

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 31, 2022

3:33 p.m.

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator Lora Reinbold, Vice Chair
Senator Mia Costello
Senator Roger Holland

MEMBERS ABSENT

Senator Scott Kawasaki

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Military Appeals Commission
Tyler Harder - Eagle River

- CONFIRMATION ADVANCED

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 187(STA)

"An Act relating to the elimination or modification of state agency publications that are outdated, duplicative, or excessive or that could be improved or consolidated with other publications or exclusively delivered electronically; and providing for an effective date."

- MOVED CSHB 187(STA) OUT OF COMMITTEE

SENATE BILL NO. 188

"An Act relating to criminal law and procedure; relating to a petition for a change of name for certain persons; relating to procedures for bail; relating to consecutive sentencing for violation of condition of release; relating to the duty to register as a sex offender; amending Rules 6(r) and 47, Alaska Rules of Criminal Procedure; amending Rule 12, Alaska Delinquency Rules; amending Rule 84, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 123

"An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 187

SHORT TITLE: STATE AGENCY PUBLICATIONS

SPONSOR(S): REPRESENTATIVE(S) KAUFMAN

04/22/21	(H)	READ THE FIRST TIME - REFERRALS
04/22/21	(H)	STA, FIN
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	<Bill Hearing Canceled>
05/06/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/06/21	(H)	Heard & Held
05/06/21	(H)	MINUTE(STA)
05/11/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/11/21	(H)	-- MEETING CANCELED --
05/13/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/13/21	(H)	Heard & Held
05/13/21	(H)	MINUTE(STA)
05/15/21	(H)	STA AT 10:00 AM GRUENBERG 120
05/15/21	(H)	Moved CSHB 187(STA) Out of Committee
05/15/21	(H)	MINUTE(STA)
05/18/21	(H)	STA RPT CS(STA) 5DP 1NR
05/18/21	(H)	DP: STORY, VANCE, KAUFMAN, TARR, KREISS-TOMKINS
05/18/21	(H)	NR: CLAMAN
02/02/22	(H)	FIN AT 1:30 PM ADAMS 519
02/02/22	(H)	Heard & Held
02/02/22	(H)	MINUTE(FIN)
02/10/22	(H)	FIN AT 1:30 PM ADAMS 519
02/10/22	(H)	Moved CSHB 187(STA) Out of Committee
02/10/22	(H)	MINUTE(FIN)
02/11/22	(H)	FIN RPT CS(STA) 6DP 5NR
02/11/22	(H)	DP: LEBON, CARPENTER, THOMPSON, JOHNSON, RASMUSSEN, FOSTER
02/11/22	(H)	NR: ORTIZ, EDGMON, WOOL, JOSEPHSON, MERRICK
02/17/22	(H)	TRANSMITTED TO (S)
02/17/22	(H)	VERSION: CSHB 187(STA)
02/22/22	(S)	READ THE FIRST TIME - REFERRALS
02/22/22	(S)	STA
03/10/22	(S)	STA AT 3:30 PM BUTROVICH 205

03/10/22 (S) -- MEETING CANCELED --
03/17/22 (S) STA AT 3:30 PM BUTROVICH 205
03/17/22 (S) Heard & Held
03/17/22 (S) MINUTE(STA)
03/31/22 (S) STA AT 3:30 PM BUTROVICH 205

BILL: SB 188

SHORT TITLE: CRIM PROCEDURE; CHANGE OF NAME
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/15/22 (S) READ THE FIRST TIME - REFERRALS
02/15/22 (S) STA, JUD
03/31/22 (S) STA AT 3:30 PM BUTROVICH 205

BILL: HB 123

SHORT TITLE: STATE RECOGNITION OF TRIBES
SPONSOR(s): ZULKOSKY

03/03/21 (H) READ THE FIRST TIME - REFERRALS
03/03/21 (H) TRB, STA
03/30/21 (H) TRB AT 8:00 AM DAVIS 106
03/30/21 (H) Heard & Held
03/30/21 (H) MINUTE(TRB)
04/01/21 (H) TRB AT 8:00 AM DAVIS 106
04/01/21 (H) Moved HB 123 Out of Committee
04/01/21 (H) MINUTE(TRB)
04/05/21 (H) TRB RPT 3DP 1NR
04/05/21 (H) DP: FIELDS, TARR, ZULKOSKY
04/05/21 (H) NR: CRONK
04/17/21 (H) STA AT 3:00 PM GRUENBERG 120
04/17/21 (H) Heard & Held
04/17/21 (H) MINUTE(STA)
04/22/21 (H) STA AT 3:00 PM GRUENBERG 120
04/22/21 (H) Moved HB 123 Out of Committee
04/22/21 (H) MINUTE(STA)
04/26/21 (H) STA RPT 5DP 1NR
04/26/21 (H) DP: VANCE, CLAMAN, STORY, TARR, KREISS-
TOMKINS
04/26/21 (H) NR: KAUFMAN
05/19/21 (H) LIMIT ALL DEBATE TO 2 MIN EACH Y23 N16
E1
05/19/21 (H) MOTION TO TABLE UC
05/19/21 (H) TAKEN FROM TABLE UC
05/19/21 (H) TRANSMITTED TO (S)
05/19/21 (H) VERSION: HB 123
01/18/22 (S) READ THE FIRST TIME - REFERRALS
01/18/22 (S) STA, CRA

02/10/22 (S) STA AT 3:30 PM BUTROVICH 205
02/10/22 (S) Heard & Held
02/10/22 (S) MINUTE(STA)
02/15/22 (S) CRA REFERRAL REMOVED
02/15/22 (S) STA AT 3:30 PM BUTROVICH 205
02/15/22 (S) Heard & Held
02/15/22 (S) MINUTE(STA)
03/03/22 (S) STA AT 3:30 PM BUTROVICH 205
03/03/22 (S) <Bill Hearing Canceled>
03/10/22 (S) STA AT 3:30 PM BUTROVICH 205
03/10/22 (S) -- MEETING CANCELED --
03/17/22 (S) STA AT 3:30 PM BUTROVICH 205
03/17/22 (S) Heard & Held
03/17/22 (S) MINUTE(STA)
03/31/22 (S) STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

TYLER HARDER, JAG Alternate Appointee
Military Appeals Commission
Eagle River, Alaska

POSITION STATEMENT: Testified as appointee to the JAG Alternate Seat for the Military Appeals Commission.

REPRESENTATIVE JAMES KAUFMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 187.

MATTHEW HARVEY, Staff
Representative James Kaufman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 187.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Introduced SB 188 on behalf of the administration.

ANGIE KEMP, Director
Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 188.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information during the hearing on SB 188.

SCOTT OGAN, Staff
Senator Mike Shower
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered his observations and recommendations during the hearing on HB 123.

NICOLE BORROMEO, Executive Vice President and General Counsel
Alaska Federation of Natives (AFN)
Anchorage, Alaska

POSITION STATEMENT: Provided background information on federal Indian law and discussed what HB 123 does and does not do.

JULIE KITKA, President
Alaska Federation of Natives
Anchorage, Alaska

POSITION STATEMENT: Stated support for HB 123 and Nicole Borrromeo's testimony.

BETTY JO MOORE, representing self
Anchorage, Alaska

POSITION STATEMENT: Stated support for HB 123 with Mr. Ogan's recommendation.

ACTION NARRATIVE

[3:33:47 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:33 p.m. Present at the call to order were Senators Holland, Reinbold, Costello, and Chair Shower.

CONFIRMATION HEARING(S) **Military Appeals Commission**

[3:34:20 PM](#)

CHAIR SHOWER announced the consideration of Governor Appointees to Boards and Commissions.

He asked Tyler Harder to tell the committee about his interest in serving on the Military Appeals Commission.

[3:34:42 PM](#)

TYLER HARDER, JAG Alternate Appointee, Military Appeals Commission, Eagle River, Alaska, stated that since June 2017, he has served as the senior civilian legal advisor to the commander of the Alaska Command (ALCOM) for the Alaskan NORAD Region located at Joint Base Elmendorf Richardson (JBER). Prior to this he served for 24 years as an Army judge advocate starting at Fort Wainwright in 1991. His military career was focused on military justice and the military criminal process, first as a prosecutor or defense attorney at the trial level and then as a supervisor and mentor to younger counsel. In 2014 he chose to retire rather than accept the order that would send him outside of Alaska.

MR. HARDER stated that his familiarity with the National Guard structure stems from the time he spent working with a number of state National Guards. Through that work he developed a great respect for the state sovereignty under which the individual state guards operate. In his current position he has had the opportunity to work closely with the Alaska organized militia. This includes the joint staff and the Air and Army National Guards at various levels. He offered his belief that his background and experience fit well with serving on the Military Appeals Commission. If confirmed, he looks forward to serving.

[3:38:42 PM](#)

CHAIR SHOWER observed that his background and experience clearly aligned with service on this commission. He said he asks all appointees two generic questions. The first is whether he has any skeletons in the closet that the committee should know about now that might come out later.

MR. HARDER replied the answer is unequivocally no.

CHAIR SHOWER asked if he had identified any problem areas or a priority that he would like to accomplish while serving on this commission.

[3:40:54 PM](#)

MR. HARDER said given the events that gave rise to establishing the [Alaska Code of Military Justice (ACMJ)], he wants to ensure

things are done correctly from the start to provide a good foundation for the future. He said he looks forward to this opportunity.

SENATOR HOLLAND asked if this would be his first term.

MR. HARDER answered yes.

SENATOR HOLLAND commented that this looks like a good fit.

[3:42:30 PM](#)

SENATOR REINBOLD asked him to talk about the article he wrote about "Every Child Left Behind."

MR. HARDER replied that he had not been admitted to the Alaska State Bar when he retired, so he was looking for things to do other than practice law. The opportunity to teach Junior Reserve Officers' Training Corps (JROTC) at Bartlett High School presented itself and he did that for several years while he worked to pass the state bar. He has enjoyed the work and believes he helped a few students along the way.

MR. HARDER explained that when he was selected to attend the Army War College in Carlisle, Pennsylvania, he had just returned from Iraq and decided to use the opportunity to look into the effect of multiple deployments on children when their fathers and mothers are away from home for six months to a year at a time, and what the military could do about that. There was little focus on this at the time and the purpose of the article was to bring attention to that aspect of deployments.

SENATOR REINBOLD also asked whether appeals stemming from the Governor's COVID-19 mandates would be within the jurisdiction of the Military Appeals Commission.

MR. HARDER asked if she was referring to the requirement for all National Guardsmen on Title 10 status to receive the vaccine.

SENATOR REINBOLD answered yes.

MR. HARDER replied he didn't know for certain whether or not the commission would deal with that matter, and he didn't know the Guard's position. To the second question, he said he wasn't sure what his position would be until he had all the information from both sides. He shared that based on his personal belief, he voluntarily received the vaccine long before it was required. He said he does believe there are some constitutional issues

associated with a blanket requirement, particularly for civilian employees in federal service, and that is working its way through the courts. He noted that different case law applies to the long-standing requirement for military members to be vaccinated for certain things.

SENATOR REINBOLD offered her perspective which is to err on the side of personal liberties and medical choices. She emphasized that Alaska is an opt-in state; offered her perspective of the data associated with the Covid-19 vaccine; and emphasized that she will work with all military members who choose not to take the vaccine.

[3:53:43 PM](#)

SENATOR COSTELLO asked for his perspective of the students at Bartlett High School who were in JROTC and their readiness to enter the military in the future. She also asked for an explanation of what the Military Appeals Commission does.

MR. HARDER explained that the Military Appeals Commission listens to the first appellate level of cases that are handled through the National Guard's criminal adjudication process. He didn't know the scope of the commission's jurisdiction, but he did know that individual soldiers or airmen who disagree with a decision have the opportunity for further appeal.

To the question about JROTC at Bartlett High School, he said he particularly enjoyed the diversity and for the most part the students acted like his own five kids did when they were treated with respect but given firm boundaries. He acknowledged that it was a challenge that many students came from low-income homes that provided little structure which was an additional challenge for teenagers.

CHAIR SHOWER echoed Senator Reinbold's sentiments about the importance of taking care of service members and not losing them needlessly. Finding no further comments or questions, he solicited a motion.

[3:59:39 PM](#)

SENATOR REINBOLD stated that in accordance with AS 39.05.080, the Senate State Affairs Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration.

Military Appeals Commission

Tyler Harder, JAG Alternate - Eagle River

CHAIR SHOWER reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

[4:00:16 PM](#)

CHAIR SHOWER opened public testimony on the appointment of Tyler Harder to the Military Appeals Commission; finding none, he closed public testimony.

[4:00:34 PM](#)

At ease

HB 187-STATE AGENCY PUBLICATIONS

[4:01:55 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of CS FOR HOUSE BILL NO. 187(STA) "An Act relating to the elimination or modification of state agency publications that are outdated, duplicative, or excessive or that could be improved or consolidated with other publications or exclusively delivered electronically; and providing for an effective date."

He noted that the bill was heard previously, and the sponsor and staff were at the table to answer questions.

[4:02:41 PM](#)

SENATOR HOLLAND asked why the committee substitute (CS) changed the timing to submit the list of publications to every even numbered year.

REPRESENTATIVE JAMES KAUFMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 187, deferred the question to his staff, Mathew Harvey.

[4:03:18 PM](#)

MATTHEW HARVEY, Staff, Representative James Kaufman, Alaska State Legislature, Juneau, Alaska, explained that publishing once every other year at the beginning of each new legislature follows the same two-year cycle as legislation.

[4:03:57 PM](#)

CHAIR SHOWER opened public testimony on HB 187; finding none he closed public testimony.

REPRESENTATIVE KAUFMAN thanked the committee for considering the bill.

SENATOR REINBOLD commented on the long co-sponsor list.

[4:04:51 PM](#)

SENATOR REINBOLD moved to report HB 187, work order 32-LS0779\W, from committee with individual recommendations and attached fiscal note(s).

CHAIR SHOWER found no objection and CSHB 187(STA) was reported from the Senate State Affairs Standing Committee.

[4:05:16 PM](#)

At ease

SB 188-CRIM PROCEDURE; CHANGE OF NAME

[4:07:15 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of SENATE BILL NO. 188 "An Act relating to criminal law and procedure; relating to a petition for a change of name for certain persons; relating to procedures for bail; relating to consecutive sentencing for violation of condition of release; relating to the duty to register as a sex offender; amending Rules 6(r) and 47, Alaska Rules of Criminal Procedure; amending Rule 12, Alaska Delinquency Rules; amending Rule 84, Alaska Rules of Civil Procedure; and providing for an effective date."

CHAIR SHOWER listed the individuals available to answer questions and asked Kaci Schroeder to introduce the bill.

[4:08:41 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, Juneau, Alaska, stated that SB 188 does four things, and she would discuss them in the following order:

- 1) It deals with name changes for people involved in the criminal justice system;
- 2) It amends the bail statutes;
- 3) It amends the role of the grand jury regarding presenting hearsay at grand jury; and
- 4) It amends the Plain-Error Rule for cases that go on appeal.

MS. SCHROEDER explained that SB 188 requires people under the jurisdiction of the Department of Corrections (DOC), to notify

that department and the Department of Public Safety if they are required to register as a sex offender, and the Court System when they want to change their name. Currently neither department routinely receives this notice which makes it difficult to track these people and difficult for victims to track individuals as they move through the criminal justice system. The bill asks people who are not charged with a crime but want to change their name, to notify the Court System and identify the case so the court knows the person is involved in the criminal justice system. With this information and notification, the court will evaluate the request to change a name based on criteria that ensures the request is not made for a fraudulent purpose or to evade law enforcement.

[4:10:29 PM](#)

MS. SCHROEDER explained that SB 188 changes the bail statutes in the following ways:

- Defendants must give the prosecutor 48-hour notice when seeking a bail review hearing so the prosecutor can provide meaningful notice to victims who have a right to participate in bail hearings.
- Judges are required to provide written findings for the bail and conditions they order. This will provide a written record, whereas the current process is to check a box and give the order orally, which is more difficult to track and may not be as clear as it would if it were in writing.
- There is a rebuttable presumption that somebody who has violated conditions of release in the past, poses a risk to the victim or the community or that they won't appear. In the law, a rebuttable presumption is a strong suggestion from the legislature that something needs to change. It is not a presumption of no release; it is just that the person poses a risk and something needs to happen to address that risk.
- Consecutive sentencing is addressed. When somebody violates their conditions of release, that can trigger a new criminal charge called violating conditions of release. The current system creates the potential for a revolving door of arrest, bail, release, violation of conditions, and the cycle repeats. This is a drain on resources and it jeopardizes public safety when someone is unwilling to comply with conditions.

Sometimes the court will run the sentences concurrently when there is an underlying crime as well as several

violations of conditions of release. SB 188 says that when that happens, there must be some additional sanction for each violation of conditions of release.

[4:14:29 PM](#)

MS. SCHROEDER said the third thing SB 188 does is allow witnesses to summarize the testimony of other witnesses at grand jury, which is the charging phase of the case. The current process requires every witness to go to grand jury to offer their own testimony and this has to happen within 10 days after a person is arrested. This means that the victim who has already given their statement to law enforcement has to relive that event days later when they recount their story in a room full of strangers.

SB 188 provides that, at the prosecutor's discretion and based on the case, one person or a couple may go to grand jury and summarize the testimony of other witnesses. This would be less traumatizing for the victim and it would streamline and speed up the process. This does not change the fact that all the witness must be available at trial and for cross-examination.

[4:16:06 PM](#)

MS. SCHROEDER said SB 188 seeks to return the Plain Error Rule to what it was pre-2011. An appeal in a criminal case historically started with an objection, which preserved the issue on appeal except when the error was plain. Historically an error was plain if it affected substantial rights, was obvious, had a prejudicial effect, and the decision not to object was not tactical.

Beginning in 2011 a series of cases were handed down that reinterpreted the rule and shifted the burden of proof from the defendant to show prejudice to the state to prove the error was harmless beyond a reasonable doubt. The cases also redefined the word "obvious" to include things that are truly debatable. Furthermore, the court will only find that a failure for counsel to object was tactical if the record is clear that it was tactical. The result has been that more cases are taken up on appeal. Now more cases have to be defended on appeal, convictions are jeopardized, the system is less fair, and it's a drain on resources. SB 188 would restore the Plain Error Rule to what it was pre-2011 and provide more finality for victims.

[4:19:40 PM](#)

SENATOR COSTELLO asked for examples of what conditions of release might include. She also asked her to discuss the

significance of a grand jury indictment and the influence it has on the outcome of a trial.

MS. SCHROEDER said conditions of release are tailored to both the case and the defendant and might include such things as no contact with the victim and no alcohol consumption. The rebuttable presumption is a strong suggestion from the legislature that this situation must be addressed. The court might respond by requiring the person to engage in a 24/7 sobriety program that requires daily screening. The idea is to adjust the conditions to ensure the individual can comply and public safety is preserved.

To the question about the grand jury, she said the constitution requires all felony cases to be brought before a grand jury, but she didn't know the conviction rate in those cases.

SENATOR REINBOLD expressed concern about people who are under conditions of release and have had their trials delayed due to Covid-19.

MS. SCHROEDER said the prosecutor or the defense attorney can always ask the court to adjust the conditions of release, and the courts are considering trial delays and restrictions on people's liberty so that too is an avenue to seek an adjustment. She added that SB 188 proposes to make the system more efficient in getting indictments and addressing the backlog.

[4:24:28 PM](#)

CHAIR SHOWER said he may circle back to this topic.

SENATOR REINBOLD said the case she referenced did not have a change in circumstance. She also said she didn't care for the use of the term hearsay.

MS. SCHROEDER said hearsay is the term that is used under the law. Regarding additional bail hearings, it is not uncommon for attorneys to request a bail hearing to argue for a change when somebody has complied for a long time.

[4:25:59 PM](#)

SENATOR REINBOLD asked if the hearings can take place online since the courts have been closed.

MS. SCHROEDER said yes, and criminal hearings take priority.

CHAIR SHOWER asked Angie Kemp if she could answer Senator Costello's question.

4:26:27 PM

ANGIE KEMP, Director, Criminal Division, Department of Law, Anchorage, Alaska, said she wasn't aware of statistics on the conviction rates following a grand jury indictment.

CHAIR COSTELLO said her reason for asking was to fully understand the significance of a grand jury indictment to all the people that are involved in the case. She said she assumes that allowing hearsay would result in a faster indictment from the grand jury, but this raises concerns about the accuracy of hearsay witnesses and whether the accused would have the ability to mount a proper defense.

MS. KEMP agreed that it was correct to suggest that the grand jury indictment is a significant event in the process. It is akin to the probable cause finding, which is one phase among many, but once there is an indictment the victim is informed that the case is moving forward to superior court.

CHAIR SHOWER asked Ms. Meade if she had anything to add.

4:29:50 PM

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, stated that over the past four years between 2,500 and 3,000 cases have gone to grand jury and in about 99 percent of those cases the grand jury returned an indictment. That left about one percent of cases that did not result in indictment.

CHAIR SHOWER asked if she would agree that the data shows that prosecutors are doing a good job of presenting the data in a case and are getting high rates of indictments.

MS. MEADE replied the data indicates that nearly all the cases the prosecutor decides to take to grand jury result in an indictment.

CHAIR SHOWER said that's important information for the record because it counters the public perception that criminals often go free.

MS. MEADE clarified that the 2,500 to 3,000 cases that went to grand jury are far fewer than the total number of felonies that

were filed. These are only the ones that the prosecutor decided to take to a grand jury.

CHAIR SHOWER said he understands that, but the data does highlight that the prosecutors have a high rate of success on those cases they decide to take forward.

[4:32:57 PM](#)

SENATOR COSTELLO asked what the conviction rate was on those indictments.

MS. MEADE said she didn't have that information and wasn't certain it was available. She asked if would help to know that in felony cases, about one-third are dismissed by the prosecutor, about two percent go to trial, and about 68 percent are resolved through a guilty plea.

SENATOR COSTELLO said she was trying to understand the end result of allowing hearsay because she would assume that allowing family and loved ones to serve as a witness would make it easier to get a grand jury indictment.

[4:34:50 PM](#)

MS. MEADE agreed that a reason to allow hearsay is to make it easier to get an indictment. The data shows an indictment usually results from a grand jury, although Ms. Schroeder said it would be faster and more efficient to allow hearsay.

CHAIR SHOWER noted that both Senator Reinbold and Senator Costello were very strong advocates of victim rights, and both worked to repeal Senate Bill 91.

SENATOR REINBOLD asked her to clarify the definition of hearsay in criminal law.

MS. MEADE replied it is a well understood term in the field of law. The standard definition is, "An out of court statement offered for the truth in the matter asserted in that statement." Because it's out of court the true source of the statement is not examined.

[4:37:56 PM](#)

CHAIR SHOWER asked if this ties into the right of the defendant to face their accuser.

MS. MEADE replied that is the underpinning of the hearsay rule so it's possible to talk to and examine the source of the issue.

For example, if the bill passes and hearsay is permitted, the prosecutor would be able to introduce a police report that says what happened as opposed to producing the people who told the police about the matter that was put in the police report. Allowing hearsay would streamline the process because in that example, the officer reading the report would be the only one to present what happened. She said Ms. Schroeder would point that out later in the proceeding or at trial the defendant would have a chance to examine the people who gave the police the information that went into the report. Hearsay is not permitted at that point unless there is one of the exceptions.

CHAIR SHOWER asked for assurance that throughout the process the defendant would have the right to cross examine the people who gave the information that went into the police report.

MS. SCHRODER replied,

That's correct. There is no confrontation, and I think that's what you're describing - the right to cross examine witnesses etcetera. That does not occur at grand jury as Ms. Meade has described. The grand jury proposal only changes the hearsay aspect of grand jury. The defendant would still be able to review the record of the grand jury, challenge the record, file motions to dismiss. It happens all the time, and they would still be able to do that. We would still need to bring all of the witnesses in at trial for that confrontation, the confrontation clause so that the defendant could cross examine those witnesses.

CHAIR SHOWER said that was helpful.

[4:41:56 PM](#)

SENATOR REINBOLD spoke about how this is important for rape victims. She noted that Ms. Meade gave a clear definition of hearsay and asked Ms. Schroder to clarify that the Department of Law agrees with that definition.

MS. SCHRODER concurred with Ms. Meade's description that hearsay is defined by Court Rule; It's "an out of court statement offered for the truth of the matter asserted."

CHAIR SHOWER asked Ms. Schroder if she wanted anyone else to testify for the administration.

MS. SCHRODER answered no but it would be helpful to ask Ms. Kemp if she had anything to add.

CHAIR SHOWER asked Ms. Kemp if she had testimony to offer.

MS. KEMP mentioned Senator Reinbold's concern about protecting victims of rape and highlighted that a primary objective is victim protection. Under the current rule a victim of child sexual abuse is required to testify at grand jury and then at trial.

[4:45:09 PM](#)

CHAIR SHOWER found no further questions or comments and stated he would hold SB 188 for future consideration.

HB 123-STATE RECOGNITION OF TRIBES

[4:46:14 PM](#)

CHAIR SHOWER announced the consideration of HOUSE BILL NO. 123 "An Act providing for state recognition of federally recognized tribes; and providing for an effective date."

He stated that the intention is to hear invited testimony and try to assuage the concerns some members have expressed. He listed the individuals who were available to testify and answer questions.

[4:47:22 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, Alaska, offered his belief that it was time that the state recognize tribes in Alaska. The federal government recognizes both tribes in Alaska and the State of Alaska as sovereigns; federal case law recognizes tribal sovereignty; and state case law recognizes some levels of tribal sovereignty. He said his largest concern was how the sovereign immunity of tribes affects things such as torts and taxes. However, attorneys for both the Department of Law and Legislative Legal Services have opined that the bill only formally recognizes tribes. It changes nothing else. The Department of Law convinced him there was no reason for concern, but the chair may offer an amendment to remove the enabling sections of the bill.

MR. OGAN stated that he initially had concerns that Sections 3 and 4 placed recognition of tribes in Chapter 44.03 that talks about sovereignty of state issues, such as ownership of water and submerged land. He said there has been a lot of tension

about these issues over the years and his recommendation is to place recognition of tribes in bill Section 5 in its own chapter. He related that several attorneys familiar with the topic have said that such an amendment would not substantially change the policy and it would keep the initiative off the ballot. He offered his belief that the initiative would "cause unfortunate rhetoric and possibly exacerbate some people's perceptions of the relationship between Natives and non-Natives, especially as written."

CHAIR SHOWER asked Nicole Borromeo to offer her testimony.

[4:55:55 PM](#)

NICOLE BORROMEO, Executive Vice President and General Counsel, Alaska Federation of Natives (AFN), Anchorage, Alaska, stated that her testimony on HB 123 was intended to provide a simple explanation of what the bill does and does not do. She would also provide background information on federal Indian law which should make it easier for the committee to pass the bill.

MS. BORROMEO provided the following testimony:

The United States has a trust relationship with federally recognized Alaska Native tribes. The concept has evolved from federal tribal treaties, the U.S. Constitution, federal statute, Supreme Court jurisprudence etcetera. The relationship subjects the United States to the highest degree of moral and legal obligations and has been reaffirmed in every piece of modern federal Indian legislation and presidential policy statements in recent times.

The bill before the committee today, HB 123, will not affect the tribal trust responsibility that the federal government shares with our tribes. Furthermore, federal recognition is a political process that institutionalizes the government-to-government relationship between the United States and recognized tribes.

The process also cements the tribes' political status as a distinct society which carries certain political and legal powers. The vast majority of these powers are related to the tribe's members and/or its lands. Federal recognition can be accomplished through treaty, statute, or other administrative means. Again,

this bill, HB 123 will not affect federal recognition of tribes.

Sovereignty of federally recognized tribes has been a sticking point for this committee and an issue that is difficult for Alaskans to grapple with. American Indian and Alaska Native tribes were self-governing societies for centuries before European contact. As such, the United States Supreme Court has consistently ruled that the sovereignty powers of federally recognized tribes are not, in general, delegated powers from the United States. Rather, they are inherent powers of a limited sovereignty. Sovereignty has been limited because we have a federal government now and state governments.

In the simplest form, sovereignty means that the tribe has the ability to manage its own affairs. Tribes can form their own governing structures, determine tribal membership, make and enforce laws, license and regulate activities on tribal lands, and exclude certain persons from tribal lands. Most of that list that I just read relates to tribes in the Lower 48 because Alaska settled its land claims differently with Alaska Native tribes than Lower 48 tribes did.

Again, HB 123 will not affect the sovereignty of Alaska Native tribes.

State recognition of tribes is possible and that is something that is not necessarily being asked of this committee today. What's being asked of the committee today is to recognize in statute the list of federally recognized tribes. However, certain states have recognized tribes that are not recognized by the federal government. This mainly occurs on the East Coast where a lot of those tribes were removed so the lands could be settled in the early turn of the century when the United States was colonized.

Finally, taxation was brought up as is torts with the previous testimony and questions concerning sovereignty of tribes and whether HB 123 could affect either the state's ability to tax Alaska Native lands or would absolve an Alaska Native tribe or tribal entity from a tort.

In short, HB 123 will have no bearing on the state taxation of ANC land. Furthermore, sovereign immunity will have to be negotiated and waived on a case-by-case basis. And that is what currently happens right now with tribes.

So we hope that you will move HB 123 from this committee today if there are no more lingering questions about the state's ability to recognize federally recognized tribes or the benefits to the state of Alaska for doing so.

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CHAIR SHOWER reconvened the meeting.

SENATOR HOLLAND stated his belief that HB 123 was long overdue. However, he said there seems to be angst and perhaps a desire to not get along between the state and many tribal entities. He asked how it is interpreted when people introduced themselves as a group from an unseated land.

MS. BORROMEO replied it depends on who makes the statement, but she interprets it as a sign of respect and acknowledgement to the indigenous groups that occupied the land before colonization. She does not interpret it as a sign of disrespect to the current forms of federal or state government.

SENATOR HOLLAND said his assumption was that it is a statement of pride. He stated support for HB 123, although he did want to see the proposed amendment.

CHAIR SHOWER stated that he continues to think that HB 123 is the path forward, although with some changes that do not alter the bill but assuage some member's concerns.

He asked Ms. Kitka if she had testimony of offer.

[5:04:29 PM](#)

JULIE KITKA, President, Alaska Federation of Natives, Anchorage, Alaska, thanked the chair for inviting Ms. Borrromeo to testify and said she would be available to answer further questions. She highlighted that Ms. Borrromeo had passed the Bar in multiple states and had a depth of experience on legal issues pertaining to Indian law and Alaska Natives.

5:04:58 PM

CHAIR SHOWER asked Ms. Moor if she had closing comments.

5:05:11 PM

BETTY JO MOORE, representing self, Anchorage, Alaska, stated that she liked what Mr. Ogan said about focusing on the recognition of tribes. She also articulated support for additional references to comity, due diligence and sovereignty. She noted that she had been reading about the trust responsibility and obstruction of justice within tribal government. She suggested that the bill needed more work to clarify the meaning of jurisdiction. She said she would like more assurance that within tribal governments, the constitutional rights of tribal and nontribal citizens will be protected, as what Michael Geraghty did on behalf of Edward Parks. She stated support for HB 123 "with the recommendation of recognition of tribes and jurisdiction deleted."

5:08:39 PM

CHAIR SHOWER held HB 123 for future consideration.

5:08:54 PM

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:08 p.m.