

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 30, 2005

1:24 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative John Coghill

**COMMITTEE CALENDAR**

HOUSE BILL NO. 54

"An Act relating to bail review."

- HEARD AND HELD

HOUSE BILL NO. 150

"An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 210

"An Act relating to blood testing of certain persons alleged to have committed certain offenses directed toward peace officers or emergency workers."

- MOVED CSHB 210(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 54

SHORT TITLE: BAIL REVIEW

SPONSOR(S): REPRESENTATIVE(S) SAMUELS, STOLTZE

01/10/05 (H) PREFILE RELEASED 1/7/05

01/10/05 (H) READ THE FIRST TIME - REFERRALS

01/10/05 (H) JUD, FIN  
03/30/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 150

SHORT TITLE: LICENSING RADIOLOGIC TECHNICIANS

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/14/05 (H) READ THE FIRST TIME - REFERRALS  
02/14/05 (H) L&C, JUD, FIN  
02/23/05 (H) L&C AT 3:15 PM CAPITOL 17  
02/23/05 (H) Scheduled But Not Heard  
03/02/05 (H) L&C AT 3:15 PM CAPITOL 17  
03/02/05 (H) Heard & Held  
03/02/05 (H) MINUTE(L&C)  
03/18/05 (H) L&C AT 3:15 PM CAPITOL 17  
03/18/05 (H) Moved CSHB 150(L&C) Out of Committee  
03/18/05 (H) MINUTE(L&C)  
03/22/05 (H) L&C RPT CS(L&C) 2DP 1NR 2AM  
03/22/05 (H) DP: LYNN, ANDERSON;  
03/22/05 (H) NR: CRAWFORD;  
03/22/05 (H) AM: ROKEBERG, KOTT  
03/30/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 210

SHORT TITLE: BLOODBORNE PATHOGEN TESTING

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

03/07/05 (H) READ THE FIRST TIME - REFERRALS  
03/07/05 (H) JUD, FIN  
03/30/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SARA NIELSEN, Staff  
to Representative Ralph Samuels  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 54 on behalf of Representative Samuels, one of the bill's prime sponsors.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 54; responded to questions during discussion of HB 210.

LINDA WILSON, Deputy Director  
Central Office  
Public Defender Agency (PDA)  
Department of Administration (DOA)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 54, responded to questions and expressed concerns.

TAMARA de LUCIA, Associate Victims' Rights Advocate  
Office of Victims' Rights (OVR)  
Alaska State Legislature  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 54 and responded to questions.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 54.

JON BITTNER, Staff  
to Representative Tom Anderson  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 150, provided comments on behalf of the sponsor, Representative Anderson.

SHALON SZYMANSKI, Staff  
to Representative Lesil McGuire  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 210 on behalf of the sponsor, Representative McGuire.

ANTHONY NEWMAN  
Social Services Program Officer  
Division of Juvenile Justice (DJJ)  
Department of Health and Social Services (DHSS)  
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 210 and suggested a change.

MIKE COUTURIER, Vice President

Anchorage Police Department Employees Association (APDEA)  
Anchorage, Alaska  
POSITION STATEMENT: Provided comments during discussion of HB 210 and responded to a question.

WILL AITCHISON  
Anchorage Police Department Employees Association (APDEA)  
Anchorage, Alaska  
POSITION STATEMENT: Responded to a question during discussion of HB 210.

#### **ACTION NARRATIVE**

**REPRESENTATIVE TOM ANDERSON** [acting as chair in the absence of Chair Lesil McGuire] called the House Judiciary Standing Committee meeting to order at [1:24:21 PM](#). Representatives Anderson, Kott, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representative McGuire arrived as the meeting was in progress.

#### HB 54 - BAIL REVIEW

REPRESENTATIVE ANDERSON announced that the first order of business would be HOUSE BILL NO. 54, "An Act relating to bail review."

[1:24:52 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 54, Version 24-LS0271\Y, Luckhaupt, 3/21/05, as the work draft. There being no objection, Version Y was before the committee.

[1:25:11 PM](#)

SARA NIELSEN, Staff to Representative Ralph Samuels, Alaska State Legislature, presented HB 54 on behalf of Representative Samuels, one of the bill's prime sponsors. She pointed out that HB 54, Version Y, has two parts, and that the first part deals with bail review hearings. She explained:

Right now a defendant may be granted a bail hearing every 24 hours without limitation. ... A lot of the defendants take advantage of that 24-hour hearing period and they use it to get out of jail, to go to court, and the [District Attorney] has to drop what they're doing. And the victim has a right to be at

the hearing, so they drop what they're doing, and ... it brings forth many logistical problems. So to help limit the abuse ... of that, HB 54 proposes to do three things. The first is that the accused must submit in writing that there exists new information for the court's consideration that wasn't considered at a trial bail hearing. The second is that the [district attorney] is given 48 hours notice in which to notify the victim of the hearing. And lastly, there will be a 48-hour period between calendared bail hearings, so we're just changing it from 24 to 48 [hours].

MS. NIELSEN continued:

The second part of the bill, which is the new language in the CS, has been added [so] that a victim may be introduced to a jury during an opening statement at a trial or during the jury selection process. Right now the defendant is right there throughout the entire process, and the jury is able to see the defendant. And just to balance it, we thought it was a good idea for the prosecution to be allowed to introduce the victim.

[1:27:17 PM](#)

REPRESENTATIVE KOTT asked if bail hearings are heard before the same judge [that presided over the original trial], whether packets of information are presented in advance to the judge that's making the determination, and whether he/she has to consider that information.

[1:29:23 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), opined that HB 54 will bring order to what are sometimes disorderly requests for bail hearings. She noted that there have been problems particularly in Anchorage with what she called "serial" bail hearings. In response to Representative Kott, she replied that bail hearings are heard by whoever is available, and that a file with all pertinent information follows the case.

REPRESENTATIVE KOTT, noting that the current standard allows a person to request a bail hearing every day, asked what would be

the substantial savings in moving that to the 48-hour arrangement, since one could still bring the issue up every two days.

MS. CARPENETI answered that the bill allows for at least twice as long as is currently provided for, plus requires that one have additional information to provide to the judicial officer.

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REPRESENTATIVE KOTT offered a hypothetical example wherein a person can't make bail initially but can within a few hours; he asked if this person would then have to wait in jail for the entire 48 hours before having the opportunity to pay bail and leave the premises.

MS. CARPENETI responded that she didn't believe that would be correct. She said, "If the judge sets a \$5,000 cash bail and you don't have it at 'hour one' but you have it at 'hour five,' ... you can be released."

REPRESENTATIVE GRUENBERG relayed his concern that it is not always possible to get a hold of the prosecuting attorney for a bail review hearing, particularly in rural areas. He suggested amending Version Y to allow the court to waive the proposed requirements. He asked Ms. Carpeneti if she saw any problems with such an amendment.

MS. CARPENETI asked that she be allowed to discuss this with the DOL's prosecutors, but she worries that such an amendment would require the court to hear the request and then have another hearing within 24 hours regarding whether there's sufficient cause to have a hearing.

REPRESENTATIVE GRUENBERG remarked that that is not his intent.

[1:35:48 PM](#)

REPRESENTATIVE ANDERSON mentioned that the Office of Victims' Rights had originally requested the bill.

REPRESENTATIVE GARA asked where in the law it says that one can keep requesting more and more bail hearings without any new information or any cause.

MS. CARPENETI replied that the law does not say this specifically, but such has been the practice.

1:37:26 PM

REPRESENTATIVE GARA surmised, then, that HB 54 would allow one to get a bail review after a review of the first hearing.

MS. CARPENETI clarified that an individual is arraigned within 24 hours of being arrested and bail is set at that time. The individual then has the right to a hearing 48 hours from the time of arraignment. She said, "This bill addresses hearings after that first arraignment and the 48-hour hearing after that." In response to a question, she replied that HB 54 would add a new subsection (j) to AS 12.30.020 that would address bail hearings after the hearing outlined in AS 12.30.120(f).

REPRESENTATIVE GARA asked whether other states or federal trials allow the victim to be introduced during the opening statement.

MS. CARPENETI said she did not know the answer, but offered her understanding that most judges in Alaska do allow prosecutors to introduce the [victim] but not in all situations, and this has been the impetus for the bill. She said:

I think the bill originally said, "during the opening statement," and then it was revised to allow introduction during jury selection for a couple of reasons. If the victims are sitting in the audience and there're all these jurors being voir dired, they're kind of wondering who these people are. The defendant is there; they know who he or she is, but they don't know these other people who are potential jurors. Plus the fact that the jurors may actually know the victims and may not recognize the name but recognize the face, and it's important so they can answer accurately whether or not they know any of the parties in the case. ...

REPRESENTATIVE GARA wanted to know why the rule is as it is currently, whether there is some sort of "fairness at trial" concern that judges have. He commented, "I don't want to just quickly change a court rule without thinking it through."

MS. CARPENETI offered her belief that there is nothing that addresses this specifically. She pointed out that the practice has been to allow introduction of victims, but there have been a few recent cases where this has not been allowed.

REPRESENTATIVE GARA asked why.

MS. CARPENETI replied that she did not know.

[1:41:14 PM](#)

REPRESENTATIVE KOTT relayed that he'd sat through a [hearing] wherein the defendant had a \$5,000 bail that he couldn't pay. The defendant asked if he could be sent to a halfway house in lieu of paying bail. Representative Kott asked if this case would fall within the scope of this bill.

MS. CARPENETI said she'd never heard of a person being given the choice of staying at a halfway house in lieu of paying bail.

REPRESENTATIVE GARA asked whether a person has a right to get a new bail hearing every time he/she asks for one, or just the right to ask for one.

MS. CARPENETI offered her understanding that the judge would have to hold the hearing.

[1:44:00 PM](#)

REPRESENTATIVE GARA asked what would happen if there is no new information to change the judge's mind, but the defendant has a "new conditions" request.

MS. CARPENETI replied that there are types of new information that would entitle a person to a new bail hearing, such as that someone is willing to post a portion of the bond or be a third party custodian. She pointed out, however, that "if you had the same person suggested as the third party custodian that the court had rejected at the prior hearing, suggesting the same one again would not be new information, but if you had somebody else who you could say is willing to be a custodian, ... I think that is new information."

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REPRESENTATIVE GRUENBERG asked whether the bill will allow a bail hearing in situations wherein the defense lawyer finds something illegal in the condition of bail.

MS. CARPENETI said that it would.

REPRESENTATIVE GRUENBERG offered his understanding that a direct court rule amendment will require a two-thirds vote to become effective, while an indirect rule does not require such a vote.

MS. CARPENETI responded that her understanding is that the indirect rule also requires a two-thirds vote, and noted that the title of the bill says that it would change court rules.

REPRESENTATIVE GRUENBERG opined that the committee should, as a matter of policy, also put that in the bill.

[1:49:12 PM](#)

LINDA WILSON, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), mentioned that she'd been able to speak with the PDA attorney who handles all superior court arraignments, but not with the attorney who handles district court arraignments. She went on to say:

[The Anchorage] superior court hears bail hearings for cases where the defendant has been indicted already, so if it's pre-indictment, the bail hearings are occurring in district court - post-indictment they're heard in the superior court. The superior court also hears bail hearings on petitions to revoke probation, and the bulk of the bail hearings the superior court hears has to do with probation revocation and bail for those revocations. So in the superior court, it's all in front of the same judge routinely, ... and the court generally schedules only five or six hearings a day.

So it's a limited number of hearings that the judge allows to come in before the court on a regular basis. So you don't have that situation where you have a defendant abusing the system and coming in every day for repeated bail hearings, arguing the same thing over and over again. Quite frankly, that's not happening. So I'm not sure if this is something that they're saying is occurring in the district court; ... I haven't spoken with them, but I find ... that that would be quite remarkable if that were happening.

MS. WILSON continued:

What we normally do is what we call calendaring for a date. Generally speaking, we have to wait a week to

get a bail hearing scheduled in front of the judge. So again, it's not happening the next day. We generally give the [district attorneys] 24-hour advance notice [of] ... what our request is and give an explanation. ... If we're proposing a third party, we give them the third party information so they can review it. ...

And then we e-mail the probation officer [PO] and let them know about it because the superior court has wanted to get the PO involved as well. ... On very rare occasions could you get bail hearings for something less than the five days away or the week away ... and those are usually for pretty extenuating circumstances, and you usually have to go to the judge to request that expedited bail hearing. ... So that's what I'm finding out about superior court arrangements, which indicate to me that it's not a situation where there's a lot of abuse or that there is a problem that exists for the superior court.

MS. WILSON said that judges normally do allow the victim to be introduced to the jury, but pointed out that Section 3 of Version Y says that the term "victim" has the meaning given in AS 12.55.185, which is a broad definition of the word and includes members of the victim's family and "any interested party." She said that she would like to hear more information about why this was included in the bill.

[1:56:22 PM](#)

TAMARA de LUCIA, Associate Victims' Rights Advocate, Office of Victims' Rights (OVR), Alaska State Legislature, said:

The provisions contained in HB 54 are important to protect the needs and rights of victims in several ways. ... The bail provision [serves] to curb the current defense practice of setting bail hearings in the morning for hearings that same afternoon. Generally I would tell you this is a district court problem. I'm not sure if it's necessarily particularized to Anchorage, but I would imagine that it is. ... In addition, this is not a situation where we have encountered the [PDA] as the culprit. This is a tactic very often used by private attorneys and by the "defense contractor" for the Municipality of Anchorage. So this is a district court misdemeanor

problem; it affects a lot of misdemeanor cases in the ... city, especially in the domestic violence context because most of those cases do go to "misdemeanor land."

MS. de LUCIA continued:

The way the current practice is at this point, the defense attorneys fax in a request before 10 ... in the morning for a bail hearing set the same day. And what they do is they fax that to the calendaring division - the request does not go before a judge, it goes to "calendaring," ... [which] automatically calendars that hearing. The prosecutors also get the printout of the court calendar ... at 11 a.m. ... and they have to scramble to notify the victim, to get the file to prepare the prosecutor for the hearing, and this is all done mindful of the fact that there's a noon to 1 p.m. lunch hour. They have about an hour or forty-five minutes to get that together, which can be very difficult for victims. It puts a burden on the court system because what the effect that you have of scheduling a hearing with such short notice is that more than half the time the victim's aren't notified or the prosecutor's not prepared, and so the prosecutor comes to court saying, "I never got my victim on line," and the court has to re-calendar it for the next day, affectively giving us 48 hours anyway.

MS. de LUCIA continued:

So that does put a strain on the calendaring division because judges are getting, especially in district court, ... a bail hearing calendar that has 30 cases set. And they very often go way through the afternoon, a lot longer than the time they have set aside for those hearings, in order to see who's there, who's not, and who's ready. The court must allow victim input at bail hearings. Most victims do choose to exercise that right and ... not only is ... [that] right ... constitutionally protected, but the court is under statutory obligation to consider [the] risk to the victim. So it's very important to have victim input at these hearings.

MS. de LUCIA explained that the 48-hour issue wouldn't affect the first bail hearing. She presented an example wherein a defendant is held on a \$5,000 cash corporate bail but can't make bail that first day. The next day the defendant can come forward with another application requesting to be sent to the halfway house or asking for approval of a third party. She pointed out that the DOC halfway houses do act as a bail hold for defendants. She also noted that the prosecution has the right to run the criminal history of the third party, to check with the victim about suitability of that third party, and to interview the third party to find out if the person is suitable. Occasionally there isn't enough time for this background work, and the third party is found to be unsuitable, which, she commented, "just puts another kink in the gears that make justice swiftly turn."

2:01:02 PM

MS. de LUCIA commented, "I don't think [HB 54] affects the defendant's right to ask for bail hearings; it just says you can't use this system to clog and abuse the process." She reiterated that in district court, the judges don't set their own schedules; this task is completed by calendaring personnel. She noted that by having a 48-hour waiting period, the district attorney would have enough time to produce a file and notify the victim. Regarding HB 54, she said, "These provisions balance the rights of the accused, they balance the rights of crime victims, and they accommodate for the schedules of ... the district attorney's office, the prosecutor's office, and the court system."

MS. de LUCIA then stated, "Allowing the victim to choose whether to be introduced to the jury is important because it recognizes the victim's critical role in this process." She clarified that the definition of victim in the bill is predicated on the victim being deceased, so if the victim is deceased, the next of kin would "step into the victim's shoes." She continued:

Very often victims feel totally out of control and wholly secondary to the court proceeding and especially secondary to the rights of the defendant. Without the opportunity to be introduced to the jury, the jurors may get the sense that the victim is peripheral to the process, and this provision gives some sense of control and importance to the crime victim. ... We already allow the defendant to be

humanized, [and] our courts have ruled that those efforts do not prejudice the fairness of the trial.

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MS. de LUCIA concluded:

[House Bill 54] is designed to strike the balance between rights afforded the defendants throughout the criminal process ... [and] those constitutionally protected rights of crime victims. It's designed to humanize the process for victims, take into account the importance of victim involvement and participation throughout the criminal process, and I would urge passage, as written, of this bill.

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to a question, noted that he'd received a comment from a rural magistrate saying that even if there is a stipulation, there may not be a district attorney in the community, or there may be only one district attorney and he/she is tied up in a different case. He said that in those situations, if there is some avenue for the court, on its own, to waive the provision, it would facilitate cases in rural communities where it just isn't possible to gather everybody within the 48-hour time period.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti if she was able to come up with any kind of language that might solve the problem; he noted that it is definitely not his intent to have yet another hearing.

[2:08:57 PM](#)

MS. CARPENETI commented that she hated to be the one holding up the bill, but she would really like to have more time to talk with other people about [that issue]. She, too, offered her understanding that the issue at hand is a district court problem, not a superior court problem.

REPRESENTATIVE GRUENBERG said that he had no problem with the bill's definition of "victim" and "defendant".

[2:11:30 PM](#)

REPRESENTATIVE ANDERSON closed public testimony on HB 54.

REPRESENTATIVE KOTT asked whether, if the defendant cannot post bail but then something occurs in the interim which enables the defendant to post bail, the victim has a right to attend the second hearing, or even whether there is a second hearing. He said he can envision a situation in which a defendant can post bail without the victim's knowledge, which could then pose a risk to the victim.

MS. de LUCIA replied that the victim has the right to be present at every proceeding where the accused's release is considered, including all subsequent bail hearings. However if it is simply the case that bail money wasn't posted the first day but was posted the second day, that defendant will just be released, and then the onus is on the Department of Corrections (DOC) to inform the victim that the accused was released.

MS. WILSON added that there isn't a bail hearing every time a person is released from jail; if the defendant is able to come up with whatever the conditions of bail are, then he/she is released from the facility without a separate bail hearing. She noted that halfway houses are often used in Anchorage as part of a bail release plan. She again assured the committee that the PDA doesn't abuse the bail hearing process.

[2:15:37 PM](#)

REPRESENTATIVE GARA said he understands the reason for what the bill proposes in district court, but is a little concerned that there might be some exceptional circumstance when the bail order releases a defendant to a treatment center that is full; the defendant would then have to wait another 48 hours to get a new bail hearing. He asked whether the bill could contain a provision that would retain the current rules on expedited review under exceptional circumstances.

MS. WILSON opined that the bill should contain a safety valve for exceptional circumstances. She offered her belief that 24 hours seems to be adequate notice. She noted, "In the bill, it reads that the court cannot schedule ... a bail hearing without the 48 hour notice." She pointed out that sometimes a judge will continue a bail hearing the next day so that more information can be presented; she asked how that situation would be affected by HB 54, and recommended that language be added to the bill to clarify that the 48-hour period would begin after there was a decision regarding bail.

MS. de LUCIA commented:

Very often [in cases of exceptional circumstance] I would argue that it would be very easy to get a stipulation to say, "We're just going to amend this or transfer this language," and it wouldn't necessarily require 48 hours, or you could get a stipulation from your prosecutor saying, "We waive this provision and we're going in today ... just to change this administrative problem." And that could solve the issue summarily. ...

MS. de LUCIA commented on the situation where cases are reset for the next day, saying that the next bail hearing has to be 48 hours after the initial request.

[2:20:10 PM](#)

REPRESENTATIVE GARA said he didn't think he is comfortable giving prosecutors the discretion to determine whether there is good cause for an expedited review, because that is the role of the judge.

MS. de LUCIA agreed. She opined that such would be ideal if all the cases were heard before a judge, but that is not the case; rather, these requests are dealt with by administrative calendaring officials.

[2:21:17 PM](#)

REPRESENTATIVE GRUENBERG said it sounds like some attorneys are abusing the bail process. He noted that in civil court proceedings there are rules such as Rule 11 and Rule 95 of the Alaska Rules of Civil procedure which could be used to address the perceived abuse. He asked whether there are any criminal rules similar to these civil rules that could address the problem.

MR. WOOLIVER replied that he didn't know.

REPRESENTATIVE GRUENBERG suggested that the bill be held over to address members' concerns.

REPRESENTATIVE ANDERSON opined that members' concerns could be characterized as differences in viewpoint.

REPRESENTATIVE GRUENBERG replied that he supports the bill but is concerned about an amendment that would give the courts some additional discretion. However, he said it seems to him that if attorneys are violating the spirit of the rules by filing frivolous motions, then perhaps the bill should include rules for criminal proceedings equivalent to Rules 11 and 95. He commented: "If you're filing ... stuff frivolously, the court can really sanction you. It's the modern equivalent to a contempt of court. They don't use contempts of court now against attorneys; they use Rule 95."

REPRESENTATIVE ANDERSON offered his belief that it is seldom used.

REPRESENTATIVE GRUENBERG concurred.

REPRESENTATIVE ANDERSON speculated that Representative Samuels would not want such an amendment in HB 54.

MS. NIELSEN relayed that the goal of the bill is to limit abuse, and posited that the bill in its current form would be sufficient.

REPRESENTATIVE ANDERSON said that he would like to move the bill today.

[2:27:12 PM](#)

REPRESENTATIVE GRUENBERG opined that the court should be given discretion.

MS. NIELSEN suggested that she and the DOL could work outside of the committee to draft another CS.

REPRESENTATIVE ANDERSON said that HB 54 would be held over.

#### HB 150 - LICENSING RADIOLOGIC TECHNICIANS

REPRESENTATIVE ANDERSON announced that the next order of business would be HOUSE BILL NO. 150, "An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date." [Before the committee was CSHB 150(L&C).]

JON BITTNER, Staff to Representative Tom Anderson, Alaska State Legislature, sponsor, said on behalf of Representative Anderson

that several groups have come forward with concerns about the bill, and asked that HB 150 be heard at another time after the concerns have been addressed.

REPRESENTATIVE ANDERSON said HB 150 would be held over and public testimony would be kept open.

HB 210 - BLOODBORNE PATHOGEN TESTING

[2:30:16 PM](#)

REPRESENTATIVE ANDERSON announced that the final order of business would be HOUSE BILL NO. 210, "An Act relating to blood testing of certain persons alleged to have committed certain offenses directed toward peace officers or emergency workers."

SHALON SZYMANSKI, Staff to Representative Lesil McGuire, Alaska State Legislature, sponsor, said on behalf of Representative McGuire that HB 210 proposes to expand the existing policies and procedures for testing for bloodborne pathogens to include peace officers, fire fighters, emergency medical technicians, and mobile paramedics. She explained:

If an individual is exposed to another individual's blood or bodily fluid that is contaminated with bloodborne pathogens, they're at risk of being exposed to a variety of viruses, ranging from hepatitis to [human immunodeficiency virus (HIV)]. If a public safety officer feels that he or she has been exposed to an offender or prisoner's blood or bodily fluids that could be contaminated with bloodborne pathogens, they could request from their employing agency that they be tested for bloodborne pathogens. A physician would then be appointed to determine whether the exposure of the blood or bodily fluid was significant enough for further testing. If further testing is necessary, the physician will then take the request for a blood sample and request it from the prisoner or the offender. And you can find a description of that in the first section of the bill.

MS. SZYMANSKI continued:

Throughout this process of testing, the person being tested is protected; their identity is protected. And the test results will then also be passed on to the person being tested. The bill also provides

information on the process in which the tests can be ordered if the person refuses to give a sample of blood, and it could therefore then be ordered by the court. And that would be found in Section 3 of the bill, on page 4. This bill does not enact any new policies or procedures for bloodborne pathogen testing; it simply adds public safety officers. ...

[2:33:29 PM](#)

ANTHONY NEWMAN, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), commented that the DJJ appreciates the bill, but asked that the definition of a public safety officer be expanded to include juvenile probation officers and juvenile justice officers. The current definitions for public safety officer include probation officers and corrections facilities staff, but those are Department of Corrections employees, whereas juvenile probation officers and juvenile justice officers fall under the purview of the DHSS.

REPRESENTATIVE GRUENBERG asked Mr. Newman to write language for his suggested change.

[Representative Anderson turned the gavel over to Chair McGuire.]

[2:35:29 PM](#)

MIKE COUTURIER, Vice President, Anchorage Police Department Employees Association (APDEA), testified in support of HB 210. He stated that HB 210 will help provide appropriate protection for police officers who are accidentally or intentionally exposed to infectious pathogens via another's bodily fluids. He pointed out that HB 210 follows the example set in other states, and it will provide safety and peace of mind for police officers and their families while providing ample privacy protections for offenders. He relayed his personal experience wherein he was stuck with a used needle. He'd asked for a search warrant to get a sample of the person's blood, and the magistrate did finally authorize it, but the test still had to be taken by force and the risk management personnel would not provide him with the test results. He remarked that the bill will go a long way towards solving this issue.

REPRESENTATIVE GRUENBERG characterized HB 210 as a fine bill. He asked whether federal officials ought to be included in the list of those covered by the bill.

WILL AITCHISON, Anchorage Police Department Employees Association (APDEA), said he is not aware of any national protection existing for federal law enforcement officers in Alaska, though other states do have such protection.

[2:40:29 PM](#)

REPRESENTATIVE GRUENBERG said that he would like the committee to consider including federal officers in the bill.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 210.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, as follows [original text provided]:

Page 2, line 6, after "paramedic"  
Insert "juvenile probation officer or juvenile  
detention or treatment facility staff"

REPRESENTATIVE GRUENBERG then made a motion to amend Conceptual Amendment 1 such that it would say:

Page 7, [paragraph] 8, include "juvenile probation  
officer or juvenile detention or treatment facility  
staff".

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CHAIR McGUIRE clarified:

Conceptual Amendment [1, as amended,] will allow latitude to the drafters to get it right, but we understand the basic ideas in the definitional section that applies then throughout the bill. Page 7, lines 4-7: that section there that will add "juvenile probation officer or juvenile detention or treatment facility staff".

CHAIR McGUIRE noted that there were no objections to Conceptual Amendment 1, as amended. Therefore, Conceptual Amendment 1, as amended, was adopted.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, which would define the term "public safety officer" to include federal and military public safety officers.

REPRESENTATIVE ANDERSON turned attention to page 6, line 16, which would require assistance from departments and municipalities, and asked if federal departments would have to be added.

REPRESENTATIVE GRUENBERG replied that such is not needed.

REPRESENTATIVE ANDERSON opined that Conceptual Amendment 2 is too broad.

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REPRESENTATIVE GRUENBERG said that it is not his intention to require the federal government to comply with the new statutes. He reiterated that he would like to protect and assist the federal officials who might be at risk at contracting bloodborne pathogens while on the job.

REPRESENTATIVE ANDERSON cautioned that Conceptual Amendment 2 is too expansive. He noted that page 1, line 10, and page 2, line 9, say that the employing agency shall follow the testing procedure. He said, "We don't have purview over the federal government."

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REPRESENTATIVE GRUENBERG said that he did not intend to make any changes to the term "employing agency."

CHAIR McGUIRE remarked that she understands Representative Gruenberg's point, and likened it to when a federal employee or military police officer is acting as an agent for the state, carrying forward a duty that would normally be done by a state employee.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), stated that the bill requires employing agencies not to divulge what they have learned about individual prisoners and offenders. She said, "If we add federal agents, we're not putting a concomitant responsibility on those employers."

REPRESENTATIVE GRUENBERG withdrew Conceptual Amendment 2.

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REPRESENTATIVE ANDERSON moved to report HB 210, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 210(JUD) was reported from the House Judiciary Standing Committee.

**ADJOURNMENT**

[2:49:13 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:49 p.m.