ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
January 18, 2006
1:53 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 326
"An Act relating to harassment."

- MOVED CSHB 326(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 323
"An Act relating to material witnesses; amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 321
"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 132(efd fld)
"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 326
SHORT TITLE: POSTING LEWD MATERIAL AS HARASSMENT
SPONSOR(S): REPRESENTATIVE(S) MEYER, LYNN

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
01/18/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 323
SHORT TITLE: DETENTION OF MATERIAL WITNESSES
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
01/18/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 326 as one of the prime sponsors; presented HB 323 as the sponsor.

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
House Finance Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 326 on behalf of Representative Meyer, one of the bill's prime sponsors; assisted with the presentation of HB 323 on behalf of the sponsor, Representative Meyer.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 326, provided comments and responded to questions.

WALT MONEGAN, Chief
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 323.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:53:16 PM. Representatives McGuire, Coghill, Anderson, and Gara were present at the call to order. Representatives Kott and Gruenberg arrived as the meeting was in progress. Representative Wilson was excused.

HB 326 - POSTING LEWD MATERIAL AS HARASSMENT

1:54:08 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 326, "An Act relating to harassment."

1:54:27 PM

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, one of the prime sponsors of HB 326, relayed that the bill proposes to include the posting, publishing, and distribution of lewd material in the definition of harassment. He said that with the advent of technology, camera phones and small, digital cameras are now raising serious concerns in the work place and for the public; a person can easily snap a picture with his/her camera phone and share it with others.

1:55:06 PM

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, one of the prime sponsors of HB 326, relayed that he'd just used his [camera phone] to send pictures of the House Judiciary Standing Committee members to the committee aide's e-mail address.

REPRESENTATIVE MEYER explained that the posting, publishing, or distributing of such pictures is not currently covered under Alaska statute, and that HB 326 is intended to send a strong message that this type of behavior is not acceptable. He relayed that a constituent brought forth the concept of the

bill, based on her personal experience wherein her boyfriend at the time took pictures of her, but when they broke up, sent those pictures on to other people in order to harass her. Current law didn't provide this constituent with any remedy.

CHAIR McGUIRE noted that the bill contains mental intent language.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 326.

1:56:54 PM

REPRESENTATIVE COGHILL characterized the concept of the bill as an excellent idea, but mentioned that he is not familiar with the process of convicting a person for the crime of harassment.

REPRESENTATIVE MEYER explained that the crime of harassment constitutes a class B misdemeanor, and said he is not sure how often the police have used the current statute. He characterized the bill as a tool that police could use to assist victims of the type of behavior outlined in the bill.

REPRESENTATIVE COGHILL questioned whether AS 11.61.120, because violation of it is only a class B misdemeanor, is the correct statute with which to address the behavior stipulated in the proposed new language.

REPRESENTATIVE MEYER acknowledged that there are stiffer penalties available depending on what is done with the photographs. If the intent is only to harass a person, then AS 11.61.120 is the correct statute in which to include the new language.

CHAIR McGUIRE acknowledged that point.

1:58:46 PM

MR. PAWLOWSKI relayed that AS 11.61.123 speaks to the crime of indecent viewing or photography, and surmised that that is the crime to which Representative Coghill is referring, particularly given that when the victim is under the age of 16, the crime becomes a class C felony.

REPRESENTATIVE COGHILL concurred, saying his question was, "When does a photograph rise to that level", and that his concern was that the bill would be lowering the bar, though he now realizes

that the bill proposes a crime additional to what is listed in AS 11.61.123.

2:00:13 PM

REPRESENTATIVE GARA offered his understanding that the intent of the bill is to preclude someone from intentionally distributing sexually explicit pictures of somebody else, without that person's consent, in order to embarrass him/her. He said he is concerned, however, that the language in the bill is not narrow enough. He suggested that if a kid receives a photograph of the type listed in the proposed language and then sends that photograph on to others, he/she would be guilty of a crime under the bill; currently such behavior would merely be considered a prank.

MR. PAWLOWSKI explained that in that situation, the behavior of the original sender would already be a crime under AS 11.61.123. The "sidebar" on HB 326, he opined, is the intent to harass or annoy. The initial taking of the picture might be a consensual act, and since indecent photographing of a minor is already covered under another statute, the bill covers situations in which the stipulated behavior - publishing, posting, or distributing the pictures - is used to harass or annoy another person.

REPRESENTATIVE GARA asked why it would be a good idea to make it a crime to simply forward pictures on to someone else.

REPRESENTATIVE MEYER said that it depends on what the intent of the person forwarding the photographs is. If the intent is to harass a person, then the behavior would be covered by the bill.

2:03:11 PM

MR. PAWLOWSKI said that if he is forwarding a photograph to someone else, he might not know the person who is in the photograph and therefore might not be intending to harass that person, but the person who initially distributed the photograph is the one intending to start the prank.

REPRESENTATIVE GARA pointed out, however, that regardless of whether one initially takes the photograph or merely forwards it after receiving it, one could reasonably be expected to know that forwarding the photograph will annoy the person in the photograph even if one doesn't know that person. The bill would make the person forwarding the photograph a criminal.

MR. PAWLOWSKI suggested that perhaps Department of Law personnel could better respond to that issue. He then questioned whether, in terms of how a court would interpret an action, there is a difference between "knowing" and "intent".

REPRESENTATIVE GARA said he didn't know whether the standard is "knowing" or "intent."

CHAIR McGUIRE noted that initially she'd had a concern that the bill, as currently written, is both too broad and too vague, but then she'd observed that the bill stipulates in subsection (a) that in order to qualify for the crime of harassment, the behavior must be done with the intent to harass or annoy another person, though subsequent paragraphs (1) through (5) have varying degrees of specificity.

2:05:39 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said she does see some possible First Amendment issues with HB 326. For example, the prosecutor would have to prove that a person forwarded photographs with the intent to annoy or harass another person, and so if a person does not know the subject in the photograph, then it would be an issue of fact whether the person did it anyway knowing that the behavior would annoy or harass the subject. Therefore, the committee might want to consider defining "publish" or "post", or otherwise narrowing the language. The issue as the DOL sees it is whether the phrase, "intent to harass or annoy another person", answers the First Amendment issues, and whether the behavior of merely pressing the "forward" button is something that could be prosecuted. "Doesn't seem like it should be, but under [certain] circumstances you might be able to, ... [but] do you want that covered?" she asked.

2:07:05 PM

REPRESENTATIVE GRUENBERG opined that they should either narrow the title or look at the issues in terms of the statute as a whole. He referred to an Alaska Court of Appeals case, McKillop v. State, the holding of which he said they may wish to incorporate in to the bill. Doing something along those lines, he ventured, would make the [proposed] statute constitutional. When speaking of "with intent to harass or annoy", he posited, it is assumed that one does not have the other person's

permission, though that is not necessarily expressed in statute. He offered his belief that they should ensure that the proposed language stipulates that the behavior occurs without the subject's permission.

REPRESENTATIVE GRUENBERG, referring to the tort of intrusion, said it seems as though the bill should also punish the person who takes the picture, offering his belief that the bill does not yet do that, that instead the bill only criminalizes the distribution of the photograph. He suggested that they don't want people to commit either behavior even once. He then summarized that his issues are: looking at the whole statute in light of the title, making sure that the whole statute it constitutional; considering the question of whether they want to criminalize the taking of the photograph; and ensuring that the language stipulates that the behavior is done without the subject's consent. He suggested that they use the bill as an opportunity to ensure that the [current] statute is as legal and as strong as possible.

2:10:12 PM

REPRESENTATIVE COGHILL posited that the language in the first part of the bill - "with intent to harass" - already stipulates that the behavior is nonconsensual.

REPRESENTATIVE GRUENBERG acknowledged that point, but said he just wants to be sure.

CHAIR McGUIRE noted, though, that a photograph could be taken consensually at the outset but then what is done with that photograph later is not consensual; therefore, she doesn't think that it matters so much what the subject of the photo thought at the time the photograph was taken. Instead it is the intention of the person taking the photograph to use that photograph to harass the subject that matters. She suggested that the question of whether or not the subject gave his/her permission to be photographed is not relevant.

REPRESENTATIVE GRUENBERG opined that one should not be able to either take a photograph or distribute a photograph without the subject's permission, that [the law] should protect people's privacy.

2:12:23 PM

MS. CARPENETI offered her understanding that AS 11.61.123 makes [photographing a person without his/her permission] against the law already.

REPRESENTATIVE GARA said he is concerned about criminalizing behavior that could be considered simply a high school prank. He said he would be amenable to limiting the bill such that it would be a crime if the main purpose for distributing a photograph is to harass or annoy someone. This could be accomplished, he suggested, by inserting - after "act" on page 2, line 2 - the words, ", with the main purpose being to harass or annoy the other person".

REPRESENTATIVE GRUENBERG opined, however, that they wouldn't want to criminalize someone who, for example, takes a picture of a nursing mother and, with permission, distributes that picture to [the mother's] friends and family members.

2:15:45 PM

REPRESENTATIVE ANDERSON mentioned that it could be difficult to secure a conviction [unless the proper language is used], and indicated he is amenable to Representative Gara's suggestion.

MR. PAWLOWSKI noted that in the McKillop case, the court referred to AS 11.61.120(a)(4) - which says in part, "makes an anonymous or obscene telephone call" - and said that when the caller's speech is devoid of any substantive information and the caller's sole intention is to annoy or harass the recipient, [the behavior qualifies as a violation of AS 11.61.120(a)(4)]. He indicated that the phrase "sole intention" fits in well with Representative Gara's suggested change, which would meet the [court's] standard. He relayed that the use of the words in [proposed paragraph (6)] has already been upheld by the courts as being a narrow definition of what is obscene and lewd. Mr. Pawlowski said Representative Gara's suggested language change is fine.

REPRESENTATIVE COGHILL noted that paragraphs (1)-(5) specifies that one is doing something directly to another person, whereas proposed paragraph (6) specifies that one is doing something to another person's image. Because of this difference, he opined, the concept of "unwanted" should be inserted somewhere in proposed paragraph (6) so that it will "mesh" with the other paragraphs. In response to comments and to clarify, he indicated that his thought is that the act of annoying someone involves one person doing something to another person that

he/she doesn't want to have done to him/her, and therefore he would like to find a word which will fit that concept and include it in paragraph (6).

REPRESENTATIVE GRUENBERG noted that perhaps the person receiving a photograph doesn't want to receive it; therefore, maybe it should be a crime to distribute a photograph with the intent to annoy either the subject of the photograph or the receiver.

CHAIR McGUIRE, referring to the First Amendment, and noting that she receives annoying items via e-mail all the time, indicated that she would have a concern with stipulating that it would be a crime if the behavior annoyed the receiver; instead, she would prefer to keep the language narrow and say that a crime occurs when one harasses the subject of the photograph. She also indicated that she would be amenable to Representative Gara's proposed language, and suggested that the committee could also consider the question of whether to clarify that it would be a crime if the photographs are published, posted, or distributed without the subject's consent.

2:22:20 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 1, to add on page 2, line 2, after "act", the words: ", with the sole purpose being to harass or annoy the other person". There being no objection, Amendment 1 was adopted.

2:23:16 PM

REPRESENTATIVE GRUENBERG offered his understanding that the McKillop case "dealt with" AS 11.61.120(a)(4), and suggested that identical language should be inserted in that paragraph.

REPRESENTATIVE GRUENBERG therefore made a motion to adopt Conceptual Amendment 2, subject to the committee's review of the McKillop case, to add the same language from Amendment 1 to page 1, line 13, [after the word "contact"].

MR. PAWLOWSKI asked whether changing the statute is appropriate given that the court has already interpreted the current statute via the McKillop case.

REPRESENTATIVE GRUENBERG opined that doing so is appropriate, and explained that the conceptual aspect of Conceptual Amendment 2 is that if the committee later determines that the language is unnecessary, it can be taken out. In response to

questions, he restated what Conceptual Amendment 2 would do, and paraphrased from the following portion of the McKillop case:

> Thus, when AS 11.61.120(a)(4) is read in conjunction with AS 11.81.900(a)(1), the statute is theoretically broad enough to punish political speech or other legitimate communication upon proof that one of the speaker's subsidiary motives was to annoy the listener. Because the scope of the statute is potentially so broad, we conclude that AS 11.61.120(a)(4) must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose - when the caller's speech is devoid of any substantive information and the caller's sole intention is to annoy or harass the recipient.

REPRESENTATIVE MEYER said he would be amenable to Conceptual Amendment 2.

REPRESENTATIVE GRUENBERG remarked that criminal laws should give fair notice to the public of what they do; one shouldn't have to research a case.

2:27:12 PM

CHAIR McGUIRE, in response to a question, clarified that Conceptual Amendment 2 would add the same language in Amendment 1 to page 1, line 13, after "contact", that language being: ", with the sole purpose being to harass or annoy the other person".

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 2. There being none, Conceptual Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG suggested that the same theory applies to paragraphs (2) and (3).

CHAIR McGUIRE said that initially she'd been thinking that perhaps the best thing to do would be to change subsection (a), but then she realized that doing so might render paragraph (1) unworkable.

REPRESENTATIVE GRUENBERG concurred, and suggested that they split up what is currently subsection (a) into subsections (a) and (b) and have the language currently being added to paragraphs (4) and (6) also apply to paragraphs (2) and (3).

CHAIR McGUIRE said she didn't know if the behavior listed in paragraphs (4) and (6) could be interpreted as being reasonable if there were another motive. With regard to paragraphs (2) and (3), she surmised that it may be the mere fact that one is calling over, and over, and over again at inconvenient hours or calling and leaving the phone off the hook so as to impair the victim's ability to place or receive calls, that this fact is more important in terms of harassment than the fact that one could argue that he/she had a legitimate purpose in placing the calls. Therefore, she indicated that she is disinclined to have the language being added to paragraphs (4) and (6) also apply to paragraphs (2) and (3).

REPRESENTATIVE GRUENBERG relayed, then, that he would not be offering an amendment to change paragraphs (2) and (3).

2:31:22 PM

REPRESENTATIVE GRUENBERG asked whether the title should be narrowed.

CHAIR McGUIRE noted that the sponsor has relayed to her that the drafter prefers the language currently in the title because there is a specific act relating to harassment; furthermore, there is only other one bill that could reasonably be expected to fit under the current title of HB 326, and that bill is sponsored by Representative Lynn, the other prime sponsor of HB 326.

MR. PAWLOWSKI, in response to a question, acknowledged that one option would be to change the title to read: "An act relating to the definition of harassment".

REPRESENTATIVE GRUENBERG indicated that he would be amenable to such a change.

2:32:47 PM

CHAIR McGUIRE explained that Amendment 3 would change the title to read: "An act relating to the definition of harassment". [Although no formal motion was made] Chair McGuire determined that there were no objections to Amendment 3. Therefore, Amendment 3 was adopted.

2:33:09 PM

REPRESENTATIVE GRUENBERG, in response to a question, made a motion to adopt Conceptual Amendment 4, to add to page 1, line 15 line, after, "(6)", the words: ", without the consent of the other person,".

REPRESENTATIVE KOTT offered his understanding, though, that adding such language would in effect be saying that a person must give his/her permission to be harassed, since subsection (a) says in part, "A person commits the crime of harassment".

MR. PAWLOWSKI acknowledged that point, and referred to Representative Gruenberg's prior suggestion to create a new subsection (b).

REPRESENTATIVE GRUENBERG relayed that he'd decided against offering such an amendment.

REPRESENTATIVE COGHILL again suggested that the correct word may be, "unwanted", if it pertains to the intent to harass or annoy.

REPRESENTATIVE GRUENBERG clarified that his goal with Conceptual Amendment 4 would be to address situations in which the subject either didn't want the photograph to be taken or didn't want the photograph to be distributed.

REPRESENTATIVE COGHILL pointed out, though, that the language currently says it's a crime if the behavior listed in paragraph (6) is done to harass or annoy. Therefore, he surmised, it's a given that a subject would not want the photographs published, posted, or distributed in order that he/she may be harassed or annoyed.

REPRESENTATIVE GRUENBERG, in response to a question, relayed that he wished to withdraw Amendment 4.

2:38:33 PM

REPRESENTATIVE COGHILL asked whether the committee wished to insert the word "unwanted" into [paragraph (6)].

REPRESENTATIVE GRUENBERG said no.

CHAIR McGUIRE posited that the concept of "unwanted" is already included in the definition of harassment.

2:38:44 PM

REPRESENTATIVE COGHILL moved to report HB 326, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 326(JUD) was reported from the House Judiciary Standing Committee.

HB 323 - DETENTION OF MATERIAL WITNESSES

2:39:22 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 323, "An Act relating to material witnesses; amending Rule 58.1, Alaska Rules of Civil Procedure, and Rule 204, Alaska Rules of Appellate Procedure; and providing for an effective date."

2:39:49 PM

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, explained that HB 323 allows the prosecutors and defense attorneys to apply to the Alaska Superior Court for a material witness order, establishes conditions and sets guidelines for handling a material witness, and gives powers to law enforcement officials to detain a material witness. He noted that Black's Law Dictionary [Sixth Edition] defines "material witness" in part as, "a witness whose testimony is crucial to either the defense or prosecution." He said that he introduced HB 323 because it is becoming apparent, particularly in Anchorage, that witnesses with crucial information are not coming forward or helping the police. Instead, people are resorting to taking matters into their own hands, thus endangering the lives of others.

REPRESENTATIVE MEYER said that the spate of gang-related activities has brought this issue to the forefront because the police do not currently have the authority to take someone "downtown" when he/she clearly has information that the police need. House Bill 323 attempts to balance individuals' rights with their obligations. The bill places conditions on the issuance of a material witness order, and places strict conditions on the detention of a material witness. For example, a material witness must be someone who is unlikely to respond to a subpoena, an arrest is only in order if there is probable cause that the person will not appear at the "material witness hearing" unless he/she is arrested, a material witness detained by the police without a warrant must be immediately brought before the nearest judge, and a material witness may not be held

in a correctional facility and must be provided with room and board similar to what is provided to a juror. In conclusion, he said he anticipates that the proposed statute will be used very infrequently and only in the most serious of crimes.

2:43:31 PM

REPRESENTATIVE GRUENBERG said he questions the accuracy of the bill's zero fiscal notes.

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, sponsor, in response to a question, made mention of a statute pertaining to the bail of a material witness; he later indicated that he would have to do further research in order to provide the committee with the correct statutory citation.

CHAIR McGUIRE asked whether there is a provision in the bill pertaining to the protection of material witnesses.

REPRESENTATIVE MEYER said no, but offered his belief that a material witness would be extremely important to law enforcement and thus would receive some form of protection.

CHAIR McGUIRE asked Representative Meyer whether he would object to the addition of a provision stipulating the protection of a material witness.

[Representative Meyer's response was inaudible.]

REPRESENTATIVE GRUENBERG asked Mr. Pawlowski to research what other states have drafted for their witness protection Acts, adding that he is concerned that [the bill] could be putting some people in danger.

2:47:08 PM

WALT MONEGAN, Chief, Anchorage Police Department (APD), Municipality of Anchorage (MOA), relayed his belief that HB 323 would be used infrequently and primarily only for the most serious of crimes. He offered an example of a victim who is not willing to testify, and suggested that HB 323 could be used to get information from that victim in order prosecute a case in a timely manner. He said that the only area of the bill that he has concern with pertains to how it would work in gang-related situations, because as currently drafted, even though a material witness in a gang-related shooting, for example, would be taken

before a judge or magistrate, that witness could not be compelled to testify.

MR. MONEGAN said that law enforcement officers want the ability to bring a witness into the police station for an hour or so and gain his/her cooperation. He noted that people will vent on the police officer if they are not allowed to feel safe, and so providing an officer with the ability to bring a witness into the police station for an hour or so would allow the witness some "decompression" time.

2:51:56 PM

REPRESENTATIVE GARA asked whether currently a witness can be subpoenaed for a pre trial deposition.

MR. MONEGAN relayed that if a witness is already hostile, he/she will not volunteer to talk about anything and will probably ignore a subpoena or "duck" the subpoena service altogether because he/she doesn't want to get involved in a case or with the police. He added, "By the other rules that dictate [to] the court how they operate, we're kind of stymied in our ability to find someone to get all the good information, on an occasional basis, and still meet all the time restraints ... that must be handled by the courts."

REPRESENTATIVE GARA said he is struggling with the concept of allowing law enforcement the ability to arrest someone if he/she is innocent, and the bill would allow for the temporary arrest of an innocent person simply because law enforcement thinks that he/she might have information.

MR. MONEGAN clarified that the goal would be to get a person out of an environment in which there is a strong code or tradition inhibiting him/her from talking to the police. In such an environment, victims attempt retaliation on their own, and although there is a public outcry against [gang-related violence], police are stymied because they are unable to obtain proof against the perpetrators of [gang-related] violence. He added:

> I'm certainly not willing to swap our civil liberties [or] to compromise them to a point where we become a police state, because no one wants that, especially us. What we're trying to find is a middle ground that'll allow people to "de-stress" or stop and reflect alone, privately, away from the group, away

from the crowd, away from the gang, so that we can actually get some information. ...

2:56:03 PM

CHAIR McGUIRE asked Mr. Monegan to comment on the issue of protection for those who are compelled to testify as material witnesses; for example, witnesses in domestic violence (DV) situations.

MR. MONEGAN relayed that he, himself, has taken a turn at guarding a witness in a hotel room in order to make sure that no harm befell that witness. The costs of protecting a witness in a crucial case, he indicated, are well worth getting a conviction.

CHAIR McGUIRE said she is concerned about long-term protection for material witnesses. She referred to Representative Gruenberg's request for information regarding what other states do with respect to material witness protection programs. "Anchorage is sadly becoming a place where some of these higher-level, higher-stakes crimes are taking place, and so I'm thinking a little bit longer term even than just that immediate ... time period [before and during the trial]," she added.

MR. MONEGAN said that certainly if the crime involves federal violations the APD can request [assistance] from the federal government. He used the example of a case wherein a young man was shot to death but none of the 50 people present were willing to testify as a material witness. Currently the police can't force someone to testify in such a case, and so [the APD's goal] is to give such individuals a chance to reflect on whether they would indeed be willing to testify as material witnesses.

3:00:36 PM

REPRESENTATIVE GARA said he would like to meet the APD's concerns without allowing the police to arrest a potential witness without a warrant. He therefore suggested deleting the provisions that currently allow this, and instead adding language which says that a person has a legal obligation, if a police officer believes that the person is a witness to a crime, to provide the officer with the person's name, address, and contact information. The police, then, wouldn't have to worry about "losing" the person, and it would still be up to the person whether he/she would be willing to testify as a material

witness. Such language would eliminate the problem of [intentionally] arresting an innocent person.

MR. MONEGAN said that in an ideal world, that would work; he predicted that what he will encounter, however, are individuals who make excuses for not providing the aforementioned information or who will simply give false information.

REPRESENTATIVE GARA suggested that the language could be written in such a way as to inhibit such occurrences.

3:03:34 PM

MR. MONEGAN explained that the involuntary detention that he is proposing would be similar to what is used in "non-custodial interviews," and pointed out that the best time to get information from a witness is close to the event.

REPRESENTATIVE GRUENBERG noted that the residents of his district keep a low profile and the last thing they want to do is get involved with [being a witness], because they have the fear that their involvement with the people against whom they testify would only be beginning. Society, if it requires that people get involved in being material witnesses, has a responsibility to make sure that those people are protected after they testify.

MR. MONEGAN said he won't disagree with that point, but reiterated that he is only asking for the opportunity to give a person time, away from the situation, to think about cooperating; in that time, the police can attempt to build a rapport with the person, gain his/her trust, and present him/her with options - for example, simply calling "Crime Stoppers" later on and providing information anonymously.

3:07:31 PM

REPRESENTATIVE GRUENBERG said that in order for the police to get the cooperation they want, ultimately it will take more than simply developing a rapport with the person in a quiet setting and asking him/her to provide information anonymously; instead, it will require that the state be able, on a long-term basis, to protect the person.

MR. MONEGAN said he wouldn't argue that point, and remarked that one of his challenges is to convey to individuals that the more they keep quiet about crimes in their neighborhood, the more

they are allowing the situation to continue, and that fear and apathy are allies of crime. He mentioned one situation in which the people from a church group took steps to find out, via a poll, how residents in the neighborhood felt about the crime that was occurring in it; this poll in and of itself had a chilling effect on the number of crimes being committed in that neighborhood. He indicated that the people must be brought to understand that collectively they can make a difference simply by standing together and indicating that crime will not be tolerated.

3:09:54 PM

CHAIR McGUIRE relayed that HB 323 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:11 p.m.