, only if their ballots are not counted.

[2:47:28 PM](#)

MIKE MASON, Staff, Representative Chris Tuck, Alaska State Legislature, on behalf of Representative Chris Tuck, prime sponsor of HB 66, added that the notification process occurs after the election is certified, and the proposed bill would allow for curing of errors.

REPRESENTATIVE VANCE asked where the provisions for ballot curing appear under HB 66.

MR. MASON stated that the language appears in Section 30, on page 14. He suggested that Mr. McGuire may be able to explain how other jurisdictions handle ballot curing.

[2:48:25 PM](#)

MR. MCGUIRE explained the State of Washington's ballot curing process is initiated when an issue arises such as an unsigned ballot or signature verifiers find that a signature does not match, at which point a letter is sent with a prepaid postcard that a voter may return to cure the issue with his/her signature. He added that signatures do change over time and that the voter record is updated with the new signature obtained in the curing process. He explained that information regarding missing or unmatched signatures may be shared with political campaigns, which campaigners may use to follow up directly with voters.

[2:50:01 PM](#)

REPRESENTATIVE VANCE stated that her district constituents had expressed their desire to address voting in Alaska. She referred to Section 30, on page 14, regarding the curing a rejected absentee ballot, and she asked in reference to paragraph (a), "Not later than the completion of the state ballot counting review", and (c), "Cured absentee ballots shall be forwarded immediately to the director by the most expeditious service", whether there would be a date certain by which those should be postmarked in order to be counted.

MS. FENUMIAI answered that there does not exist a date certain by which the review board shall complete its work. She added that there exist other legal deadlines such as the board being required to complete its work prior to the swearing in of the governor elect.

[2:51:29 PM](#)

MR. MASON added that, during the drafting of HB 66, dates certain had been sought and it had been determined that each election varied, and no deadline for the curing process had been set, and it would occur when the review board meets.

[2:51:54 PM](#)

REPRESENTATIVE VANCE expressed her concern that in a very close race the absence of a date certain for ballot curing could leave the state open to lawsuit.

[2:53:15 PM](#)

REPRESENTATIVE TUCK referred to Section 31, "The state review board shall review and count absentee ballots under AS 15.20.081(e) and (h), absentee ballots properly cured under AS 15.20.204," that compels the state review board to count ballots; however, the review board is not subject to a deadline specific to counting ballots. He suggested that the division would require ballots to be postmarked by a certain date and further research would be necessary to determine when a postmarked ballot must be received.

[2:55:03 PM](#)

REPRESENTATIVE SNYDER stated her concern would be to ensure that outstanding ballots are not left outstanding indefinitely.

[2:55:21 PM](#)

MR. MCGUIRE stated that, in the State of Washington, cured ballots must be received the day before certification of the election. He further stated that the deadline is associated with a postmark; however, it is necessary to require a received-by date.

[2:55:48 PM](#)

CHAIR CLAMAN postulated that the ballot curing process to correct a mistake on a ballot should not be subject to slow or tardy response by the voter, and that an amendment could be brought to provide for a deadline by which cured ballots shall be received.

[2:56:27 PM](#)

REPRESENTATIVE KURKA recalled earlier testimony by Ms. Fenumiai that there would be no change to the process for counting absentee and question ballots under Section 4 and questioned the validity that no change would occur to the process considering that there would be a change to the voter registration process, should HB 66 pass.

MS FENUMIAI explained that the current process allows for voters to attempt to vote on question ballots and that no change to the process would be necessary.

[2:58:00 PM](#)

REPRESENTATIVE KURKA asked whether the process applies to federal elections or all state elections.

MS. FENUMIAI explained that, in all elections, should a voter who is already registered and voted in a different district, and the voter put another address on the question ballot affidavit envelope, that information is entered into the voter registration system, and a determination as to whether the ballot should be counted is made.

[2:58:45 PM](#)

REPRESENTATIVE KURKA asked whether the state voter registration system is updated on a daily basis.

MS. FENUMIAI answered that the system is updated on a real time basis and, in some cases, minute by minute.

[HB 66 was held over.]

[2:59:48 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.