

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 3, 2024

1:31 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 238 (JUD)

"An Act relating to criminal mischief in the third degree; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 165

"An Act relating to legal representation of public officers in ethics complaints."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 238

SHORT TITLE: CRIMINAL MISCHIEF 3RD DEGREE

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

| | | |
|----------|-----|--|
| 01/16/24 | (H) | PREFILE RELEASED 1/8/24 |
| 01/16/24 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/16/24 | (H) | JUD |
| 02/26/24 | (H) | JUD AT 1:30 PM GRUENBERG 120 |
| 02/26/24 | (H) | Heard & Held |
| 02/26/24 | (H) | MINUTE (JUD) |
| 03/01/24 | (H) | JUD WAIVED PUBLIC HEARING NOTICE, RULE 23 |
| 03/01/24 | (H) | JUD AT 1:30 PM GRUENBERG 120 |

03/01/24 (H) Heard & Held
03/01/24 (H) MINUTE(JUD)
03/11/24 (H) JUD AT 1:00 PM GRUENBERG 120
03/11/24 (H) Moved CSHB 238(JUD) Out of Committee
03/11/24 (H) MINUTE(JUD)
03/13/24 (H) JUD RPT CS(JUD) 5DP
03/13/24 (H) DP: GRAY, GROH, SUMNER, CARPENTER,
VANCE
03/20/24 (H) TRANSMITTED TO (S)
03/20/24 (H) VERSION: CSHB 238(JUD)
03/22/24 (S) READ THE FIRST TIME - REFERRALS
03/22/24 (S) JUD
04/03/24 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 165

SHORT TITLE: DEFENSE OF PUB. OFFICER: ETHICS COMPLAINT
SPONSOR(s): SENATOR(s) CLAMAN

01/16/24 (S) PREFILE RELEASED 1/8/24
01/16/24 (S) READ THE FIRST TIME - REFERRALS
01/16/24 (S) JUD, FIN
02/28/24 (S) JUD AT 1:30 PM BUTROVICH 205
02/28/24 (S) Heard & Held
02/28/24 (S) MINUTE(JUD)
03/22/24 (S) JUD AT 1:30 PM BUTROVICH 205
03/22/24 (S) Heard & Held
03/22/24 (S) MINUTE(JUD)
04/03/24 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON, District 13
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 238.

ALEXANDER SCHROEDER, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of
HB 238.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 238.

HEATHER BARBOUR, Member and Representative
Islamic Community of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified by invitation in support of HB 238.

LESLIE FRIED, Curator
Alaska Jewish Museum
Anchorage, Alaska

POSITION STATEMENT: Testified by invitation in support of HB 238.

STACIE KRALY, Director
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 165.

ACTION NARRATIVE

[1:31:10 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Tobin, Kiehl, Giessel, Kaufman, and Chair Claman.

HB 238-CRIMINAL MISCHIEF 3RD DEGREE

[1:31:42 PM](#)

CHAIR CLAMAN announced the consideration of CS FOR HOUSE BILL NO. 238(JUD) "An Act relating to criminal mischief in the third degree; and providing for an effective date."

CHAIR CLAMAN said this is the first hearing of HB 238 in the Senate Judiciary Committee. He invited the bill sponsor to identify himself for the record and introduce his bill.

[1:32:04 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, District 13, Alaska State Legislature, Juneau, Alaska, sponsor of HB 238. He said the Anti-Defamation League supports this bill.

REPRESENTATIVE JOSEPHSON said a tragic event that occurred in Sterling, Alaska was the catalyst for HB 238. A publicly open,

same sex-oriented woman was believed targeted, and she and law enforcement were attacked. He stated that he and the late former Representative Gary Knopp worked for years on a bill to establish a sentence aggravator in AS 12.55.155 for individuals who target lesbian, gay, bisexual, and transgender (LGBT) individuals.

REPRESENTATIVE JOSEPHSON spoke with the Anti-Defamation League (ADL) and the organization recommended an institutional vandalism bill. The League is the leading organization in the country fighting antisemitism. HB 238 is not a hate crime bill, but a criminal mischief property crime bill. Hate crimes are typically crimes of intent; HB 238 addresses "knowingly" committed offenses.

[1:35:14 PM](#)

REPRESENTATIVE JOSEPHSON stated that HB 238 distinguishes between vandalizing public property, like a park bench, and vandalizing a house of worship. He said vandalism of a synagogue affects an entire congregation. He said ADL has long supported crime enhancement statutes for such offenses. The bill is not aimed at hate crimes but focuses on protecting all places of worship. HB 238 does not pertain to public buildings like libraries and post offices. Desecration crimes against public structures do not evoke the same collective emotional response felt by a congregation in a place of worship.

[1:36:58 PM](#)

REPRESENTATIVE JOSEPHSON said HB 238 allows desecration, defacement, or damage to a house of worship to be charged as a C felony at the prosecutor's discretion. Notwithstanding some federal protections, Alaska needs this law and he offered an example of such a case involving the Jewish Museum in Alaska.

REPRESENTATIVE JOSEPHSON reiterated that HB 238 is an institutional vandalism bill. The legislative legal drafter selected criminal mischief in the third degree based on ADL recommendations and it mirrors an existing statute that makes defacing cemeteries a C felony. He noted that both fall within the parameters of religious significance. Current Alaska law treats desecration of a park bench and a place of worship the same. Alaska higher courts do not define defacement, damage, or desecration but use the Webster's Dictionary for interpretation. He cited the Bergman case (2016) and Willet case (1992) for existing legal definitions related to repair costs. He said there is not a lot of jurisprudence on defining defacement, damage, or desecration.

[1:39:57 PM](#)

REPRESENTATIVE JOSEPHSON addressed the culpable mental state provisions of HB 238. He offered a supposition. If someone spray painted several homes and one of them turned out to be a church, HB 238 might apply if it could be shown the individual was aware it was a religious building. He explained that this is a "knowing" crime, it cannot be committed accidentally. He stated that while the prosecutor would have to show a substantial probability, there is a subjective element to it that would require awareness, not a random event. He repeated a Department of Law staff's definition of "knowingly," stating it is just short of intentionality, and he said it requires some forethought. He said random acts would not be prosecuted unfairly under the "knowingly" standard and said the public should be reassured on that point. He said these are the fundamental aspects of HB 238 that he wanted to share.

[1:41:37 PM](#)

SENATOR TOBIN asked whether HB 238 includes indigenous sacred monuments or sacred spaces that may reflect a different interpretation of religion from the Western construct.

[1:41:58 PM](#)

REPRESENTATIVE JOSEPHSON replied that there would always be some prosecutorial discretion. He said the location must be real property used for religious education or worship. For example, a Christian Science reading room located within a mall may meet the criteria if the vandalism targeted that space specifically and it is owned, leased, or used by a religious organization. He explained that if someone tagged the entire mall and included a Hallmark store, the Hallmark store would not meet the elements of the crime in HB 238.

REPRESENTATIVE JOSEPHSON indicated that if an indigenous sacred site is real property or, as referenced on page 2, subparagraph (C)(ii), tangible personal property, then it might meet the elements of the crime.

[1:43:26 PM](#)

SENATOR TOBIN said that when she thinks of a house of worship, she tends to picture the Western religious institutions in which she was raised. However, in her indigenous heritage, places such as rocks or natural monuments, though not man-made, serve as religious spaces. These are locations where religious practices occur and where individuals may knowingly deface or remove objects. She explained that this is a broader construct than the

traditional four walls and roof associated with the churches she attended.

REPRESENTATIVE JOSEPHSON responded that he would consider a carefully crafted amendment of the kind described to be a friendly amendment.

[1:44:29 PM](#)

SENATOR KIEHL referred to the example of a mall containing a church. He stated that he had diagrammed the sentence in the bill and noted that the Dimond Center is a single piece of real property. He questioned how vandalizing a different location on the same property, such as the Olive Garden, would not meet the elements of the crime, given the presence of a church in the tower of the same property.

REPRESENTATIVE JOSEPHSON replied that if the Dimond Center were known to be owned by a Christian denomination and widely recognized to meet the "knowingly" element, then there may be a case. He explained his interpretation of this piece, stating the edifice must be a place of religious education or worship and the property must be owned, leased, or used by a religious organization. Both criteria must be met. Therefore, vandalism must target the place of worship, not a separate business on the same property.

[1:46:19 PM](#)

SENATOR KIEHL sought clarification about the scope of tangible personal property under HB 238, specifically, the outer boundaries of the language.

[1:46:51 PM](#)

REPRESENTATIVE JOSEPHSON explained how the language in HB 238 was derived. He conveyed that the House Rules Committee chair had some hypothetical ideas related to that question, such as, how to protect a Jewish exhibit in a museum. He noted the difficulty in narrowly defining protections for such exhibits. He stated that AS 11.81.900 includes the use of tangible personal property under the definition of "property." The aim was to protect items with religious impact though not limited to a church, mosque, or synagogue.

[1:48:14 PM](#)

ALEXANDER SCHROEDER, Staff, Representative Andy Josephson, Alaska State Legislature, Juneau, Alaska, responded that one limit worth noting is the specific inclusion of tangible personal property. He explained that the bill does not cover

intangible property, such as digital content like Facebook posts or other digital property. He expressed his belief that this distinction helps define an outer limit of what HB 238 proposes to protect.

[1:48:53 PM](#)

SENATOR KIEHL said he would like to work with the sponsor to refine the language. He raised concerns about whether the bill would criminalize actions such as scuffing a crucifix or handling the Koran in ways considered desecration by some groups. He suggested a need for more precise drafting.

[1:49:37 PM](#)

REPRESENTATIVE JOSEPHSON replied that he attempted to limit the bill's scope and gave examples. He acknowledged HB 238 might require further refinement. He welcomed suggestions from the committee.

[1:50:52 PM](#)

SENATOR TOBIN sought clarification on whether a knowingly intoxicated person, who sideswipes a church van used for community event pickups, would be liable under the Class C felony proposed in HB 238. She stated that, based on her interpretation, the individual might be held liable, and she asked whether that outcome reflects the sponsor's intent.

[1:51:33 PM](#)

MR. SCHROEDER replied that interpretation is not the sponsor's intent nor is it to criminalize such conduct under HB 238. He explained that under the element of "knowing," there must be a substantial probability that the person is aware they are committing the offense. In the case of an accident, such as a collision between two vehicles, the conduct would not meet that threshold. He stated that an individual would need to know they are vandalizing property belonging to a religious institution; otherwise, he does not believe the person would have committed an offense under this bill.

[1:52:17 PM](#)

CHAIR CLAMAN presented a hypothetical scenario involving a church that owns several properties. He described a parcel of land containing the church building and a parsonage where the minister traditionally resides, as well as a house located a mile away that is owned by the church and occupied by the director of religious education. He asked whether a person who knows that the house is owned by the church and knowingly spray

paints something defamatory on it, but causing less than \$750 in damages, would be culpable under the proposed legislation.

MR. SCHROEDER acknowledged that he is not an attorney but said that, under the "knowingly" provision in HB 238, the offense would fall under the bill if the individual knew the property was owned by a religious institution. However, if the individual did not know the property was affiliated with the religious institution, the offense would not qualify. He deferred further clarification to Ms. Meade with the Alaska Court System.

[1:54:34 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, responded that she was unsure how much clarity she could provide. She read the bill language beginning on page 2, line 7, and explained that the real property must include a religious school or worship building and be owned by a religious organization.

MS. MEADE said that the question would likely be fact-specific. She examined the elements in the hypothetical scenario as they pertained to subparagraph (C)(i). She stated that if the house a mile away is owned by the religious organization, and the entire property is considered one parcel that includes a place of religious education or worship, then it could potentially meet the criteria in the bill. She said, however, it would likely be a matter for legal interpretation and debate, and she could not provide a definitive answer.

[1:56:04 PM](#)

SENATOR KAUFMAN drew attention to the language on page 2, subparagraph (C), and questioned whether it was overly broad. He raised a hypothetical about praying in a car or at home, which could be considered religious use, and wondered whether damage to such personal property might fall under HB 238 if motivated by hostility or ill will. He expressed concern about potential mission creep due to the proposed bill's broadness.

MR. SCHROEDER replied that he did not interpret the bill so broadly as to include cars or private homes used for prayer. He explained that, for the proposed bill to apply, these elements must be met: the presence of real property, a place of religious education or worship located on that property, and use, lease or ownership by a religious organization or for a religious purpose. He deferred to Ms. Meade for the court system's interpretation.

[1:58:16 PM](#)

MS. MEADE acknowledged that the wording could be interpreted broadly. She said there could be a prosecutor that might consider real property used for prayer as qualifying under the bill. She said the sponsor might want to refine the language a little bit, noting that would be up to the sponsor's office.

[1:59:20 PM](#)

SENATOR TOBIN asked for more detail about hate crimes. She drew attention to the word "knowingly" on page 1, line 12, and requested further explanation about the word in the context of religious purposes. She asked what the expectation is for actions committed knowingly, particularly related to this bill and religion.

MS. MEADE replied that she is not familiar with federal hate crime law, so she cannot speak to the definition or elements of it.

MS. MEADE explained that "knowingly" is a complex concept that she finds fairly complicated. She explained that "intentionally" means the person wanted the act to happen, planned for it, and intended the outcome. "Knowingly" is just shy of that, meaning the person knew they were going to take an action, but may not have intended all the consequences. It involves some aforethought and awareness of the act, such as knowing one was desecrating a religious object or space.

[2:00:59 PM](#)

CHAIR CLAMAN shared legal and historical context about the term "knowingly." He stated that the Alaska Criminal Code is largely based on the Model Penal Code and the criminal code revision passed by the legislature in 1980, which established four mental states: intentionally, knowingly, recklessly, and with criminal negligence. These align with the mental states outlined in the Model Penal Code. He noted that federal crimes also use the term "knowingly," and federal courts tend to interpret it in a manner similar to Alaska. He clarified, however, that while there is some overlap, state and federal statutes are not identical and do not completely align.

[2:02:35 PM](#)

SENATOR KIEHL turned his attention to the word "desecrate." He acknowledged that the term is already used in the context of graves. He commented that the difference in that context is clarity, people know what a grave is. He noted that Webster's Dictionary defines "desecrate" as violating the sanctity of

something or profaning it, removing its sacred nature. He asked how the Alaska Court System determines what constitutes something as sacred or no longer sacred, and how judges instruct juries in making that determination when the courts rely on a dictionary definition of a word like "desecrate."

[2:03:39 PM](#)

MS. MEADE stated that she did not know the exact jury instruction or whether Alaska has one for the definition of "desecration" under AS 11.46.482(a). She expressed her belief that the approach would likely not differ significantly from how the court addresses other statutory terms. She explained that the court might consult case law from Alaska or other jurisdictions to determine how much damage must occur for something to be considered desecrated. She acknowledged uncertainty regarding the distinctions among the terms "defaces," "damages," and "desecrates" in the statute, and questioned whether "desecrate" is an umbrella term or an intensifier. She stated that judges could determine the interpretation through legal briefing and input from the parties involved and the district attorney.

[2:05:04 PM](#)

SENATOR KIEHL discussed the term "desecrate," remarking that every religion he is familiar with contains internal schisms. People's beliefs within a given religion often range from strong to deeply passionate and history shows that internal disputes can lead to intense conflict. He recommended the legislature craft the term carefully and precisely to avoid involving law enforcement or prosecutors in doctrinal disagreements. He stated, by way of example, that most adherents of Islam do not object to a menstruating woman entering a mosque, but some schools of thought consider that act to desecrate the space. He emphasized that troopers should never be placed in a position of interpreting which imam's reading or doctrine is correct. He suggested that the legislature use caution and consider going beyond the Webster's dictionary definition.

[2:06:52 PM](#)

CHAIR CLAMAN said that may be more of a comment for the bill sponsor than for the court system.

[2:06:55 PM](#)

CHAIR CLAMAN announced invited testimony on HB 238.

[2:07:26 PM](#)

HEATHER BARBOUR, Member and Representative, Islamic Community of Alaska, Anchorage, Alaska, testified by invitation in support of HB 238. She said that she is an attorney in Anchorage and was formerly an assistant district attorney in the Anchorage office.

MS. BARBOUR said it is vital for the committee to recognize that vandalism of a house of worship is not the same as general property damage or criminal mischief and should not be treated the same in the courts. The motive and message behind the act are different and carry a deeper emotional impact. She said the actual extent of the damage is not the issue; it is the message that causes harm. Vandalism to a house of worship can be just as damaging whether the property loss is under or over \$750. Monetary damage is not always the best standard by which to judge the effect of a property crime on its victims. She pointed out that the legislature acknowledged this distinction in AS 11.46.482, subsections (a)(3)(A) and (B).

MS. BARBOUR shared a personal experience. She said that her community began construction of its mosque in 2010. She said it was the first and only mosque in the state of Alaska. The community suffered vandalism at the site during its construction. There were offensive anti-Islamic messages that were spray painted on the building. Some of the equipment was stolen, and someone actually shot arrows into the building and the remaining construction equipment. Although the acts were captured on video and reported to police, the perpetrator was never caught. She said if the individual had been caught, he would have only faced a class B misdemeanor under current law. She said community members cleaned up the site themselves, so did not really incur the \$750 minimum that would have been needed to charge a felony. She emphasized the emotional damage and fear that the individual caused and instilled in the community never would have been acknowledged.

2:09:46 PM

MS. BARBOUR contrasted the emotional impact of the vandalism to the physical damage caused by a recent earthquake. While the earthquake caused more material loss, it did not make the community feel targeted or unsafe. She emphasized that the sense of victimization from vandalism is different. In surveillance footage of religious property vandalism, victims often react with fear, scanning the surroundings, rather than checking the damage. She said the message received is clear, "you are not wanted, you are not safe." Victims often fear the perpetrator may still be nearby.

MS. BARBOUR asserted that such acts constitute a form of terrorism, intended to inflict emotional trauma. The degree of physical damage is secondary to the hate and threat behind the act. She urged the committee to vote in favor of HB 238, which recognizes the unique and severe nature of vandalizing religious property. She concluded by stating that if the law protects the dead under AS 11.46.482, then the living deserve the same protection. She thanked the chair for the opportunity to testify.

[2:12:23 PM](#)

LESLIE FRIED, Curator, Alaska Jewish Museum, Anchorage, Alaska, testified by invitation in support of HB 238. She said the museum is part of the Alaska Jewish campus and she works for Rabbi Greenberg, Rabbi of the Orthodox Jewish organization associated with it. She recollected an incident in 2021, shortly before the Jewish holiday Shavuot, during which the museum was vandalized with stickers bearing Nazi swastikas. One of the stickers was carved through the back door. The same act was repeated three months later. She said it was the first time she felt terror while performing her job, and the experience triggered panic attacks that affected her ability to work.

MS. FRIED stated that she did not know the perpetrator's motivation but suspected the individual had been influenced by hate propaganda and conspiracy theories, which are common today. She said antisemitism is rising globally at an alarming rate. In the aftermath of the vandalism, the community was shocked and fearful, resulting in a need for armed security at the campus.

[2:15:21 PM](#)

MS. FRIED expressed support for HB 238, emphasizing that it raises awareness about the importance of recognizing intent when determining appropriate punishment. She stated that this type of vandalism is distinct from a case in which someone indiscriminately spray paints several homes and one happens to be a sacred building. She reiterated that intent is critical, especially in the context of ideologies such as neo-Nazism. She noted that the museum has previously been targeted with stickers and naming attacks.

MS. FRIED pointed out that many do not realize the museum contains sacred religious artifacts and is more than a history museum. It is directly connected to the Alaska Jewish Campus, where synagogue members visit, participate in discussions, and take part in tours. She stated the museum is deeply integrated into the religious and cultural life of the community.

[2:17:37 PM](#)

CHAIR CLAMAN opened public testimony on HB 238; finding none, he closed public testimony.

CHAIR CLAMAN held HB 238 in committee.

SB 165-DEFENSE OF PUB. OFFICER: ETHICS COMPLAINT

[2:18:00 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 165 "An Act relating to legal representation of public officers in ethics complaints."

CHAIR CLAMAN said this is the third hearing of SB 165 in the Senate Judiciary Committee. He invited Ms. Kraly to put herself on the record to answer questions regarding the Department of Law's position on this legislation.

[2:19:05 PM](#)

STACIE KRALY, Director, Civil Division, Department of Law, Juneau, Alaska, expressed appreciation for the opportunity to appear before the committee to answer questions. She noted that the Civil Division is preparing a written position statement, which will be distributed to the committee.

[2:19:30 PM](#)

CHAIR CLAMAN asked if it is fair to say that the written position statement is, to some extent, in response to the testimony of Jahna Lindemuth, former attorney general (AG), regarding SB 165 on March 22 in the Senate Judiciary Committee.

MS. KRALY replied that is part of it, but the statement also provides a robust explanation of the ethics process from the Department of Law's perspective. It explains why the regulations that have been adopted do not create a conflict or raise concerns identified by the former AG. It provides a broader construct of the Ethics Act and how the Department operates within that system.

[2:20:19 PM](#)

SENATOR KAUFMAN requested a summary of the Department's position statement, which has not been distributed yet.

MS. KRALY reviewed the underlying premise of the recently adopted regulations concerning representation of the governor, lieutenant governor, and attorney general when ethics complaints

are filed against them. She said regulations are not only consistent with the Ethics Act as drafted, but also reflect a consistent application of how the Department of Law interprets and applies the Act. This applies both to high-level state officials and to other state employees subject to the Ethics Act. She stated that the Department of Law serves three primary roles under the Act: it advises on ethics, educates on ethics, and prosecutes ethics violations. She said the Department is now adding, in a very limited circumstance, the role of defending certain ethics opinions it has issued.

[2:21:34 PM](#)

MS. KRALY explained that when an executive branch employee requests an opinion from the Department of Law on whether an activity violates the Ethics Act, the Department's role is to provide legal advice. That service is available to all executive branch employees, including the governor, lieutenant governor, attorney general, commissioners, and others. She stated that such advice becomes a "safe harbor." If the Attorney General's Office opines that a specific activity does not constitute an ethics violation, that opinion can shield the employee from prosecution if a complaint is later filed. If a complaint is received and the individual acted according to the Department's advice, the violation is not prosecuted. If a complaint pertains to conduct not previously reviewed, the Department will evaluate and prosecute the issue consistent with its prior advice and interpretation of the Ethics Act. She noted that the Department also provides ethics advice to the state's highest officials, who are treated differently under the current statute.

[2:23:07 PM](#)

CHAIR CLAMAN sought confirmation that the three individuals are the governor, lieutenant governor, and attorney general.

[2:23:11 PM](#)

MS. KRALY answered in the affirmative, stating that the governor, lieutenant governor, and attorney general frequently make inquiries to the Department's designated ethics attorney. They often pose hypothetical scenarios, asking whether a particular situation would create a problem under the Ethics Act, and the Department provides advice accordingly.

MS. KRALY explained the difference between these three high-ranking individuals and a commissioner or other employee. The Department does not prosecute ethics complaint cases against those three, rather, those complaints are referred to the Personnel Board. The Personnel Board then hires outside counsel

to prosecute the matter on behalf of the State. She explained that the new regulation allows the Department to defend the advice it previously provided or to defend the actions of the governor, lieutenant governor, or attorney general if those actions were based on the Department's advice. She noted that the obligation to represent these high-level officials is not absolute; it must serve the public interest. A determination must be made that the activity in question was conducted in reliance on the Department's advice or consistent with it. If it was not, the Department would decline representation, and the official would be required to hire private legal counsel to address the complaint. She said this broadly explains the Department's position and how it assesses and advises on ethics matters.

[2:24:57 PM](#)

SENATOR KAUFMAN said the byproduct of your position seems to incentivize legal consultation on ethics questions. He stated that, provided the governor, lieutenant governor, or attorney general followed the advice given, the subsequent defense would rely on that advice rather than the incident itself.

MS. KRALY replied that is exactly right. She expressed her belief that this framework encourages the governor, lieutenant governor, and attorney general to seek legal advice from the Department. She explained that if an ethics complaint is filed, the Department does not have authority to screen out the complaint because it does not prosecute those three officials. Instead, the complaint is referred to the Personnel Board, which has that screening role. If the complaint proceeds, the Department may defend its advice, either the specific advice given in that case or advice reflected in prior opinions issued by the Department. She said it may be that the official was engaged in activity that had already been reviewed and deemed not to violate the Ethics Act, and that such prior advice could be relied upon.

[2:26:29 PM](#)

CHAIR CLAMAN expressed his belief that the new regulation raises concerns about public transparency. He stated that, for example, if he were to ask how many ethics complaints had been received against the governor, lieutenant governor, or attorney general since the new regulation was adopted, his assumption is that the Department's response would be that it is a confidential ethics matter and that information could not be disclosed.

MS. KRALY replied that she believes that is correct and that ethics complaints are confidential under state law. She expressed her belief that, pursuant to statute, identifying how many ethics complaints have been filed, screened in, or screened out is not public information.

[2:27:20 PM](#)

CHAIR CLAMAN sought confirmation that this would also have been true under what he referred to as the Sullivan-era structure for handling ethics complaints against the governor, lieutenant governor, or attorney general.

MS. KRALY expressed her belief that is correct.

CHAIR CLAMAN raised a challenge with the current structure. He said suppose the governor asks the Attorney General's Office if he may attend a dinner. The AG's Office responds with advice indicating the governor may attend. If someone later files an ethics complaint related to that dinner, the Attorney General's Office would then defend its own advice by stating that the governor acted in accordance with its guidance. As a result, the attorney general is using state resources to defend advice it issued.

CHAIR CLAMAN drew a comparison of this with the Sullivan-era structure, under which an ethics complaint against the governor would result in the hiring of independent counsel. In that instance, the governor would inform the independent attorney that he had relied on the attorney general's advice. The independent attorney would then contact the Department and confirm whether the advice had been issued. Upon confirmation, the attorney would defend the governor on the basis of that advice.

CHAIR CLAMAN pointed out that, under the new regulation, the Attorney General's Office serves both an advisory and defensive role, which may reduce transparency compared to a system where independent counsel defends these three officials.

[2:29:23 PM](#)

MS. KRALY expressed uncertainty about the chair's concern that the new regulation reduces transparency. She noted that all ethics complaints against the governor, lieutenant governor, and attorney general are referred to the Personnel Board regardless of whether advice is defended by the AG's Office or outside counsel. The AG's Office does not screen those complaints, but

it does defend its advice. She said the Personnel Board adjudicates that decision.

2:30:05 PM

MS. KRALY explained the rationale behind the new regulation and why it has been promulgated. She contended that in an era of heightened scrutiny, there is the possibility of numerous ethics complaint filings against these top officials. She emphasized that under the prior construct, these officials had to pay for private counsel, which is expensive, then seek reimbursement later, assuming they were found not in violation. She stated that the centralized handling of ethics issues in the Civil Division makes the process more efficient. She emphasized that having in-house, ethics counsel who understand all prior advice and decisions, ensures a streamlined and cost-effective defense before the Personnel Board. She acknowledged that the Personnel Board may still find a violation, but the process is faster and less burdensome on State resources. She said it is a disservice and disincentive to serve if officials must hire private counsel for every ethics complaint, especially frivolous ones, due to lack of complaint screening. She reiterated two points: the importance of defending the Department's advice and avoiding personal financial burdens on elected or appointed officials to defend ethics complaints that could be frivolous.

2:32:48 PM

CHAIR CLAMAN compared the Department of Law's request to continue defending the governor with the lack of comparable protections for legislators. He noted that members of the legislature do not receive the same support the Department seeks for the governor, lieutenant governor, and attorney general, such as relief from the high cost of hiring independent counsel. He stated that although the director articulated the rationale clearly, it raises a question of priority: if a governor is found not to have committed a violation and submits for reimbursement, the state pays the cost, but no state staff time or resources are spent on defense. However, under the current system, the Department's staff and daytime resources are spent defending the governor on complaints that could arguably be referred to outside counsel.

CHAIR CLAMAN referenced a troubling discussion in the Finance Committee, where members asked how murders in rural Alaska are being addressed and what the public safety implications are. He expressed concern that the Department is dedicating valuable staff time to handling ethics complaints against the governor, while core public safety responsibilities, such as court

processes, are sidetracked. He emphasized that although the Department provides legal advice with the hope that the governor follows it, the use of in-house staff to defend against ethics complaints raises important questions.

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SENATOR KAUFMAN remarked that, in considering what is appropriate for the governor versus a legislator, one distinction is that the governor represents the entire state. He is involved in every statewide issue, making the office a broader and more prominent target. He noted that his observation was offered as a general comment based on personal perspective.

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SENATOR KIEHL sought clarification about the existing regulation. He asked whether the governor, lieutenant governor, or attorney general must have specifically requested advice from the Department in order to qualify for public representation if an ethics complaint is later filed against them.

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MS. KRALY replied if they had sought advice, inquired about prior opinions, or relied upon prior opinions, that would indicate a public interest. If they were relying upon that advice, the issue of whether or not they actually sought advice, is not determinative of whether or not the Department would defend them. Each situation would be evaluated on a case-specific basis to determine whether the public interest standard was satisfied. If it was, the Department would provide representation; if not, the Department would decline.

MS. KRALY explained that these high-ranking officials, like many others, ask for ethics advice all of the time. The Department regularly provides ethics guidance to the governor, lieutenant governor, attorney general, commissioners, and other state employees. She stated that even she asks for ethics advice. She described it as a standard and expected part of their roles.

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SENATOR KIEHL sought confirmation that if a high-level official asked for advice, then yes, they would get a public defense. If they did not ask for advice, then maybe they might qualify.

MS. KRALY replied, they may; it would depend on the circumstances.

SENATOR KIEHL expressed concern that there may be insufficient incentive for officials to seek ethics advice in advance if they might still qualify for a public defense regardless.

SENATOR KIEHL stated that he was somewhat confused. He asked whether the Personnel Board has acted capriciously and questioned whether the Department's current approach suggests a lack of confidence in the Board's review process. He further asked if that perception is sufficient to justify dedicating significant departmental resources to defend against what are seen as weaponized ethics complaints.

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MS. KRALY replied that this is not an indictment of the Personnel Board. It is recognition that every other executive branch employee who seeks and gets ethics advice, receives safe harbor from a complaint. In contrast, the governor, lieutenant governor, and attorney general do not receive that same protection. Even though complaints filed against them are automatically referred, there is no screening process. She emphasized that this is not a criticism of the Personnel Board's decisions but an attempt to level the playing field by affording the same protections to the state's highest officials that are given to all other executive branch employees.

MS. KRALY addressed the chair's concerns about resource allocation. She explained that the Department of Law comprises two divisions: Civil and Criminal. The Civil Division handles the Ethics Act, with a designated attorney advising on all ethics matters, including accepting gifts or meals and disclosure requirements. She clarified that the Civil Division does not handle the public safety components of the entire state. Ethics guidance is a duty of the Civil Division and does not detract from its other responsibilities. She added that the division also manages conflicts, screening, and due process safeguards to prevent any appearance of partiality in representing agencies or individuals.

MS. KRALY reiterated that the Department's position involves two main points:

- creating a level playing field so that the governor, lieutenant governor, and attorney general receive similar protections under the Ethics Act as other executive branch employees.

- reducing the cost burden caused by potential weaponization of ethics complaints against these high-level officials.

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SENATOR KIEHL sought clarification about state employees who did not seek prior ethics advice, asking whether the Attorney General's Office would defend those employees against an ethics complaint.

MS. KRALY replied that the Department would serve as the prosecutor in that context. The Department would evaluate whether the activity, as described in the complaint, was consistent with prior advice or constituted a violation of the Ethics Act. If an issue was identified, the Department would prosecute the case, evaluate it, and issue an opinion. She stated that employees benefit from prior opinions and advice when they ask for it. The Department provides Ethics Act training across the state and encourages all employees to ask questions, regardless of how minor they may seem. The Civil Division will provide an answer, and the employee may rely on that guidance going forward.

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SENATOR KIEHL observed that this framework does not create parity, but rather provides a deferential benefit to the governor, lieutenant governor, and attorney general. He expressed that he has not heard concern about the Personnel Board itself, nor seen a great shortage of candidates. He expressed his understanding that SB 165 proposes reimbursement for legal costs if the ethics complaint brought before the Personnel Board against a high-level official is dismissed, meaning those officials would not bear the expense if cleared. He emphasized that when the question centers on whether one of these three officials acted in personal interest rather than public interest, that distinction is crucial. A state employee or commissioner accused of acting in personal interest may be required to defend themselves at their own expense.

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CHAIR CLAMAN expressed his understanding that there is no circumstance in which the Department would represent a State employee in an ethics complaint. He described a scenario in which the Department receives a complaint and makes a prosecutorial decision whether to proceed. The Department may choose not to prosecute if it determines the conduct falls within the scope of its prior advice. In such a case, the Department may conclude there is no violation and decline to

move forward. However, should the Department proceed, it would not under any circumstance represent the State employee because the Department is the prosecutor.

MS. KRALY affirmed that the Department could not simultaneously represent and prosecute the State employee in the same proceeding.

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CHAIR CLAMAN explained that the new regulation involves a distinction: unlike ordinary State employees, who cannot be represented by the Department in an ethics complaint, the three high-ranking officials may receive such representation. Because the Personnel Board, rather than the Department, prosecutes these complaints, the regulation provides these officials a benefit not available to other State employees.

MS. KRALY framed her position differently, reasoning that in these cases, the Department would be defending its prior advice. If the conduct at issue was in the public interest and consistent with the Department's guidance, then the governor, lieutenant governor, or attorney general may be represented by the Department. She emphasized that this is the same benefit State employees receive when they obtain advice and rely on a safe harbor.

MS. Kraly further explained that for regular State employees, if they have a safe harbor, the complaint is screened out, and no proceeding occurs. They do not need an attorney as the matter does not advance. By contrast, for the three high-ranking officials, even if the complaint is frivolous and they have a safe harbor, the Personnel Board must still process it. The prosecutor may not accept the Department's prior advice. Therefore, these officials do not receive the same benefit as other State employees. She contended that it is not an apples-to-apples comparison.

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CHAIR CLAMAN highlighted that though the governor is not required to seek advice from the Department, the Department might choose to defend the governor based on advice given years earlier to someone else. He emphasized that State employees do not receive that same benefit. Only the governor, lieutenant governor, and attorney general receive a State-funded defense in such cases.

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MS. KRALY disputed that State employees do not receive the same benefit. She explained that if the Department previously opined that the activity was not a violation, it would screen out the complaint on that basis.

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CHAIR CLAMAN asserted the notion that the prosecutor provides protection to the defendant is marginally credible. He noted that while an employee is not required to retain counsel, from his experience in private practice, he would advise it is beneficial to do so. He said the attorney would advocate with the prosecutor on behalf of the client. He asked whether a State employee has the right to hire private counsel.

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MS. KRALY replied, absolutely.

[2:48:23 PM](#)

CHAIR CLAMAN asked whether the Civil Division receives calls from private attorneys representing public employees and whether these attorneys ask the division not to prosecute.

MS. KRALY responded, potentially yes, but emphasized complaints are not filed against the individual directly. Instead, they are submitted to the Department, which conducts an initial screening. If the Department determines there is no violation based on advice previously issued, it dismisses the complaint without notifying the employee. If the Civil Division finds no safe harbor exists and concludes there is an ethics issue, then the employee is notified. At that point, the employee may choose to hire private counsel. She reiterated that the process is structured so that complaints are screened before reaching the employee.

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CHAIR CLAMAN asked whether a public employee is notified if an ethics complaint is filed and the Department concludes there is no ethics violation.

MS. KRALY replied that she did not know the answer well enough to provide it on the record and offered to follow up with the committee.

[2:50:20 PM](#)

SENATOR TOBIN raised a question pertaining to individuals appointed to State boards and commissions. She sought confirmation that these individuals would not be eligible for

representation from the Department of Law if an ethics complaint were prosecuted. Instead, those individuals would need to get independent counsel.

[2:51:04 PM](#)

MS. KRALY replied, no, explaining the intent of the Ethics Act is to promote the use of the safe harbor provision. The Act encourages board members, employees, and others to contact the Ethics Office with questions in order to receive guidance, such as confirmation that a certain action is permissible.

MS. KRALY stated that if the Ethics Office advises someone not to take a certain action and the person proceeds anyway, that may result in a problem, and the individual would then need to secure their own attorney. In such a case, the Department may pursue the matter. Conversely, if the individual asks whether an action is permissible and receives a Department safe harbor response, the matter would be screened out and dismissed.

MS. KRALY emphasized that failure to seek advice carries risk. While the action might still be found acceptable and screened out, without the safe harbor, there is no guarantee. She explained that the Department provides ethics training throughout the State and uses its website to inform individuals about how to submit inquiries. She stated that the purpose is to continue encouraging and incentivizing the use of safe harbor provisions, not only for employees and board members but also for the governor, lieutenant governor, and attorney general.

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SENATOR TOBIN said her question had been answered, specifically, individuals appointed to State boards and commissions would not receive representation from the Department if an ethics complaint were prosecuted. They would instead need to get independent counsel.

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CHAIR CLAMAN agreed that one purpose of the Ethics Act is to encourage individuals to seek advice and conform their conduct to the requirements in ethics law.

CHAIR CLAMAN asked whether another feature of the Ethics Act is that, when individuals do not comply, there are mechanisms to determine noncompliance and impose consequences. He noted that the Ethics Act is multipurpose in this way.

MS. KRALY replied, absolutely, yes.

CHAIR CLAMAN found no further questions and thanked the director for testifying.

2:53:28 PM

[CHAIR CLAMAN held SB 165 in committee.]

2:54:10 PM

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:54 p.m.