ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 7, 2004
1:55 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 244
"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

- MOVED CSHB 244(2d JUD) OUT OF COMMITTEE

HOUSE BILL NO. 336
"An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

- FAILED TO MOVE CSHB 336(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 490
"An Act relating to the release of employment security records, to the admissibility of determinations and decisions regarding unemployment compensation benefits, and to contributions, interest, penalties, and payments under the Alaska Employment Security Act; providing that property under the Alaska

Employment Security Act is not subject to the Uniform Unclaimed Property Act; and providing for an effective date."

- MOVED CSHB 490(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 275
"An Act relating to veterinarians and animals."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 31
Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to payments to certain state residents from the Alaska permanent fund; and providing for an effective date for the amendments.

- SCHEDULED BUT NOT HEARD

HOUSE JOINT RESOLUTION NO. 45
Requesting the United States Congress to propose an amendment to the Constitution of the United States to provide that a vacancy in the office of United States Representative may be filled by appointment until an election can be held.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 244
SHORT TITLE: CRIMINAL LAW/SENTENCING/PROBATION/PAROLE
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/04/03	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	(H)	JUD, FIN
04/14/03	(H)	JUD AT 1:00 PM CAPITOL 120
04/14/03	(H)	Heard & Held
04/14/03	(H)	MINUTE(JUD)
04/25/03	(H)	JUD AT 1:00 PM CAPITOL 120
04/25/03	(H)	-- Meeting Postponed to Mon. April 29 -
05/07/03	(H)	JUD AT 1:00 PM CAPITOL 120
05/07/03	(H)	Scheduled But Not Heard
05/08/03	(H)	JUD AT 3:30 PM CAPITOL 120
05/08/03	(H)	Heard & Held
05/08/03	(H)	MINUTE(JUD)
05/09/03	(H)	JUD AT 1:00 PM CAPITOL 120
05/09/03	(H)	Moved CSHB 244(JUD) Out of Committee
05/09/03	(H)	MINUTE(JUD)

05/12/03	(H)	JUD RPT CS(JUD) NT 1DP 1DNP 4NR
05/12/03	(H)	DP: SAMUELS; DNP: GARA; NR: HOLM,
05/12/03	(H)	OGG, GRUENBERG, MCGUIRE
05/13/03	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
05/13/03	(H)	-- Meeting Canceled --
05/14/03	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
05/14/03	(H)	Heard & Held
05/14/03	(H)	MINUTE(FIN)
05/15/03	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
05/15/03	(H)	Moved CSHB 244(JUD) Out of Committee
05/15/03	(H)	MINUTE(FIN)
05/15/03	(H)	FIN RPT CS(JUD) NT 2DNP 4NR 4AM
05/15/03	(H)	DNP: KERTTULA, FOSTER; NR: MOSES,
05/15/03	(H)	CHENAULT, HARRIS, WILLIAMS; AM: HAWKER,
05/15/03	(H)	STOLTZE, BERKOWITZ, WHITAKER
05/15/03	(H)	RETURNED TO JUD COMMITTEE
05/15/03	(H)	IN JUDICIARY
03/19/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/19/04	(H)	Heard & Held
03/19/04	(H)	MINUTE(JUD)
03/24/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/24/04	(H)	Heard & Held
03/24/04	(H)	MINUTE(JUD)
03/30/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/30/04	(H)	Heard & Held
03/30/04	(H)	MINUTE(JUD)
03/30/04	(H)	JUD AT 3:00 PM CAPITOL 120
03/30/04	(H)	-- Meeting Canceled --
03/31/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/04	(H)	Heard & Held
03/31/04	(H)	MINUTE(JUD)
04/02/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/02/04	(H)	Heard & Held
04/02/04	(H)	MINUTE(JUD)
04/07/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 336
SHORT TITLE: CIVIL DAMAGES FOR UNINSURED DRIVERS
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	JUD
03/31/04	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/04	(H)	<Bill Hearing Postponed>
04/06/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/06/04	(H)	Heard & Held

04/06/04 (H) MINUTE(JUD)
04/07/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 490
SHORT TITLE: EMPLOYMENT SECURITY ACT AMENDMENTS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C, JUD
03/22/04 (H) L&C AT 3:15 PM CAPITOL 17
03/22/04 (H) Scheduled But Not Heard
03/24/04 (H) L&C AT 3:15 PM CAPITOL 17
03/24/04 (H) Moved Out of Committee
03/24/04 (H) MINUTE(L&C)
03/25/04 (H) L&C RPT 4DP 3NR
03/25/04 (H) DP: LYNN, GATTO, DAHLSTROM, ANDERSON;
03/25/04 (H) NR: CRAWFORD, ROKEBERG, GUTTENBERG
04/07/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 275
SHORT TITLE: VETERINARIANS AND ANIMALS
SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/17/03 (H) READ THE FIRST TIME - REFERRALS
04/17/03 (H) L&C, RES
02/20/04 (H) L&C AT 3:15 PM CAPITOL 17
02/20/04 (H) <Bill Hearing Postponed>
03/29/04 (H) L&C AT 3:15 PM CAPITOL 17
03/29/04 (H) Moved CSHB 275(L&C) Out of Committee
03/29/04 (H) MINUTE(L&C)
03/31/04 (H) RES REFERRAL WAIVED
04/01/04 (H) L&C RPT CS(L&C) NT 3DP 2NR 1AM
04/01/04 (H) DP: CRAWFORD, LYNN, ANDERSON;
04/01/04 (H) NR: ROKEBERG, DAHLSTROM; AM: GUTTENBERG
04/01/04 (H) JUD REFERRAL ADDED AFTER L&C
04/01/04 (H) FIN REFERRAL ADDED AFTER JUD
04/05/04 (H) JUD AT 1:00 PM CAPITOL 120
04/05/04 (H) -- Meeting Postponed to Tues. 4/6/04 --
04/06/04 (H) JUD AT 1:00 PM CAPITOL 120
04/06/04 (H) Heard & Held
04/06/04 (H) MINUTE(JUD)
04/07/04 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

LINDA WILSON, Deputy Director
Central Office

Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: During discussion of proposed amendments to HB 244, responded to questions and provided comments.

SUSAN A. PARKES, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During discussion of proposed amendments to HB 244, responded to questions and provided comments.

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 336.

THOMAS NELSON, Director
Division of Employment Security
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska
POSITION STATEMENT: Presented HB 490 on behalf of the administration and responded to questions.

TOBY NANCY STEINBERGER, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 490 and responded to questions.

TRACIE AUDETTE, Owner
Fairhaven
Palmer, Alaska
POSITION STATEMENT: During discussion of HB 275, relayed concerns and suggested a change to the bill and a review of current statute regarding the definition of "animal husbandry".

CAROL GIANNINI, Staff
to Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 275 and proposed amendments, provided comments and responded to questions on behalf of Representative Crawford, sponsor of HB 323.

SALLY CLAMPITT, President
Alaska Equine Rescue (AER)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 275 and said she supported the bill.

SHARALYN WRIGHT, Staff
to Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 275 and proposed amendments, provided comments on behalf of the sponsor, Representative Chenault.

LISA ZEIMER
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 275.

ELISE HSIEH, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of proposed changes to HB 275.

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of proposed changes to HB 275.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of proposed changes to HB 275, provided comments as the sponsor of HB 323.

ACTION NARRATIVE

TAPE 04-62, SIDE A

Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:55 p.m. Representatives McGuire, Anderson, Holm, Samuels, Gara, and Gruenberg were present at the call to order. Representative Ogg arrived as the meeting was in progress.

HB 244 - CRIMINAL LAW/SENTENCING/PROBATION/PAROLE

Number 0100

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 244, "An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

[Before the committee, adopted as a work draft on 3/19/04, was a proposed committee substitute (CS) labeled 04-0033, 1/16/2004, as amended on 4/02/04.]

CHAIR McGUIRE, in response to Representative Gara, noted that [the committee packet] should now contain a proposed committee substitute (CS), labeled 23-GH1024\I, Luckhaupt, 4/6/04.

Number 0147

REPRESENTATIVE SAMUELS moved that the committee rescind its action of 4/2/04 in adopting Amendment 3, which read [original punctuation provided]:

> Page 9, lines 2 and 3: Delete all material.
>
> Page 9, line 4: Delete "(4)" and replace it with "(2)"
>
> Page 9, line 30 to Page 10, line 1: Delete "and inform the prosecution of the category of offense to which the privilege applies: a higher level felony, a lower level felony, or a misdemeanor"

CHAIR McGUIRE noted that Amendment 3 was made to the proposed CS labeled 04-0033, 1/16/2004.

REPRESENTATIVE HOLM mentioned that Version I incorporated [Amendment 3].

CHAIR McGUIRE explained that [Amendment 3] addresses the section pertaining to when someone wants to claim a Fifth Amendment privilege and be granted immunity by a judge. The individual meets with the judge in his or her chambers and, under current law, if the prosecution agrees, the individual is granted transactional immunity. Amendment 3 deleted the language allowing the judge to inform the prosecution of the category of offense for which the privilege applied.

REPRESENTATIVE GRUENBERG objected.

REPRESENTATIVE SAMUELS recalled that the discussion on this was in regard to conforming to the Senate version.

CHAIR McGUIRE clarified that the Senate version does incorporate [Amendment 3].

REPRESENTATIVE SAMUELS explained that he had thought [Amendment 3] was to a different portion of the Senate bill, otherwise he said he would've objected to the adoption [of Amendment 3]. Representative Samuels offered his understanding that immunity is rarely [granted]. He mentioned possibly having a "Chinese [firewall]" or some sort of compromise because he was concerned with "throwing it all out."

Number 0427

LINDA WILSON, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), offered her understanding that the committee is discussing filtering information to the district attorney, information that is provided to the judge from the witness during a hearing held in camera.

REPRESENTATIVE GRUENBERG said he had discussed filtering information to the district attorney with someone from the defense bar. He recalled that even the "Chinese firewall" theory would be unconstitutional. If there is some language with the "Chinese firewall" theory and the language on page 10,

line 6, of Version I is changed from "shall" to "may", would that help solve the problem, he asked.

MS. WILSON stated that [the "Chinese firewall"] wouldn't provide protection because any sharing of information will be unconstitutional. She pointed out that in the [State v. Gonzales, 853 P.2d 526 (Alaska 1993)] case, the court said that the state can't protect against the nonevidentiary uses of the information. She reminded the committee that Senator French, a former district attorney, said this [sharing of information] is unconstitutional.

Number 0596

REPRESENTATIVE ANDERSON moved to adopt CSHB 244, Version 23-GH1024\I, Luckhaupt, 4/6/06, as the working document. There being no objection, Version I was before the committee.

Number 0632

SUSAN A. PARKES, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), indicated that she disagreed with Ms. Wilson, and opined that it's a matter of interpretation. Ultimately, this is a matter on which the supreme court will have to rule. In reviewing the Gonzalez case, the DOL believes that the current proposal isn't unconstitutional. Furthermore, the DOL believes it's really detrimental for prosecutors to have to decide on granting immunity blindly. Therefore, the DOL is willing to compromise and establish a system in which the prosecutor isn't the person making the decision [with regard to granting immunity]. There could be people dedicated to sitting in on these hearings or be given the information by the judge, and that person would then make the decision regarding whether or not to grant immunity.

MS. PARKES noted that the person making immunity decisions would be bound by confidentiality not to share that information with law enforcement or other prosecutors. She said she fails to see how that wouldn't protect the potential witness from nonevidentiary uses of the testimony if the person making the decision doesn't release that information or use it and isn't involved in the case in any manner.

REPRESENTATIVE GRUENBERG asked whether, if an amendment to the effect was adopted, Ms. Parkes would be willing to change the "shall" to "may" [on page 10, line 6, of Version I].

MS. PARKES specified that she would oppose such a change. She explained that often immunity can be granted with information because witnesses and defense attorneys are cooperating. However, there are occasions in which the aforementioned parties aren't cooperative. As a public policy, the information should always be given to the prosecutor in order for him/her to make the decision about whether to grant immunity.

Number 0805

REPRESENTATIVE GRUENBERG noted his opposition to Representative Samuels's motion. However, if the motion carries and the original language remains, the language will go to the supreme court. If the supreme court strikes it down, then it will be back to square one. Therefore, in order to resolve this problem, he said he supports an amendment such as suggested by Ms. Parkes as well as changing ["shall"] to "may" and providing for a contingent effective date. Representative Gruenberg announced that he would be prepared to make such an amendment if Representative Samuels's motion passes.

MS. PARKES said she would like to take her chances with Representative Samuels's motion because she believes the supreme court would support the language that Amendment 3 changed.

REPRESENTATIVE GRUENBERG clarified that he would be willing to make an amendment with the "may" language and a contingent effective date even if the motion fails.. In this way, [the matter] wouldn't have to come back before the legislature.

CHAIR McGUIRE mentioned the severability clause.

MS. PARKES said she couldn't support Representative Gruenberg's suggestion because if the supreme court found this to be unconstitutional, the court's language regarding why it was struck down would need to be reviewed as would whether the supreme court would view Representative Gruenberg's proposal as constitutional.

REPRESENTATIVE GRUENBERG shared his doubt that the [supreme court] would "take" a hypothetical.

MS. PARKES agreed, but stated that in the supreme court's decision and reasoning there would be some indication as to why it felt something wasn't constitutional.

REPRESENTATIVE SAMUELS maintained his motion that the committee rescind its action of 4/2/04 in adopting Amendment 3.

REPRESENTATIVE GRUENBERG maintained his objection.

Number 0917

REPRESENTATIVE GARA pointed out that when one asks for a Fifth Amendment privilege, one isn't admitting that he/she committed a crime. Instead that individual is saying that he/she may have done something the government may view as a crime. Even in the aforementioned situation, he offered his understanding that the individual isn't required to talk to the government. He posed a situation in which an innocent person is found near circumstantial evidence of a murder: that individual doesn't have to talk to the government because of the fear that the government will try to implicate him/her in a crime he/she didn't commit.

REPRESENTATIVE GARA said that the Fifth Amendment applies to both situations in which the individual committed the crime and in which the individual didn't commit the crime; it applies in situations in which the individual fears he or she will provide the government with a basis to be charged with a crime. Forcing an individual to do the aforementioned essentially makes him/her give up his/her right to the Fifth Amendment, he opined, because the Fifth Amendment provides protection for both innocent and guilty individuals and places the burden on government to prove a guilt. He acknowledged that the Fifth Amendment has both good and bad aspects. He maintained his support for Amendment 3.

CHAIR McGUIRE expressed concern with regard to those who have abused the process and thus "we find ourselves in this position because of that." She offered her belief that testimony has indicated that it's not [the sponsor's] intent, once the level of crime is revealed, to prosecute individuals. To the extent such ever occurred, the legislature would change the law.

REPRESENTATIVE GRUENBERG pointed out, however, that Ms. Parkes can't speak for the DOL in every case or for every administration. The fact is, he opined, these [witnesses] are going to have a hearing in camera during which there will be an offer of proof by the defense to the judge with the defendant and [his/her] attorney present. The defendant is going to say that he/she couldn't testify about this murder because it might reveal that he/she committed another murder. The judge would then tell the prosecution that the individual can't be made to

testify because of an unclassified felony. At that point, the prosecution will be under immense political pressure to investigate and prosecute for that crime. Therefore, it will incriminate the witness, which is unconstitutional, he emphasized.

MS. PARKES clarified that as it's proposed, [the DOL] is simply asking for information regarding whether the witness is concerned about a higher felony, a lower felony, or a misdemeanor. Although Ms. Parkes said she understood [members'] concern and couldn't speak for future cases, Representative Gruenberg's hypothetical situation is not the way it works. If the DOL is prosecuting a homicide and [a witness] says he or she may implicate themselves in a higher-level felony, the [prosecutor] has no idea what that is. She identified the aforementioned as the break in the chain of evidence.

REPRESENTATIVE GRUENBERG suggested, "It may not, but it may." People may know exactly what the witness's potential involvement is, and this is what concerns him.

Number 1251

A roll call vote was taken. Representatives Samuels, Holm, Anderson, and McGuire voted in favor of the motion to rescind the committee's action of 4/2/04 in adopting Amendment 3. Representatives Gara and Gruenberg voted against it. Therefore, the motion to rescind the committee's action in adopting Amendment 3 passed by a vote of 4-2.

Number 1251

REPRESENTATIVE SAMUELS moved that the committee adopt Conceptual Amendment 17 "for the drafters to draft the language (indisc.) 'Chinese firewall' so that the same prosecutor prosecuting the case is not the one ... in the chambers with the judge."

REPRESENTATIVE GARA objected for discussion purposes. He surmised that the desire is for the prosecutor who is told this information to not share it with other prosecutors.

REPRESENTATIVE SAMUELS replied yes.

REPRESENTATIVE GARA suggested, then, that [Conceptual Amendment 17] needs to be reworded.

MS. PARKES offered her understanding that the desire is to have a designated person from the DOL assigned to make a determination about immunity and that designated person would be bound by confidentiality not to share the information with anyone.

CHAIR McGUIRE offered her understanding that Representative Samuels's intention is for Conceptual Amendment 17 to mean what Ms. Parkes stated.

REPRESENTATIVE GRUENBERG remarked that [adopting Conceptual Amendment 17] would be better than leaving the bill as is. However, he expressed concern that the supreme court will strike this provision down. Therefore, he said he wanted to offer an amendment to Conceptual Amendment 17 that would "have, ... instead of a 'shall', a 'may' in it, and it would have a contingent effective date if the supreme court strikes down the conceptual amendment." Therefore, if the supreme court says the judge can't be compelled to do this, then the amendment to Conceptual Amendment 17 would come into play and thus allow the judge to do so only when he/she feels it is appropriate.

Number 1425

MS. PARKES said her concern is that if "shall" is unconstitutional, then "may" would be as well.

REPRESENTATIVE GARA opined that Representative Gruenberg's amendment to Conceptual Amendment 17 probably makes sense because the judge can ensure that it's done only in constitutional cases. If, by a witness saying that he or she might have been involved in something that might be considered a higher level felony, the [prosecution] would be made aware of [the information], and so the judge wouldn't allow [the information] to be released because it's self-incriminating, which is unconstitutional. However, if the information wouldn't alert the prosecutor to what crime the witness might have been involved in, then it would probably be allowed. For example, he posed a situation in which there are five minors consuming at a mall and a fight begins with one of those minors and someone else. The fight results in the death of the other individual, and the prosecution brings a murder case.

REPRESENTATIVE GARA posed that three [of the minors] were involved in the fight that resulted in the death, while two [minors] were merely consuming. The prosecution gets the evidence regarding involvement in what might be viewed as a

higher-level felony, and therefore it becomes apparent that the individual was involved in the fight. While [it becomes apparent that] the individual involved in a low level misdemeanor is the minor consuming. Therefore, in such a situation the judge may say that [informing the prosecution of the offense level] would be [tantamount to] telling [the prosecution] who did what. Under the "may" language, the judge wouldn't inform [the prosecution] because it would be unconstitutional. However, in other situations such as those mentioned by Ms. Parkes, Representative Gara opined that it probably would be constitutional [to share the information]. The aforementioned has the benefit of doing what Representative Gruenberg is suggesting, he remarked.

REPRESENTATIVE SAMUELS surmised that the DOL is willing to let [this provision] be struck down by the supreme court rather than start from scratch.

CHAIR McGUIRE asked if the [amendment to Amendment 17] would be like a severability clause.

REPRESENTATIVE GRUENBERG clarified that he is attempting to provide an option to [allow immunity] in the appropriate cases.

Number 1568

MS. PARKES remarked that if the conceptual amendment passes, the scenario discussed by Representative Gara wouldn't happen because the designated individual who is told the level of the potential crime isn't going to share that information, and so this issue shouldn't be of concern. With regard to allowing the judge to decide when it's appropriate, the judge often has very little information and often doesn't have the information that prosecutors would have. Therefore, placing the judge in the position of having to decide whether a prosecutor could use this information is unfair. There could be investigations for which the judge has no knowledge and, under the proposed scenario, [the prosecution] could be "tipped off." A judge shouldn't be making those type of evidentiary decisions, she opined. Conceptual Amendment 17 seems to take care of the concerns about any information being used inappropriately.

REPRESENTATIVE GRUENBERG said it wasn't his intent to place the judge in an awkward position. He explained that he is simply trying to provide the prosecution with the opportunity to request "the firewall," which would not otherwise be available.

MS. PARKES said she would accept that concept. Upon further clarification, Ms. Parkes restated her concern with regard to the change of "shall" to "may".

REPRESENTATIVE GARA relayed his understanding that the amendment to Conceptual Amendment 17 would only [be in effect] if Conceptual Amendment 17 is declared unconstitutional.

REPRESENTATIVE GRUENBERG concurred with Representative Gara's understanding.

Number 1698

REPRESENTATIVE GARA then objected. He commented that it's important to obtain information from witnesses, the department, and government when it's involved. However, he said he didn't like the tenor of trying to find out whether the government is going to agree that it's [appropriate] to do something. At some point, [legislators] have to make an independent judgment.

CHAIR McGUIRE pointed out that the House Judiciary Standing Committee reviews opinions that are very diverse in nature. Often, courts in different circuits rule differently on the same question. Therefore, these opinions provide [members] the ability to reflect and analyze how a particular law may be interpreted. She opined that Representative Gruenberg is saying that the Gonzalez case is unclear.

REPRESENTATIVE GARA said he tended to agree.

REPRESENTATIVE SAMUELS said that he didn't view Representative Gruenberg's amendment to Conceptual Amendment 17 as friendly.

MS. PARKES, in response to Representative Gruenberg, announced that the DOL would support Conceptual Amendment 17 without Representative Gruenberg's amendment to it.

REPRESENTATIVE GRUENBERG withdrew his amendment to Conceptual Amendment 17.

Number 1831

CHAIR McGUIRE asked whether there were any objections to the adoption of Conceptual Amendment 17. There being no objection, Conceptual Amendment 17 was adopted.

Number 1844

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 2, which read [original punctuation provided]:

Page 8, after line 18:
Insert the following:
"*Sec. 15. AS 12.25.150(b) is repealed and reenacted to read:
(b) Immediately after an arrest, a prisoner has the right to (1) telephone or otherwise communicate with the prisoner's attorney; (2) telephone or otherwise communicate with any relative or friend; (3) an immediate visit from an attorney at law entitled to practice in the courts of Alaska requested by the prisoner; and (4) a visit from a relative or friend requested by the prisoner. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances prescribed under AS 11.56.755."

Renumber the following bill sections accordingly.

REPRESENTATIVE GRUENBERG objected. Representative Gruenberg pointed out that Amendment 2 offers to insert nearly the same language that was in [the original version of] HB 244 but which was rejected last year via an amendment. The only change, he opined, from the original language that was rejected and today's Amendment 2 is that the visit from the attorney - in paragraph (3) - could now be an immediate visit. In essence, last year's amendment added language to the effect that the attorney described in paragraph (3) could be requested not only by the prisoner but also by any relative or friend of the prisoner; Amendment 2 seeks to undo this change that was made last year to the original version of HB 244. Representative Gruenberg asked Representative Samuels if he would be amenable to including "or any relative or friend of the prisoner" after "prisoner" in proposed paragraph (3) of Amendment 2.

REPRESENTATIVE SAMUELS said that the purpose of Amendment 2 is to eliminate that language. Representative Samuels clarified that he is attempting reinsert language that the amendment from last year took out.

REPRESENTATIVE GRUENBERG pointed out, however, that [all the language] isn't being reinserted because Amendment 2 doesn't

include the language "or any relative or friend of the prisoner" after "prisoner".

CHAIR McGUIRE clarified that Representative Samuels is trying to eliminate the ability of a relative or friend to be the one requesting an attorney to visit a defendant. Therefore, Amendment 2 makes it clear that the defendant can initiate contact with an attorney or telephone a friend or relative, but a friend or relative can't then solicit the attorney's participation.

Number 1994

REPRESENTATIVE GRUENBERG moved that the committee adopt an amendment to Amendment 2, which would insert "or any friend or relative of the prisoner" [after "prisoner"].

REPRESENTATIVE SAMUELS objected, and announced that if the amendment to Amendment 2 passes, he would withdraw Amendment 2. Representative Samuels opined that someone else shouldn't be able to invoke someone's rights. When someone is arrested, that individual's rights are specified. He noted that there are already standards for those who don't speak English or those with mental difficulties. However, the current legislation differentiates between two people who have been accused of the same crime, and one individual is allowed "a second bite at the apple," and the aforementioned isn't fair, he opined.

CHAIR McGUIRE recalled the debate during hearings on the original version of HB 244 in which there was reference to attorneys inside or outside the courthouse soliciting [defendants]. She questioned whether the problem could be solved differently [than via the proposal encompassed in Amendment 2]. Perhaps, there could be a prohibition against attorneys being around the courthouse and soliciting.

REPRESENTATIVE SAMUELS specified that it's not just the attorneys. He reiterated that only the individual being arrested should be able to invoke his or her rights.

REPRESENTATIVE GRUENBERG said that the problem with Amendment 2 is that as written it is broader than what Representative Samuels has suggested. Amendment 2 would include more than just those [under arrest] who have said they don't want an attorney; rather, Amendment 2 includes everyone. Representative Gruenberg highlighted that most individuals who are arrested are quite traumatized, and therefore may not have the presence of mind or

ability to obtain an attorney. [Amendment 2] specifies that if a friend or relative hires an attorney for the prisoner, then that attorney is prohibited from talking to the prisoner even if the prisoner has never said he or she didn't want an attorney. This isn't a question of equal protection, rather "that's the tail wagging the dog," he opined, and posed a situation in which an 18-year-old is arrested and doesn't think about asking for an attorney - [under Amendment 2] the father can't hire an attorney to advise his son.

Number 2219

REPRESENTATIVE GARA said that he opposes [Amendment 2]. In the context of these amendments, Representative Gara said that he thinks in the context of those innocent individuals that he has represented. He posed a situation in which an innocent person is taken to jail and calls home only to reach the 14-year-old brother. The prisoner and the 14-year-old don't know what to do and the phone call ends. No attorney is coming, and the prisoner hasn't asked for an attorney. Later, the prisoner talks with his mother, who secures an attorney. However, under [Amendment 2], the government can prevent the attorney from speaking to the prisoner. Representative Gara opined that the aforementioned is a bad policy. He inquired as to the harm of placing someone who has been arrested on equal footing with the government with regard to having someone with some expertise.

REPRESENTATIVE SAMUELS, in response, posed a situation in which a young girl has been raped by a man who is confessing to the crime. However, the interview is interrupted because the man's friend suggested that he needs an attorney. If another individual - a parent, a friend, a relative - invokes the rights of the man confessing, the confession is gone and the victim is "left hanging." "Most crimes are solved because stupid people commit crimes and then ... confess to them," he opined. Therefore, if one wants an attorney, he or she should make that request. Furthermore, he recalled that a juvenile has the right to call his or her parent, but the juvenile can also waive that right.

REPRESENTATIVE GRUENBERG emphasized that the constitution and the law is present to protect everyone. Even the guilty have a right to an attorney. If one's only goal is to convict the bad guys, then that individual would be against anything that's fair. He characterized this change as a slippery slope.

REPRESENTATIVE GARA opined that the real benefit of [Amendment 2] will be to the repeat offender who knows that the first thing one must do is request an attorney. However, [Amendment 2] doesn't help those individuals involved with the criminal system for the first time because they aren't going to think to request an attorney. Representative Gara acknowledged that he tends to discuss criminal legislation [in the context of the innocent person who is arrested].

TAPE 04-62, SIDE B
Number 2393

REPRESENTATIVE GARA pointed out that Representative Samuels tends to discuss the impact such legislation would have on the guilty person who abuses the system. The truth, Representative Gara posited, is that it will impact both.

CHAIR McGUIRE noted her frustration with these situations because she wishes more people who commit crimes wouldn't use the system to get off. However, she also noted that the laws are present to protect [everyone's] constitutional rights.

MS. PARKES clarified that [Amendment 2] won't take away anyone's constitutional right because each individual has the ability to personally invoke his/her rights. The question is whether one should have the ability to invoke another individual's constitutional rights. Allowing an attorney to interrupt an interview provides some individuals extra rights that can be invoked by someone else.

REPRESENTATIVE ANDERSON inquired as to how many people will know, should Amendment 2 fail, that a friend or family member could obtain an attorney for the prisoner.

REPRESENTATIVE SAMUELS pointed out that [current law] already allows this.

CHAIR McGUIRE noted that the bill was trying to change this situation last year.

REPRESENTATIVE GRUENBERG said he agrees that Ms. Parkes is correct in that there isn't a constitutional right to this. However, he pointed out that in Alaska it's a long-standing legal right. In many cases, Alaska law is more protective than the federal constitution. If Amendment 2 were to pass, it would change long-standing Alaska law. Representative Gruenberg announced that he [is withdrawing] his amendment to Amendment 2.

REPRESENTATIVE SAMUELS opined that with the amendment one should choose the victim's [point of view].

Number 2195

A roll call vote was taken. Representatives Samuels, Holm, Anderson, and McGuire voted in favor of Amendment 2. Representatives Gara and Gruenberg voted against it. Therefore, Amendment 2 was adopted by a vote of 4-2.

The committee took an at-ease from 2:49 p.m. to 2:50 p.m.

Number 2107

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 18 with handwritten changes, labeled with an "M" in the lower right corner, which read [original punctuation provided]:

> Page 8, Sec 14 lines 18-22, omit all of proposed section 14.
>
> [**Sec. 11.81.345. DEFENSE OF SELF AND OTHERS.** A COURT MAY INSTRUCT THE JURY ABOUT THE JUSTIFICATION DESCRIBED IN AS 11.81.330-11.81.340 IF THE COURT, SITTING WITHOUT A JURY, FINDS THAT THERE IS SOME PLAUSIBLE EVIDENCE TO WARRANT A REASONABLE JURY TO FIND THE ELEMENTS OF THE JUSTIFICATION.]

CHAIR McGUIRE objected.

REPRESENTATIVE GRUENBERG explained that this provision is the result of the Folger v. State case [648 P.2d 111, 113 (Alaska App. 1982)]. He specified that there is language in the aforementioned case and others, such as Toomey and Westin (ph), that makes it clear that the burden is on the defendant to produce some evidence supporting a claim of self-defense before being entitled to jury instruction on that defense. [Section 14] is an attempt to change the aforementioned standard, and therefore he has offered Amendment 18.

REPRESENTATIVE GRUENBERG said that the only question is regarding whether there is enough evidence to go to the jury. Representative Gruenberg turned to Toomey, 581 P.2nd 1124, 1126, note 6, from Alaska Supreme Court, 1978, and offered a quote as follows: "The term 'some evidence' was defined, albeit in

another context, by our Supreme Court in LeBlonde v. State as 'evidence, in light of which a reasonable jury could've entertained a reasonable doubt as to the element in question.'" He pointed out that the only reason the term "implausible" was ever used was in order to specify that it's not up to the court to weigh the evidence because that's the jury's responsibility. The aforementioned is a constitutional right, he opined, and if Section 14 is passed, the standard would be changed in the civil and criminal context. Representative Gruenberg mentioned that he is hypothetically taking this issue to the supreme court in a civil context. He noted that this question comes up on summary judgments when a case is taken and dismissed before the jury gets it.

Number 1910

MS. PARKES acknowledged that the desire is to change the standard of evidence that will allow a case to proceed to a jury. There are many cases wherein the current standard has been interpreted to mean that any evidence, even a scintilla of evidence or implausible evidence, allows a jury to receive a self-defense instruction. The [DOL] is requesting that it be "bumped up" a bit. She reminded the committee that last year the DOL wanted to shift the burden and make self-defense an affirmative defense. [Section 14] merely specifies that there needs to be some plausible evidence before such a defense can be put before the jury, and then the state has to prove it wasn't self defense beyond a reasonable doubt. Ms. Parkes pointed out that judges frequently decide what relevant evidence is and what will be allowed to come before a jury.

REPRESENTATIVE GRUENBERG emphasized that this isn't a question of what evidence can be introduced. He relayed his understanding from Ms. Parkes that the DOL's intent is to change the standard so that the issue gets taken from the jury. The question of taking a case from the jury is a divestment of a constitutional right, which is the holding by the Alaska Supreme Court in one case in the civil area. He specified that these cases are grounded in the state and federal right to a jury trial, and any attempt to change that standard runs afoul of those constitutional rights. This legislature and the attorney general have no ability to change it, he said.

REPRESENTATIVE GARA asked whether, if by saying "some plausible evidence," Ms. Parkes means "any plausible evidence." If so, if there is any plausible evidence, it would support the use of a self-defense defense.

MS. PARKES replied yes. She explained that if there is some plausible evidence on which the jury could rely, then the individual will receive the instruction and the state will have to prove beyond a reasonable doubt that it was not a case of self defense. Ms. Parkes acknowledged that although this isn't an evidence rule, what evidence is relevant and admissible may well hinge on whether a judge says there is a valid self-defense claim and whether a self-defense argument can be presented to a jury. If a self-defense argument isn't allowed, much evidence isn't going to come in because it wouldn't be relevant.

REPRESENTATIVE GARA mentioned that he is sympathetic to the prosecution's view on this issue; however, the constitution doesn't mandate that one be allowed to present implausible evidence. In the civil context, the courts will dismiss a case if it's only based on implausible evidence. In the criminal context, it's fair, he opined, that before the prosecution is given the burden of proving that it isn't a case of self defense, that a scintilla of plausible evidence must be presented.

Number 1722

A roll call vote was taken. Representatives Gruenberg voted in favor of Amendment 18. Representatives Gara, Holm, and McGuire voted against it. Therefore, Amendment 18 failed by a vote of 1-3.

Number 1688

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 19, which read [original punctuation provided]:

> Page 12, line 7: Add a new bill section and renumber bill sections and section references accordingly:
>
> Sec. ___. AS 28.35.030(a) is amended to read:
>
> (a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance**, singly or in combination**; **or**

(2) **if** [WHEN], as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or **if** [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the person's breath[; OR

(3) WHILE THE PERSON IS UNDER THE COMBINED INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR, AN INHALANT, AND A CONTROLLED SUBSTANCE].

REPRESENTATIVE GRUENBERG commented that AS 28.35.030(a)(3) seemed to have awkward phrasing, and therefore he felt that it would read better grammatically with the adoption of [Amendment 19].

MS. PARKES said that the department doesn't have any objection to Amendment 19.

Number 1534

CHAIR McGUIRE, upon determining that there were no objections, announced that Amendment 19 was adopted.

Number 1530

REPRESENTATIVE GARA moved that the committee adopt Amendment 20A [with handwritten changes], as follows [original punctuation provided]:

Delete Page 13, lines 14-17

Insert in its place:

(s) In a prosecution under (a) of this section, a person may introduce evidence on the amount of alcohol consumed before or after operating or driving the motor vehicle, aircraft or watercraft, to rebut or explain the results of a chemical test, but the consumption of alcohol before operating or driving cannot be used as a defense that the chemical test did not measure the blood alcohol at the time of the

operating or driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft or watercraft may be used to raise such a defense.

CHAIR McGUIRE objected.

REPRESENTATIVE GARA explained that he has worked with the language in order to eliminate the big gulp theory without going any further than that. The language in Amendment 20A specifies that if one want to rebut the evidence of a chemical test, the individual can inform the jury as to how much alcohol was consumed or not consumed before driving. But it's not a defense that the [chemical test] measures one's alcohol level at the time of the test as opposed to at the time of driving, he further explained.

MS. PARKES said she has no objection to Amendment 20A.

Number 1400

CHAIR McGUIRE removed her objection. Upon determining there were no further objections, Chair McGuire announced that Amendment 20A was adopted.

Number 1382

CHAIR McGUIRE moved that the committee adopt Amendment 20B [with handwritten changes], as follows [original punctuation provided]:

Add a new section and renumber other sections accordingly:

***Sec.__.** AS 28.35.030(a) is amended to read:

(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance;

(2) **<u>and if</u>** [WHEN], as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent or more by weight of alcohol in the person's blood or

80 milligrams or more of alcohol per 100 milliliters of blood, or [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person under the combined influence of an alcoholic beverage, an intoxicating liquor, an inhalant, **or** [AND] a controlled substance.

Number 1346

CHAIR McGUIRE, noting that there were no objections, announced that Amendment 20B was adopted.

Number 1332

REPRESENTATIVE GARA moved that the committee adopt Amendment 21, on page 8, line 24, after "written" insert "or oral". There being no objection, Amendment 21 was adopted.

Number 1279

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 22, which read [original punctuation provided]:

Page 5, line 9: Insert new bill section and renumber bill sections and section references accordingly:

Sec. ___. AS 09.50.020(a) is amended to read:

(a) A person who is guilty of contempt is punishable by **a** fine of not more than $300 or by imprisonment for not more than six months. However, when the contempt is one mentioned in AS 09.50.010(3)-(12), or in an action before a magistrate, the person is punishable by a fine of not more than $100 unless it appears that a right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt, in which case the penalty shall be as prescribed for contempts described in AS 09.50.010(1) **and**[,](2)[, AND (13)].

Page 7, lines 23-31: Amend existing language as follows

Sec. 11.56.758. Violation of custodian's duty. (a) A person commits the crime of violation of a custodian's duty if the person **knowingly** fails, when acting as a custodian appointed by the court for a released person

under AS 12.30, to report immediately as directed by the court that the person released has violated a condition of the release.

(b) Violation of custodian's duty is

[(1) A CLASS A MISDEMEANOR IF THE RELEASED PERSON IS CHARGED WITH A FELONY;

(2)] a class B misdemeanor [IF THE RELEASED PERSON IS CHARGED WITH A MISDEMEANOR].

Number 1272

CHAIR McGUIRE objected.

REPRESENTATIVE GRUENBERG explained that the first portion of Amendment 22 is a conforming amendment. Representative Gruenberg specified that the language in Amendment 22 should be inserted in the necessary location in [Version I]. The amendment requires that the person must "knowingly fail" to report the violation. Under current [law], this contempt of court violation is punishable by six months in prison. The second portion of Amendment 22 makes the violation a class B misdemeanor, which makes it subject to three months in prison.

REPRESENTATIVE GRUENBERG pointed out that the "repealer section" already repeals the contempt provision on page 15, line 25, and therefore it wasn't necessary to do it via Amendment 22. However, he added, it is necessary to repeal a reference to it. Representative Gruenberg then turned attention to [a letter from] Jerry Luckhaupt, Attorney, Legislative Legal and Research Services, dated April 6, 2004, which specifies that a conforming amendment is necessary: "AS 12.30.020(b)(1) will also need to be amended because of the repeal of AS 09.50.010(13) ... because that references that particular statute."

Number 1098

REPRESENTATIVE GRUENBERG moved that the committee conceptually amend Amendment 22 such that it conforms to AS 12.30.020(b)(1).

Number 1071

CHAIR McGUIRE, upon determining there were no objections to the conceptual amendment to Amendment 22, announced that it was adopted. Therefore, Amendment 22, as amended, was before the committee.

REPRESENTATIVE GRUENBERG opined that 90 days in jail is a sufficient penalty for failing to report someone. Furthermore, the arduous task of proving contempt isn't required.

REPRESENTATIVE SAMUELS recalled that contempt was the middle ground and a class B misdemeanor lowers the penalty and a class A misdemeanor raises it. However, under Amendment 22, as amended, all of the penalties would be lower, even if the person being supervised committed it's a felony.

REPRESENTATIVE GRUENBERG replied yes, and opined that it's better to make it a regular class of crime.

Number 1010

MS. PARKES noted her support of repealing the contempt provision and that she didn't oppose inserting the "knowingly fails" language. However, she urged the committee to maintain the differentiation between a class A and class B misdemeanor.

Number 0918

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 22, as amended. Representatives Samuels, Holm, and McGuire voted against it. Therefore, Amendment 22, as amended, failed by a vote of 2-3.

Number 0906

CHAIR McGUIRE moved that the committee adopt Amendment 23, as follows [original punctuation provided]:

> Page 5, line 9: Insert new bill section and renumber bill sections and section references accordingly:
>
> Sec. ___. AS 09.50.020(a) is amended to read:
>
> (a) A person who is guilty of contempt is punishable by **a** fine of not more than $300 or by imprisonment for not more than six months. However, when the contempt is one mentioned in AS 09.50.010(3)-(12), or in an action before a magistrate, the person is punishable by a fine of not more than $100 unless it appears that a right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt, in which case the penalty shall be as

prescribed for contempts described in AS 09.50.010(1) **and**[,](2)[, AND (13)].

Page 7, lines 23-31: Amend existing language as follows

Sec. 11.56.758. Violation of custodian's duty. (a) A person commits the crime of violation of a custodian's duty if the person **knowingly** fails, when acting as a custodian appointed by the court for a released person under AS 12.30, to report immediately as directed by the court that the person released has violated a condition of the release.

With a conforming amendment to AS 12.30.020(b)(1) because of the repeal of AS 09.50.010(13).

Number 0862

CHAIR McGUIRE, after ascertaining that there were no objections, announced that Amendment 23 was adopted.

Number 0850

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 24, which read [original punctuation provided]:

Page 8, lines 1-17: Delete bill section 13.

CHAIR McGUIRE objected.

REPRESENTATIVE GRUENBERG said "This is presently overbroad," and clarified that he believes that [Section 13] speaks to the wrong [statute] and should [reference] the deadly force [statute] because [under Section 13] one isn't able to use nondeadly force when fleeing from a drug deal.

Number 0608

MS. PARKES remarked that Section 13 applies to the use of deadly force. Based on the discussions and the way the legislation has been narrowed to a deadly weapon and felonious conduct, she urged the committee to keep Section 13 in the bill. If someone uses a gun to shoot someone and doesn't kill that individual, the same arguments apply for non-deadly force as well. The desire is to take away self-defense in dangerous situations in which people know they are entering dangerous situations.

REPRESENTATIVE GRUENBERG recalled discussion regarding shifting the burden, and noted his dislike of the prohibiting a particular defense. He pointed out that AS 11.81.900(18) discusses the defenses in Alaska, including self-defense, and currently the burden isn't placed on the defendant. He offered his belief that there has been a concerted effort in Alaska to not make self defense an affirmative defense.

CHAIR McGUIRE said she is opposed to Amendment 24. She recalled that the DOL came out with a broad version of Section 13 last year and it was rejected. The DOL has since fine-tuned the concept. She opined that there are compelling arguments that in gang activity, it really can be a case in which everyone says [their actions] were in self-defense. A rebuttable presumption would eliminate the argument that there is a constitutional right to argue it. Therefore, the burden would be shifted and wouldn't be on the prosecution.

REPRESENTATIVE GRUENBERG said:

> They seem to want to take cases up to the supreme court, at least of Alaska, probably up to the Supreme Court of the United States. They want to ... test the theory [of] whether they can absolutely prohibit a defense like this under the constitution of the state and the U.S. If they want to spend the state's money on this and take this state and this country back into the dark ages, I don't think they'll be successful. But I don't want to make this any better because I think this is clearly unconstitutional. And if they do it, the court will strike it down and we'll be right back where we are, which is constitutional.

Number 0260

MS. PARKES said that the department would oppose [Amendment 24]. The amendment to 11.81.330 discusses using a deadly weapon, and therefore is restricted to those situations. She offered her recollection that the Bangs (ph) case discusses and upholds the state's ability to prohibit the use of self-defense in certain situations, and Section 13 merely sets forth a few more circumstances in which the state can prohibit the use of self-defense. The DOL believes that the court has already said that prohibiting it in certain situations would be acceptable. Therefore, having a rebuttable presumption isn't the direction the DOL wants to go in.

CHAIR McGUIRE maintained her objection.

Number 0100

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of the adoption of Amendment 24. Representatives Samuels, Holm, and McGuire voted against it. Therefore, Amendment 24 failed by a vote of 2-3.

Number 0010

REPRESENTATIVE SAMUELS moved to report the proposed CS for HB 244, Version 23-LS1024\I, Luckhaupt, 4/6/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

TAPE 04-63, SIDE A
Number 0001

REPRESENTATIVE GRUENBERG objected.

The committee took an at-ease from 3:34 p.m. to 3:35 p.m.

CHAIR McGUIRE reminded the committee that it's her discretion as the chair of the House Judiciary Standing Committee to interpret Uniform Rule 24(a) to read that a majority of members present is what's required so long as a quorum is in place to report legislation from a standing committee.

Number 0113

A roll call vote was taken. Representatives Samuels, Holm, and McGuire voted in favor of reporting the proposed CS for HB 244, Version 23-LS1024\I, Luckhaupt, 4/6/04, as amended, from the committee. Representatives Gara and Gruenberg voted against it. Therefore, CSHB 244(2d JUD) was reported out of the House Judiciary Standing Committee by a vote of 3-2.

REPRESENTATIVE GRUENBERG noted that he supported the ruling of the chair with regard to her interpretation of Uniform Rule 24(a).

Number 0121

REPRESENTATIVE GRUENBERG made a motion to adopt a letter of intent, which read [original punctuation provided]:

The Alaska State Legislature acknowledges the findings contained in the Alaska Judicial Council's study "Alaska Felony Process: 1999" that the use of third party custodians was initially intended to give indigent defendants an equal opportunity for predisposition release, that this bail condition was one of the most important influences on the length of time that defendants spent incarcerated before disposition of their cases, and that this bail condition has resulted in substantially longer terms of predisposition incarceration in non-violent type cases. Given the right to bail guaranteed by Article I, Section 11 of the Alaska Constitution, it is the intent of the Legislature that judicial officers more rigorously apply the statutory framework set out in AS 12.30.010-029 for pretrial release. It is the intent of the Legislature that judicial officers appoint third party custodians in a manner that will further the intent of the statute.

CHAIR McGUIRE, noting that there were no objections, indicated that the letter of intent was adopted and would be forwarded with CSHB 244(2d JUD).

The committee took an at-ease from 3:39 p.m. to 3:59 p.m.

HB 336 - CIVIL DAMAGES FOR UNINSURED DRIVERS

Number 0200

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 336, "An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 336, Version 23-LS1254\D, Bullock, 2/23/04, which had been adopted as a work draft on 4/6/04]

Number 0260

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 336, noted that there were questions in the last meeting about the definition of "noneconomic losses" mentioned in [Section 1 of the bill]. He referred to AS 09.17.010(a), where noneconomic losses is defined, and noted his acceptance of that definition. He asked if the committee has any concerns about using the definition found there.

CHAIR McGUIRE replied, "We get it." She asked if there were any amendments for HB 336. Hearing none, she then asked for discussion on the bill.

REPRESENTATIVE GARA said that he has already listed all of the reasons why he does not like the bill. If a motion is made to report it out of committee, he will object, he added.

Number 0317

REPRESENTATIVE SAMUELS moved to report the proposed committee substitute (CS) for HB 336, Version 23-LS1254\D, Bullock, 2/23/04, out of committee with individual recommendations and the accompanying fiscal notes.

Number 0321

REPRESENTATIVE GARA objected.

A roll call vote was taken. Representatives Samuels and McGuire voted in favor of reporting the proposed CS for HB 336, Version 23-LS1254\D, Bullock, 2/23/04, from committee. Representatives Gara, Gruenberg, and Holm voted against it. Therefore, CSHB 336, Version D, failed to be reported from the House Judiciary Standing Committee by a vote of 2-3.

CHAIR McGuire announced that HB 336 would be set aside.

HB 490 - EMPLOYMENT SECURITY ACT AMENDMENTS

Number 0385

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 490, "An Act relating to the release of employment security records, to the admissibility of determinations and decisions regarding unemployment compensation benefits, and to contributions, interest, penalties, and payments under the Alaska Employment Security Act; providing that property under the Alaska Employment Security Act is not subject to the Uniform Unclaimed Property Act; and providing for an effective date."

Number 0401

THOMAS NELSON, Director, Division of Employment Security, Department of Labor & Workforce Development (DLWD), explained

that he would be speaking to Sections 4-7, 9, and 11-13 of HB 490 and that a representative from the Department of Law (DOL) would address other sections of the bill. He characterized the proposed changes as largely housekeeping measures and clarification of existing statute that will provide Alaska a language alignment with federal law and bring Alaska into compliance with the unemployment insurance overpayment arrangement it has with other states.

MR. NELSON said that Section 4 authorizes the DLWD to adopt regulations providing for the distribution of unclaimed, excess contributions. Sections 5, 6, and 9 clarify statute by adding the terms "manager" and "limited liability company" to existing definitions. Section 7 brings Alaska into conformity with the interstate reciprocal overpayment recovery arrangement and provides the Division of Employment Security the ability to collect unemployment insurance overpayments on behalf of other states for reasons other than fraud; states participating in this agreement already provide this service to Alaska.

MR. NELSON said that Section 11 aligns Alaska language with federal law by clarifying which healthcare professionals are excluded from the definition of employment; only student nurses and medical interns are excluded, and Section 11 clears up existing language. Section 12 clarifies language that provides an exclusion, from the definition of wages, of payments or benefits provided by an employer for purposes of educational assistance to its employees; federal law already provides this exclusion from its definition of wages. Section 13 removes reference to the provisions of Department of Revenue (DOR) law regarding disposal of abandoned property; federal law requires that unclaimed excess contributions be deposited back into the unemployment insurance trust fund.

CHAIR McGUIRE said she sees nothing particularly controversial about HB 490 in that it appears to bring Alaska law into compliance with federal law.

Number 0654

TOBY NANCY STEINBERGER, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law (DOL), explained that Sections 1-3 pertain to allowing the release of employment security records for criminal investigation and prosecution purposes, and that Section 8 pertains to the binding effect of unemployment compensation decisions. Sections 1-3 will help federal, state, and municipal

prosecutors in investigating and prosecuting criminal cases by helping them locate suspects, witnesses, victims, and persons on parole. When paying employment security taxes, employers provide quarterly payroll information for each employee to the Division of Employment Security; thus the location information on employees is very current.

MS. STEINBERGER also pointed out that because the Division of Employment Security pays unemployment benefits to qualifying persons, these persons provide the division with information about where they reside. The Division of Employment Security is heavily federally funded, she remarked, and the U.S. Department of Labor requires that the employment security records be kept confidential, but has allowed, over the years, a number of exceptions, which are found in AS 23.20.110. Unfortunately none of the current exceptions allow for the release of information for criminal prosecution and investigation purposes other than for prosecuting cases against claimants who have fraudulently received unemployment compensation benefits.

MS. STEINBERGER relayed that over the years, because the Division of Employment Security's information is updated quarterly, the Criminal Division of the DOL has requested this information in order to find witnesses and victims. Unfortunately, the Division of Employment Security has had to deny these requests. She noted that upon review of Sections 1-3 of HB 490, the U.S. Department of Labor has approved the proposed changes and has in fact permitted other states to allow the release of employment security information for purposes of criminal investigations and prosecutions. These other states include Washington, Iowa, Arkansas, Georgia, Utah, and Oklahoma.

MS. STEINBERGER, directing attention to Section 8, which will amend AS 23.20.497, explained that persons who are denied unemployment benefits are entitled to a hearing, but current statute provides that unemployment compensation decisions are not admissible in a subsequent action or proceeding in another forum, for example, if an employee brings a lawsuit against his/her employer. Employers have little incentive to participate in unemployment compensation proceedings because, unless they are self insured, they have no financial interest in the outcome. Section 8 will clarify that unemployment compensation decisions are not only inadmissible in a court or administrative proceeding but are also inadmissible in an arbitration proceeding.

Number 0884

REPRESENTATIVE GRUENBERG asked whether there would be any objections to adding the words "to them" to page 3, line 7; the text of Section 7 would then read in part, "if the sums were obtained by an individual who is not entitled to them".

CHAIR McGUIRE surmised that such language is not needed.

REPRESENTATIVE HOLM surmised that that meaning is implicit.

REPRESENTATIVE GRUENBERG, turning attention to page 3, line 15, asked whether "limited partnership" and "limited liability partnership" should be added.

MS. STEINBERGER pointed out that "partnership" is already included in the text of Section 9, which merely updates Title 23 to include "limited liability company", which is a whole new entity that has been provided for in Title 10.

REPRESENTATIVE GRUENBERG offered his recollection, however, that Title 32 was recently amended by adding a new chapter pertaining to "limited liability partnerships", which are not addressed in the "uniform partnership Act."

MS. STEINBERGER said, "You may want to add 'limited liability partnerships'."

CHAIR McGUIRE suggested that they make a conceptual amendment "to ask the drafters to be clear that whenever these forms of businesses or employing units are referenced throughout, that it includes all of the various forms of partnerships, limited liability partnerships, limited liability companies, and so on, that it could."

Number 1049

REPRESENTATIVE GRUENBERG made a motion to adopt Chair McGuire's suggestion as Conceptual Amendment 1. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG turned attention to Section 2 of the bill and asked if it should include language allowing the release of information for the purpose of enforcing child support.

MS. STEINBERGER relayed that such an exception is already included in AS 23.20.110(o).

REPRESENTATIVE GARA asked whether the state is allowed to provide unemployment benefits to people whom the federal government does not.

MS. STEINBERGER noted that current Alaska law [allows benefits] to "health professionals and health nurses," but HB 490 attempts to conform state law to federal law.

REPRESENTATIVE GARA mentioned that he is referring specifically Sections 11 and 12.

MR. NELSON said of Section 11, "We already have existing language, but it's quite confusing to some employers in Alaska, so we're spelling it out, exactly who is exempt from the definition of employment for the purposes of unemployment insurance contributions."

REPRESENTATIVE GARA said he is not sure he agrees with the policy of limiting the availability of unemployment compensation to medical and nursing interns and of not counting the benefits referred to in Section 12 as wages for unemployment purposes.

Number 1223

MS. STEINBERGER remarked that the language in the bill will provide that student nurses will not get unemployment benefits and the employer will not have to pay taxes on student nurses or medical students who are interning and receiving some income.

CHAIR McGUIRE characterized the foregoing as an incentive to employers who hire student nurses.

MR. NELSON said that Section 12 speaks to training systems provided by employers to employees and those amounts of money not being counted toward wages. Federal law currently allows for "this," but Alaska law does not yet. He said that the exclusion provided for via Section 11 is not a change; rather, the language is simply being clarified. He added:

> And the reason we asked for that is, there was an instance in the state several years ago, or within the last two years, in which an employer misinterpreted this and it resulted in a mistake on their unemployment insurance contributions as an employer, and it was quite expensive, and the remedy and the

cost of recovering that amount of money was quite extensive.

MR. NELSON, in response to a question, said that in the aforementioned instance, the employer employed nurses that were not student nurses but didn't pay their contributions, and so the [DLWD] had to recover those monies because, under current law, the employer is required to pay for nurses that are not student nurses.

CHAIR McGUIRE acknowledged that the current statutory language could be misinterpreted to apply to all nurses.

Number 1351

REPRESENTATIVE HOLM moved to report HB 490, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

Number 1369

REPRESENTATIVE GARA objected for the purpose of providing a comment. He said:

> There's potentially another side to this whole story and I don't know that I've heard it ... - maybe there's not, maybe there is - and I feel uncomfortable voting on this with the amount of information I have right now. ... To the extent that I hear information that makes me think otherwise, I might vote against it on the floor; I just wanted you to know that.

REPRESENTATIVE GARA then withdrew his objection.

Number 1393

CHAIR McGUIRE asked whether there were any further objections to the motion. There being no objection, CSHB 490(JUD) was reported from the House Judiciary Standing Committee.

<u>HB 275 - VETERINARIANS AND ANIMALS</u>

Number 1416

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 275, "An Act relating to veterinarians and animals." [Before the committee was CSHB 275(L&C).]

Number 1469

TRACIE AUDETTE, Owner, Fairhaven, said she is very concerned about the language on page 2, lines 9-14, and suggested that it needs clarification regarding the extra power being given to licensed veterinarians. She said she would like to see added to the bill, [after paragraph (4)] on page 2, language to the effect of: "Other standard practices commonly performed on farm or domestic animals in the routine course of farming or animal husbandry or animal care or treatment when performed by the owner, the owner's employee, or the owner's agent acting with the owner's approval." She also asked that attention be given to the fact that although "animal husbandry" is used in statute, it is not currently defined in statute. She relayed that she is an animal therapist and does physical rehabilitation, and although she is not currently practicing, she does have a business license under the category of animal husbandry.

Number 1583

CAROL GIANNINI, Staff to Representative Harry Crawford, Alaska State Legislature, sponsor of HB 323, noting that she participated in "the original drafting of the bill that this was based on," said she is available for questions. In response to questions, she relayed that she has a copy of the Department of Law's suggested changes, and that Representative Crawford has other proposed amendments that she can explain.

Number 1751

SALLY CLAMPITT, President, Alaska Equine Rescue (AER), said she wants to emphasize the need to keep language regarding minimum standards of care in order to empower licensed veterinarians to be involved in the process of determining the conditions of animals that are taken in as a result of cruelty cases. She said she is glad to hear testimony from Ms. Audette, but relayed that she has concern about replacing language regarding veterinary care with language regarding care provided by holistic practitioners. She added, "I'm not sure that it would be appropriate to make it a hardcore provision, here, on equal footing with veterinary care because it would seem to me, then, that it may also become a defense, here, of cruelty ...

Number 1818

SHARALYN WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, sponsor, interrupted Ms. Clampitt and suggested she call Representative Chenault's office and discuss her concerns regarding this issue outside of the committee process.

MS. CLAMPITT, in conclusion, said she wholeheartedly supports HB 275.

MS. AUDETTE, in response to comments, clarified that she intended that her suggested language be added to the bill rather than replacing any language currently in the bill.

Number 1872

LISA ZEIMER, noting that she is an animal rescuer and owns three rescued dogs, said she thinks HB 275 is a great bill, is long overdue, and will go a long way towards securing the safety of and compassion towards animals in Alaska. She offered her belief that there is a link between animal cruelty and domestic violence, adding that there is a saying that in a house where people aren't safe, animals aren't safe, and visa versa. She went on to say:

> I think that animal cruelty prosecutions may indeed be able to prevent more serious prosecutions down the line. I think that ... if we were to pass this law, ... this could be a very powerful tool for interdiction. And ... by seeing animal cruelty, you're kind of getting a glimpse at the tip of the iceberg, and ... maybe some of these behaviors can be stopped in their tracks before they do accelerate and go into the realm of human victims. And I also feel that in terms of costs, if we don't pay now, we're going to end up paying more later, and I believe that with all my heart.

MS. ZEIMER indicated that it is time to start holding those who commit acts of animal cruelty accountable for their actions. Currently, she remarked, it is the people like herself and others that are involved in the animal welfare community who step up to the plate and spend time, money, and emotional energy in cleaning up the messes caused by those who, often repeatedly, commit acts of animal cruelty. She suggested that society needs to get past the attitude of looking at animals as mere property; a broken leg on a puppy is whole lot different than a broken leg on a table, she added. She opined that passage of HB 275 would

be in keeping with the spirit of the people of Alaska, and would be the mark of a civilized state and civilized society.

CHAIR McGUIRE ascertained that no one else wished to testify, and noted that Representative Crawford was present.

Number 2061

MS. GIANNINI, referring to Ms. Audette's suggested change, said she questions whether such additional language is necessary because she is not sure that the current language on page 2 excludes the type of care to which Ms. Audette referred. She also noted that page 5 contains an exclusion regarding conduct that conforms to accepted veterinary or animal husbandry practices. Turing to the issue of cost, she said:

> One thing that is not clear from the fiscal note is, in the past, when the state has taken animals from an owner and turns them over to [an] agency, my understanding is that the state (indisc.) is really liable for the cost of the care of the animal. And I believe that there have been several cases where considerable expense was put into medical care and treatment, and then the receiving agency has looked back to the state to be reimbursed for those expenses.
>
> One of the provisions in this bill is that [an] individual or an agency who now receives the animal under this bill does so knowing that they cannot go back and look to the state for reimbursement anymore. So ... that kind of savings, if there is indeed a savings, is not going to show up in the fiscal note, and I just think that's something that's important to think about when you're considering any fiscal note that's attached to this bill.

CHAIR McGUIRE asked whether any thought has been given to including a provision that would allow for recovery of expenses from the original possessor of the animal.

REPRESENTATIVE GRUENBERG said he has given that issue some thought.

REPRESENTATIVE GARA, relaying that he couldn't stay for the rest of the meeting, said:

I'm very supportive of the bill. Certainly the ... testimony that people who abuse animals are also people who end up doing worse things in society is compelling to me. ... There's only one section of the bill that I have a comment on, and it's on page 4, lines 27 and 28. I ... would like to ... strongly punish those who engage in intentional animal cruelty, or what we consider to be animal cruelty. Lines 27 and 28 deal with reckless or accidental failures to provide care to an animal.

It say's "reckless" right now, [but] there's [a proposed] amendment to move that also to criminally negligent, and I guess I would just say to the members of the committee - ... we're all trying to get after cruelty, we're all trying to get after intentional conduct - I would ask people to take a close look at lines 27 and 28 and decide what we want to do there about conduct that's not intentional, [conduct] that's irresponsible but not intentional.

Number 2239

REPRESENTATIVE GARA, in response to a question, said he does not think he supports "the criminally negligent language," adding, "It's the only part of the bill ... that really deals with people who aren't intentionally out there trying to hurt animals."

CHAIR McGUIRE asked whether he would support such language if it specified that the behavior results in the death of an animal or causes serious physical pain.

REPRESENTATIVE GARA said:

It's incorporating the standards in [proposed AS 03.55.100], which talks about providing food, providing water, providing ample surroundings for an animal. What I would not want to happen would be for a family to go on vacation, to come back, to realize that it just really screwed up [and] the family ... pet has suffered as a result of it [though] nobody intended to hurt the animal.

The family then brings the animal into a veterinarian who would rightly and ... appropriately be very offended at what the family did, but then the

> veterinarian is so offended that they call the prosecutors, and then all of a sudden this becomes a crime. Maybe it should be, but that's ... a policy call I'd ask you to think about, and ask the sponsors to talk about. And [I] could probably ... be convinced, possibly, to go either way on that one - that's just the one that I flagged.

Number 2299

MS. WRIGHT said:

> Exactly that same thing happened to me eight years ago with the neighbor's rottweiler that got loose and came over, and my limping around for eight years is a result of that. And yes, I do believe he was criminally negligent. And a guinea pig compared to a 175-pound rottweiler are two different things, but certainly this family did go on vacation and left the dog outside ... with no food, no care, and it got loose. ... So ... you're looking at different degrees of negligence and an accident.
>
> Well, accidents can happen with goldfish ..., but common sense enters into this at some point that a rottweiler left without food or care for a week is certainly different than a guinea pig. ... There ... [is] negligence and then there's real negligence, and accidents like that usually don't happen by responsible people.

REPRESENTATIVE GARA said that in a circumstance wherein the owner left on vacation and said to himself/herself that the animal could just wait to be fed until he/she returns, that behavior is outrageous and that person should be punished. However, in a circumstance where one spouse asks the other to feed the animal before they go on vacation, he suggested that such behavior is probably not reckless, but noted that the legislature needs to be careful with what it defines as a crime. "And certainly the lower levels of conduct are grounds for you to lose your animal, but ... I would just want some discussion by folks about whether that's something we want to throw people in jail for, and you might convince [me] that it is," he added.

MS. WRIGHT pointed out, though, that it's a responsibility to own an animal, whether it's a fish, a guinea pig, or a horse. And if a person forgets to arrange for an animal's care before

leaving on vacation, he/she should use a telephone to ask someone to look after the animal.

TAPE 04-63, SIDE B
Number 2393

REPRESENTATIVE GARA relayed that he had a cat that he used to share chocolate with, but at the time he didn't know that cats shouldn't eat chocolate. He said he could envision such behavior as being considered reckless or criminal under the bill.

MS. WRIGHT relayed that she has recently learned that she is not supposed to feed her dog grapes, and acknowledged that under the bill, doing so could result in her being guilty of reckless endangerment.

CHAIR McGUIRE directed attention to the changes suggested by the Department of Law (DOL). [These suggested changes were presented and explained by Elise Hsieh from the DOL during the bill's last hearing].

REPRESENTATIVE GRUENBERG indicated a preference for addressing each of the DOL's suggested changes as separate amendments.

Number 2195

CHAIR McGUIRE referred to the DOL's suggestion to change "include" to "includes" on page 1, line 6, and labeled it Amendment 2. [None of the suggested changes were labeled Amendment 1.] [Although no formal motion was made] Chair McGuire asked whether there were any objections to adopting Amendment 2. There being none, Amendment 2 was adopted.

MS. WRIGHT - referring to the DOL's suggestion to delete the word "daily" from page 1, line 8 - offered her belief that "daily" means every day and so should be included.

CHAIR McGUIRE said she disagrees, and surmised that the relevant point is that the water be provided in sufficient quantity for the animal's good health regardless of how often a person chooses to provide it.

MS. GIANNINI asked whether removing the word "daily" would allow someone to provide water only once a week.

CHAIR McGUIRE remarked that even if such is the case, the relevant point is that the water is provided in an amount sufficient to maintain the animal's good health.

Number 2065

CHAIR McGUIRE [made a motion to adopt] Amendment 3, to delete "daily and" from page 1, line 8. There being no objection, Amendment 3 was adopted.

Number 2049

REPRESENTATIVE GRUENBERG, noting that it is proper to use "include" rather than "includes" on line 6, moved that the committee rescind its action in adopting Amendment 2. There being no objection, the committee rescinded its action in adopting Amendment 2.

MS. WRIGHT - referring to the DOL's suggestion that proposed AS 03.55.100(a)(2) be rewritten for clarity - said that there were several farmers that called the sponsor's office and objected to the definition of an outdoor shelter.

Number 1997

CHAIR McGUIRE referred to the DOL's suggestion to add, on page 2, line 9, after "standards", the words "for the health and safety of the animals", and labeled it Amendment 4. [Although no formal motion was made] Chair McGuire asked whether there were any objections to adopting Amendment 4. There being none, Amendment 4 was adopted.

MS. WRIGHT - referring to the DOL's suggestion to add to proposed AS 03.55.100(b), on page 2, line 14, the words, "In the event of a disagreement under this paragraph, the State Veterinarian will provide the professional opinion needed under this paragraph." - relayed the sponsor's belief that including such language could open the door to creating a fiscal note. She suggested that the court system could be looked upon to be the final arbiter in cases where veterinarians disagree.

CHAIR McGUIRE said she agrees.

REPRESENTATIVE GRUENBERG asked the DOL to comment on the fiscal note issue.

Number 1938

ELISE HSIEH, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), relayed that Kristin Ryan from the Department of Environmental Conservation could better respond to that issue. She added, however, that the idea behind this suggestion was that if a serious conflict between two veterinarians arose, then the state Veterinarian could weigh in with a final professional opinion.

Number 1929

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), relayed that the DEC has committed itself to maintaining a zero fiscal note even if the suggested change is adopted, because situations could arise wherein specialized veterinarians disagree when making a determination regarding treatment of an animal. For example, if a veterinarian who specializes in treating small animals is asked to make a determination of cruelty to a farm animal, he/she may not have the same type of expertise as a veterinarian specializing in farm animals. "We felt that the state veterinarian would probably be the best candidate to make a [determination] of standards of care, rather than the court system [which] does not have that expertise; ... the [DEC], again, has agreed not to increase the fiscal note to make that change," she concluded.

Number 1897

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor of HB 323, remarked:

> When we were looking at this, we wanted the local veterinarian to be able to go out and make determinations. I don't know how you say that ... this is going to be only the final arbiter, because somebody may want to ... contest it at every step of the way. We felt that if we left it in the hands of the state veterinarian, which we have only one, that's not going to be present at the scene, then it's unworkable; we would have to get the state veterinarian there to make that final ... decision. And I think that's the reason we put this in here as having a licensed veterinarian making the decision on the scene.

MS. HSIEH pointed out, though, that part of her suggested language is, "In the event of a disagreement under this paragraph". She elaborated:

> I'm talking about maybe two local vets. Maybe one local vet's been hired by someone who has 20 or 40 dogs that he typically takes care of ..., and then another vet comes in and says, ... "That guy's not taking care of his dogs." Well, the vet who gets paid to take care of those 40 dogs might not agree. I'm talking about that sort of local situation, where two local vets somehow get in a disagreement. ... In that case, to provide the professional opinion required under that paragraph ..., the state [veterinarian] can come in and listen to the two vets and sort of try [to] figure out what's going on or [if] someone has a biased opinion or a personal stake, and [then] provide a more neutral, professional opinion under this paragraph. This does not take powers away from the court in any sense; when someone petitions to get their animal back, I assume the courts are going to look at any information they have and try [to] make ... a reasoned decision using evidence they have. I hope that information is helpful to the committee.

Number 1786

MS. WRIGHT suggested that perhaps this issue could be better addressed via regulation instead of statute.

MS. HSIEH offered:

> You won't have the authority for regulations to allow the state [veterinarian] to provide the professional opinion under this paragraph unless this amendment goes through. I don't see where you'd have the [regulatory] authority to go ahead and do that. You'd just end up with vets who are disagreeing, and that will end up in a stalemate for [AS] 03.55.110 when someone goes to try and actually move on to the next stage, which is taking the animal.

REPRESENTATIVE GRUENBERG noted that his wife is on the animal control board in Anchorage, and suggested that this issue will cause the DEC to "become quite a bureaucracy" and will cost the state money in the future.

CHAIR McGUIRE - referring to the DOL's suggestion to add to proposed AS 03.55.100 a subsection (c) that would grant the DEC the authority to promulgate regulations to implement AS 03.55.100 - offered her belief that it is probably appropriate to grant the DEC that authority, and mentioned that a number of members have expressed concern about this issue.

MS. HSIEH, in response to a question, relayed that statutorily, the state veterinarian falls under the purview of the DEC.

MS. RYAN, in response to comments, added that AS 03.25 defines veterinarians and states that their duties are to be implemented through the DEC. She said: "It gives us the authority to embargo and detain animals and destroy animals; the state veterinarian has incredible responsibility for ... the control of animals and diseases that animals spread." She noted that AS 03.25.020 defines the duties of state veterinarians.

Number 1490

MS. HSIEH relayed:

> As far as I'm aware, and the DOL, the only [veterinarian] that is statutorily specified is here in [AS] 03.25: it is in the Department of Environmental Conservation. The state [veterinarian] is very active and does a lot of things [pertaining] to animal and public health, and the connections between that. If, for some reason in the future, the state [veterinarian] ... were to move to another agency, I spoke with Debra Behr [Legislation & Regulations Section of Department of Law] ... and she said the revisors would just go through and change [the] statutes [that] needed changing. This would not be hindrance in any way.

MS. RYAN, in response to further comments, said: "The responsibilities are to embargo and detain animals, and so while maybe we only have one veterinarian and it would be great to have more, that's their responsibility."

Number 1387

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 5, to add to page 2, in proposed AS 03.55.100, a new subsection: "(c) The Department of Environmental Conservation may adopt

regulations to implement this section." There being no objection, Amendment 5 was adopted.

MS. GIANNINI - referring to the DOL's suggestion to delete from page 2, line 19, "on which it wishes to take action" - opined that if that language is removed, then the word "shall" on line 19 should be changed to "may", because this would prevent the Department of Public Safety from having to investigate a groundless complaint.

CHAIR McGUIRE and REPRESENTATIVE GRUENBERG relayed that the committee would not be considering that particular suggestion by the DOL.

MS. WRIGHT - referring to the DOL's suggestion to replace, "and under whose custody the animal is to be sheltered and cared for" with, "and a reference to their right to petition the court under AS 03.55.130" on page 3 [lines 3-4] - remarked that this is a good amendment and that the current language is an oversight. She noted that in the past, when irate owners have gone to where the abused animals were being sheltered, the animals have had to be moved.

Number 1245

CHAIR McGUIRE labeled the foregoing suggestion by the DOL as Amendment 6. [Although no formal motion was made] Chair McGuire asked whether there were any objections to adopting Amendment 6. There being none, Amendment 6 was adopted.

Number 1239

CHAIR McGUIRE made a motion to adopt Amendment 7, to replace "every" with "a" on page 3, line 10. There being no objection, Amendment 7 was adopted.

MS. WRIGHT - referring to the DOL's suggestion to replace, "warranted by" with "reasonable under" on page 3, line 24 - remarked that [the current language] appears to conflict in the way it reads, and that [the suggestion] is fine.

Number 1203

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 8, to replace "warranted by" with "reasonable under" on page 3, line 24. There being no objection, Amendment 8 was adopted.

CHAIR McGUIRE referred to the DOL's suggestion to delete "a herd, collection, or kennel [of]" from page 4, line 30.

MS. WRIGHT said that the sponsor would like to retain the word "collection" because there are people known as "hoarders" who collect large numbers of animals and neglect them. She mentioned Carolyn Boughton as an example of someone who did this in the Sterling area: 40-some-odd Bouviers were found partially frozen into the ground. She opined that it is important to keep the words "herd", "collection", and "kennel" because they are different words for the same thing.

REPRESENTATIVE GRUENBERG opined that keeping that language in the bill will make it harder to prosecute someone. The important factor is that the person has 10 or more animals regardless of what they are called.

MS. WRIGHT asked what happens if someone only has 2 or more animals.

REPRESENTATIVE GRUENBERG replied, "Well, then you'd want to change the number."

Number 1116

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 9, to delete "a herd, collection, or kennel [of]" from page 4, line 30. There being no objection, Amendment 9 was adopted.

[There was a brief discussion regarding how best to word the next amendment, which would address Ms. Wright's concern about situations in which more than one animal is being abused.]

Number 1097

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 10, to replace "10 or more animals" with "more than one animal". There being no objection, Amendment 10 was adopted.

Number 1057

CHAIR McGUIRE, noting that a majority caucus was in progress and that the committee no longer had a quorum, announced that HB 275 [as amended] would be held over.

ADJOURNMENT

Number 1042

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:15 p.m.