ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 26, 2006
1:09 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. 316
"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 206(FIN)
"An Act relating to contempt of court and to temporary detention and identification of persons."

- HEARD AND HELD

HOUSE BILL NO. 322
"An Act relating to infants who are safely surrendered by a parent shortly after birth."

- MOVED CSHB 322(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 502
"An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/28/06

PREVIOUS COMMITTEE ACTION

BILL: HB 316
SHORT TITLE: EXTEND BOARD OF GOVERNORS ABA
SPONSOR(S): REPRESENTATIVE(S) STOLTZE, GRUENBERG

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
04/26/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 206
SHORT TITLE: DETENTION /I.D. OF PERSONS;CONTEMPT OF CT
SPONSOR(S): SENATOR(S) BUNDE

01/09/06	(S)	PREFILE RELEASED 12/30/05
01/09/06	(S)	READ THE FIRST TIME - REFERRALS
01/09/06	(S)	JUD, FIN
02/16/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/16/06	(S)	Heard & Held
02/16/06	(S)	MINUTE(JUD)
02/27/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/27/06	(S)	Scheduled But Not Heard
03/08/06	(S)	JUD AT 8:30 AM BUTROVICH 205
03/08/06	(S)	Heard & Held
03/08/06	(S)	MINUTE(JUD)
03/15/06	(S)	JUD AT 8:30 AM BUTROVICH 205
03/15/06	(S)	Moved CSSB 206(JUD) Out of Committee
03/15/06	(S)	MINUTE(JUD)
03/15/06	(S)	JUD RPT CS 2DP 2AM NEW TITLE
03/15/06	(S)	DP: SEEKINS, HUGGINS
03/15/06	(S)	AM: FRENCH, GUESS
03/20/06	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/20/06	(S)	Heard & Held
03/20/06	(S)	MINUTE(FIN)
03/23/06	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/23/06	(S)	Moved CSSB 206(FIN) Out of Committee
03/23/06	(S)	MINUTE(FIN)
03/24/06	(S)	FIN RPT CS 5DP 2NR NEW TITLE
03/24/06	(S)	DP: WILKEN, GREEN, BUNDE, DYSON, STEDMAN
03/24/06	(S)	NR: HOFFMAN, OLSON
04/12/06	(S)	TRANSMITTED TO (H)
04/12/06	(S)	VERSION: CSSB 206(FIN)
04/13/06	(H)	READ THE FIRST TIME - REFERRALS

04/13/06 (H) JUD, FIN
04/26/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 322
SHORT TITLE: SAFE SURRENDER OF BABIES
SPONSOR(S): REPRESENTATIVE(S) LEDOUX, GRUENBERG

01/09/06 (H) PREFILE RELEASED 12/30/05
01/09/06 (H) READ THE FIRST TIME - REFERRALS
01/09/06 (H) HES, JUD
04/25/06 (H) HES AT 3:00 PM CAPITOL 106
04/25/06 (H) Moved CSHB 322(HES) Out of Committee
04/25/06 (H) MINUTE(HES)
04/26/06 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Speaking as one of the prime sponsors, presented HB 316.

JONATHAN A. KATCHER, Esq., President
Board of Governors ("Board")
Alaska Bar Association (ABA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 316.

STEVE VAN GOOR, Bar Counsel
Alaska Bar Association (ABA)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 316.

JOHN TIEMESSEN, Esq., President-Elect
Board of Governors ("Board")
Alaska Bar Association (ABA)
Fairbanks, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 316.

DEBORAH O'REGAN, Executive Director
Board of Governors ("Board")
Alaska Bar Association (ABA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions and a comment during discussion of HB 316.

SENATOR CON BUNDE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 206.

WALT MONEGAN, Chief
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 206.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 206.

REPRESENTATIVE GABRIELLE LeDOUX
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as one of the prime sponsors of HB 322.

CHRISTINE MARASIGAN, Staff
to Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 322 on behalf of Representative LeDoux, one of the prime sponsors of HB 322.

JAN RUTHERDALE, Assistant Attorney General
Child Protection Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 322.

TAMMY SANDOVAL, Deputy Commissioner
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)

Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 322.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:09:10 PM. Representatives McGuire, Coghill, Kott, and Anderson were present at the call to order. Representatives Gara and Gruenberg arrived as the meeting was in progress.

HB 316 - EXTEND BOARD OF GOVERNORS ABA

1:09:24 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 316, "An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

1:09:39 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, speaking as one of the prime sponsors of HB 316, relayed that although the Alaska Division of Legislative Audit recommended [an eight-year] sunset extension for the Board of Governors ("Board") of the Alaska Bar Association (ABA), the bill proposes a three-year extension.

CHAIR McGUIRE asked Representative Stoltze whether there were any other recommendations made by division that he'd considered adopting.

REPRESENTATIVE STOLTZE said that the issue of disclosure was considered, as was the issue of continuing legal education (CLE), but he'd not made any changes to the bill.

1:12:18 PM

JONATHAN A. KATCHER, Esq., President, Board of Governors ("Board"), Alaska Bar Association (ABA), expressed the Board's hope that HB 316 will pass with the maximum sunset that the legislature will allow.

1:13:02 PM

STEVE VAN GOOR, Bar Counsel, Alaska Bar Association (ABA), relayed that he acts as disciplinary counsel and general counsel to the Board, and offered to answer questions.

CHAIR McGUIRE, in response to a question, relayed that the Alaska Division of Legislative Audit, in a report released by the Legislative Budget and Audit Committee, had recommended improved disclosure of disciplinary actions against ABA members [and perhaps a move away from self-regulation]. Self-regulation is a privilege that comes with an added level of responsibility, she remarked, and thus the disclosure recommendation should be considered further.

MR. VAN GOOR clarified that the division's recommendation was that the Board should consider developing a database of disciplined lawyers that the public could access on the ABA's web site. He explained that the ABA had already planned to do that and hopes to have that available this summer or fall; meanwhile, such information is being made available to those who request it.

REPRESENTATIVE GARA asked Mr. Katcher whether he would be amenable to changing the ABA's requirements so that those who do not remain an inactive member of the ABA do not have to take the bar exam again.

MR. KATCHER expressed disfavor with that concept, and opined that the $180 annual fee is justified because ABA dues provide the ABA with the resources it needs to serve the public. Furthermore, doing so would essentially constitute a revision of the rules promulgated by the courts, and would therefore more appropriately fall within the province of the [Alaska] Supreme Court, not the legislature.

REPRESENTATIVE GARA disagreed, and opined that there is an aspect of the ABA that is very monopolistic and self-preserving, citing as examples the ABA's refusal to allow a person to "waive in" through passage of the multistate exam and the ABA's protection of its [active] members through having their fees subsidized by the fees of [inactive members].

REPRESENTATIVE GRUENBERG relayed that he is a member of the ABA and therefore may have a potential conflict of interest.

CHAIR McGUIRE objected, thus requiring Representative Gruenberg to participate.

REPRESENTATIVE GRUENBERG, speaking as one of the prime sponsors of HB 316, said he is very pleased that the Board is recommending a rule change regarding mandatory CLE, particularly since he'd expressed an interest in doing it via legislation should the ABA not take it up. Mandatory CLE will protect the public and be good for ABA members as it will require them to keep up with current law.

1:24:30 PM

JOHN TIEMESSEN, Esq., President-Elect, Board of Governors ("Board"), Alaska Bar Association (ABA), indicated that the ABA recommends advancement of HB 316, adding that it will be good for Alaskans. He then provided a bit of background on the ABA, which serves and protects the citizens of Alaska through a board of governors consisting of 12 members - 9 attorney members and 3 public members - and 17 staff and currently serves more than 2,800 active instate members. Noting that sunset [legislation] gives the Board the opportunity to interact with the legislature, he suggested that the Board should interact more often - perhaps annually - with the legislature outside of the context of sunset legislation.

CHAIR McGUIRE remarked that sunset legislation gives the legislature the opportunity to review how well an entity is performing its tasks and meeting its goals, and this is important, particularly when it involves an entity that has been delegated to perform a state function.

MR. TIEMESSEN agreed, reiterating that the ABA should have more dialog and interaction with the legislature. He said that the ABA appreciates the thoroughness of the division's audit and is prepared to address the concerns raised in the ensuing report, and mentioned that the Board's 2005 annual report is now out and that the Board has just voted to publish the mandatory CLE rule. With regard to the division's recommendation to develop a database of disciplined lawyers and post it on the ABA's web site, he said that the Board expects to have a problematic software issue resolved by no later than the first quarter of 2007. He also mentioned that there is no fiscal note associated with the ABA.

MR. TIEMESSEN said that the three things the ABA does are, "discipline, admissions, and ... 'other,'" with the first two items being the most important and not strictly membership-directed functions but rather part of the core services provided to the public; those functions serve to assure the Alaska

Supreme Court and the public that every applicant for the ABA is ethically qualified and competent. The discipline process also serves to recertify that every member of the ABA continues to be worthy of public trust and the trust of the court system. Under the heading of "other" fall member services such as CLE, the "Alaska Law Review", the "Alaska Bar Rag", insurance benefits, a lawyer referral service, a drug and alcohol referral service, and various other services.

1:33:43 PM

DEBORAH O'REGAN, Executive Director, Board of Governors ("Board"), Alaska Bar Association (ABA), in response to a question, said that the Board did receive the "blank" fiscal note that was sent to it.

REPRESENTATIVE GARA again raised the issue of possibly allowing applicants to "waive in" to the ABA if they pass the multistate exam elsewhere. After commenting on the difficulty of passing that exam, he relayed that he'd once been told by a member of the Board that the reason such isn't allowed is, "We don't want it to be so easy for people to come up here."

CHAIR McGUIRE noted that other states set a threshold score which must be reached in order for an applicant to "waive in" for that portion of the particular state's test. Furthermore, some states only require the multistate exam. She opined that the process of licensure should be fair to all, both those that have already obtained licensure and those that are considering applying for licensure. She added:

> We want people to be competent when they practice in this state, ... but we don't want to create a system that simply allows for a monopoly and protects only those who have the license to the detriment, I would argue, not only of those who might want entry into it, but to the public, because, after all, the public benefits from a diversity of lawyers to choose from.

REPRESENTATIVE ANDERSON noted that an acquaintance of his had passed the bar in Missouri but decided not to apply for entry into the Alaska bar - even though he'd heard there were openings in Alaska in a field of law he was interested in - because he did not want to have to retake the multistate exam.

CHAIR McGUIRE clarified that the question is, how is asking an applicant who has already passed the multistate to retake that

exam an indication of his/her competence, particularly given that he/she is also being asked to answer a series of essay questions demonstrating proficiency in Alaska law?

MR. VAN GOOR, after acknowledging the difficulty of passing the multistate exam, said that the reason it is required for all applicants has nothing to do with limiting the number of persons who can practice law in Alaska; instead, the reason is scientific, and testing expert Dr. Steven Kline (ph) from the Rand Corporation was instrumental in designing a "sea-change" in the exam in the early '80s. Prior to 1982, the Alaska exam consisted of one day of California questions, a half day of Alaska questions, and the multistate bar examination. Because of the small size of the ABA back then, the California portion of questions was sent back to California and graded by California examiners, but there came a time when California decided not to do that anymore. The model that Dr. Kline subsequently came up with is basically the model used today, and it consists of a day of Alaska questions, a half day of long essay questions, a half day of short essay questions - questions provided by the National Conference Of Bar Examiners (NCBE) - and the multistate bar exam.

MR. VAN GOOR mentioned that at one time the multistate exam score could be transferred from another state and used in the ABA's exam computations. However, Dr. Kline pointed out that there would be greater precision in scores when the universe of people taking the multistate exam is the same universe of people taking the essay exam. There are three different ways of combining the multistate exam scores and the essay scores, but the standard the ABA has been using for the last several years is the "standard deviation method," which allows the ABA to statistically compare the range of performance of the class of those taking the multistate exam with the range of performance of the same class of applicants taking the essay exam. Those scores are combined and then divided by two, and those who have a combined score of 140 or above pass the ABA. He predicted that were Dr. Kline to testify on this issue he would say that this method gives the Alaska bar exam a high degree of credibility.

1:46:58 PM

CHAIR McGUIRE pointed out, however, that a similar model could be achieved simply by taking a person's multistate exam score and combining it with the essay exam score, and that ABA members also take a multistate professional responsibility exam that is

taken independent of the other two exams, follows the member into most other states, and is good for five years.

REPRESENTATIVE GARA recalled that when he'd proposed his bar rule change regarding accepting multistate exam scores, Dr Kline testified before the ABA, and although Dr. Kline did not respond to any of his questions, what became clear during that hearing was that the ABA could "take the last bar exam and figure out whatever half the score was" and say that that's the acceptable multistate exam score, and then, for those applicants who obtain that score and "waive in," score them separately on the Alaska portion so that their results don't contaminate the results of those taking both parts of the exam, and finally require those that waive in to have an Alaska score at least as high as half the score of those who took both parts of the exam. It's not like it can't be done, he opined, regardless of Dr. Kline's numerous arguments that it couldn't. He said he and "Judge Tan" and others have been quite displeased with the ABA's response on this issue.

MR. TIEMESSEN, in response to comments and a question, pointed out that there is not as yet universal reciprocity and that there are limitations on the reciprocity rule as it relates to the states that Alaska does have reciprocity with.

1:51:33 PM

MR. VAN GOOR, in response to another question, said that although Alaska does have reciprocity with the state of Washington, Washington doesn't require either the multistate bar exam or the multistate professional responsibility exam, both of which are required by the ABA. Instead, an Alaska applicant to the Washington bar would have to take the Washington ethics examination in order to qualify for reciprocity admission.

MS. O'REGAN, in response to a comment, clarified that Alaska has reciprocity with about 30 states.

MR. VAN GOOR offered his belief that Alaska's reciprocity is designed to be an accommodation for lawyers who, in these other states, have done two important things: they've passed a written bar examination in their state, and they've actively practiced law during five of the last seven years. So while it is true that reciprocity applicants from other states are not tested specifically on Alaska law, it is also true that Alaska attorneys seeking reciprocity in another state are not required to demonstrate knowledge of that other state's law. He offered

his belief that the type of reciprocity rules that Alaska has adopted reflect what he thinks will become more and more of a national trend, that being that clients will be able to choose a lawyer without regard to where the lawyer is living, and predicted that the future might bring with it national licensure.

MR. VAN GOOR, with regard to the question of how he would go about ensuring that a lawyer from Washington seeking reciprocity with Alaska demonstrates competency in Alaska law, pointed out that the very first rule of the rule of professional conduct requires a lawyer to be competent, which in turn requires the necessary study, experience, [and] desire to become proficient in a particular area of law; therefore, if a lawyer from Washington desires reciprocity from Alaska, he/she will be held to the same standard that a lawyer in Alaska will be held to regarding knowledge of Alaska law. "I think reciprocity ... basically reflects more or less a reality of interstate practice, perhaps more in the Lower 48 than up here because we have no bordering states, but I think historically that's the reason that Alaska has moved along with reciprocity," he concluded.

1:55:44 PM

CHAIR McGUIRE remarked, "I think historically the reason it has is because your main job is to serve the lawyers that are already licensed, and those lawyers want the ability to practice in other states ...."

MR. VAN GOOR concurred.

REPRESENTATIVE GRUENBERG asked Ms. O'Regan to provide the committee with a list of the states and other jurisdictions that have reciprocity or partial reciprocity with Alaska.

MS. O'REGAN said she would do so, that such a list is already available on the ABA's web site, and that there are no states that have only partial reciprocity with Alaska.

CHAIR McGUIRE set HB 316 aside.

SB 206 - DETENTION /I.D. OF PERSONS;CONTEMPT OF CT

1:58:24 PM

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 206(FIN), "An Act relating to contempt of court and to temporary detention and identification of persons."

1:59:44 PM

SENATOR CON BUNDE, Alaska State Legislature, sponsor, relayed that the genesis of SB 206 was a recent gang-related shooting in Dimond Center at which the police were unsuccessful in detaining some of the participants because Alaska as yet doesn't have a "material witness" statute. Specifically, SB 206 is an attempt to provide the police with the tools to protect citizens without interfering with their rights; SB 206 balances the need to protect individual freedoms with the ability to prosecute crimes, and will provide defendants with witnesses on their behalf. He remarked that whether it is for the defense or for the prosecution, material witnesses are crucial to trials; unfortunately, material witnesses often refuse to cooperate with law enforcement officials, significantly impeding their ability to bring indictments or prosecute crimes.

SENATOR BUNDE relayed that Senate Bill 206 protects material witnesses from unreasonable arrest or confinement while ensuring the availability of crucial testimony, and does this via the addition of a provision to AS 12.50 that would allow the police to temporarily detain a person under circumstances that give the officer reasonable suspicion of three things: one, the person witnessed a crime or was in the vicinity of a crime such as homicide or manslaughter; two, the person may have information of material aid to the investigation of that crime; and three, the temporary detention is of reasonable necessity to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.

SENATOR BUNDE relayed that Walt Monegan, Anchorage Chief of Police, had suggested that for those who's lifestyle takes them to the border between legal and illegal activities, SB 206 could provide an excuse for cooperating with the police without being put in danger. Also, in a volatile situation, SB 206 could provide a police officer with the means to keep such a situation from escalating into the "immediate retribution" cycle sometimes associated with gang activities. Under SB 206, a police officer who has detained a person under the aforementioned circumstances could photograph the person, serve him/her with a subpoena, and take his/her fingerprints if the crime being investigated is

murder, attempted murder, or misconduct involving weapons in the first degree.

SENATOR BUNDE explained that under SB 206, a person receiving the aforementioned subpoena would be allowed to request of the district attorney that the subpoena be withdrawn if the person can provide valid, government-issued, photographic identification (ID) prior to any grand jury proceedings. The bill also makes it a class B misdemeanor to refuse or resist the taking of a photograph or fingerprints, contains provisions outlining how such photographs or fingerprints may be [used] and when they shall be destroyed, and increases the penalty to contempt of court for failing to honor a subpoena, refusing to answer as a witness in connection with a felony crime, or refusing to appear before a grand jury.

SENATOR BUNDE, in conclusion, offered his belief that SB 206 has achieved a balance that will provide law enforcement with a bit more leeway to investigate some of the violent crimes that are becoming far too prevalent, while also protecting the rights of citizens.

2:06:19 PM

REPRESENTATIVE GARA said he understands the concerns raised by the aforementioned shooting - "you see witnesses there, they run away, you never find them again" - but there are parts of the bill that he thinks are unnecessary for the purpose of obtaining the addresses of such witnesses. For example, he said he doesn't like the provision allowing the police to detain someone just because they had reasonable [suspicion] that the person was in the vicinity, because that language seems to be too broad.

SENATOR BUNDE acknowledged that eyewitnesses are sometimes the most unreliable of witnesses because of the fact that people are very selective in what they perceive. Therefore, a police officer must use his/her judgment with regard to the likelihood that a person might have heard or seen something but not recall it or its significance until questioned.

REPRESENTATIVE GARA observed that when used together, the terms "reasonable suspicion", "in the vicinity", and "may have information" mean everybody that's in the vicinity, particularly given that the term "may have" is not setting a very high standard. Furthermore, the bill appears to allow the detention of citizens without making any distinction between those that are innocent and those that are guilty. He suggested that the

goal of the bill to address gang-related violence would still be achieved if the bill were to instead use the standard of probable cause.

SENATOR BUNDE said that if a witness provides law enforcement with a "photo ID," detention won't be necessary. However, if a witness won't provide a photo ID, a police officer can retain the witness long enough to either fingerprint or photograph him/her.

REPRESENTATIVE GARA suggested substituting the words, "reasonable suspicion", with the words, "probable cause", [on page 2, line 5]. He then asked whether the subpoena referenced in SB 206 would be used to force a witness to come in [to the police station] and get photographed or fingerprinted.

SENATOR BUNDE said no.

2:12:04 PM

REPRESENTATIVE GRUENBERG indicated that he would prefer that the language being added via proposed AS 09.50.020(a) not be limited to just felony crimes; that the term "temporarily detain" - on page 2 [line 4] - be defined, as should the term, "temporary detention" on page 2, line 14; and that the term, "in the vicinity" on page 2, line 9, should instead say, "in the immediate vicinity".

SENATOR BUNDE offered his belief that [a definition of the term] "temporary" is part of case law.

REPRESENTATIVE GRUENBERG suggested that a definition of that term should be inserted into statute. He then characterized the term, "or for other exigent circumstances" on page 2, line 16, as "a real barn door."

CHAIR McGUIRE concurred.

REPRESENTATIVE GRUENBERG also suggested that proposed AS 12.50.201(b)(3)(A) lists too few crimes for which a person could be required to provide fingerprints, and so perhaps that provision should be broadened, though the question of which other crimes it should include must also be considered. He then referred to language on page 3, lines 4-5, and suggested that the phrase, "or may move the court to quash the subpoena" be added after the phrase, "may request the district attorney to withdraw the subpoena".

2:18:17 PM

WALT MONEGAN, Chief, Anchorage Police Department (APD), Municipality of Anchorage (MOA), with regard to the phrase, "in the vicinity", explained that if someone is determined to flee the scene of a crime, he/she can easily get a pretty good distance away from the "immediate" vicinity in just three to four minutes, and so the APD would like to be able to stop someone who was seen in the area or is seen to be running away from the area or is seen driving away from the area. He acknowledged, however, that if a crime occurs on the "East side of town," the police shouldn't be looking to detain someone on the "West side of town," because that wouldn't be reasonable.

MR. MONEGAN, with regard to the suggestion that "reasonable suspicion" be replaced with "probable cause", pointed out that probable cause is the level of proof needed to make an arrest, whereas reasonable suspicion is the level of proof required for a stop. He then referred to page 3, line 11, which says that the photographs or fingerprints "must be destroyed upon the earlier of the following occurrences:", and said that he would like that language changed to instead say, "unless the investigation indicates the person is a suspect in the case, the [photographs] and fingerprints must be destroyed upon the earlier of the following occurrences:". Such a change would ensure that law enforcement isn't destroying evidence pertaining to a guilty witness.

MR. MONEGAN, referring to language in proposed AS 12.50.201(b), remarked on the fact that the police can't, and shouldn't be able to, compel someone to give a statement, and that the biggest hurdle that the APD faces is that the information that's "locked up in some of the individuals" that the APD has made contact with may be the only information with which to get a case before the grand jury. He said that the APD appreciates the legislature's efforts on this issue, adding that without the bill, communities as a whole are paying too high a price.

REPRESENTATIVE GARA asked Mr. Monegan how long he anticipates the proposed detention period being.

MR. MONEGAN said just a few minutes because most police officers carry a digital camera and kits that allow for the taking of fingerprints at the scene.

REPRESENTATIVE GARA said he does not want "temporarily detained" to mean taking someone to the police station, and asked whether Mr. Monegan would be amenable to a change stipulating that the temporary detention would be limited to the location where the person was found.

MR. MONEGAN [seemed to suggest adding] the words, "in the immediate vicinity". He explained that what happens as a matter of course, even for cooperative witnesses, is that they are separated [from each other] by a little bit of distance, but such could still be done at the immediate scene.

SENATOR BUNDE noted that the language on page 2, line 20, already stipulates that the photographs may be taken as long as it can be done without unreasonably delaying or removing the person from the vicinity, thus implying that taking the person's photograph would indeed take place at the police car.

2:25:46 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), pointed out that the language on page 2, line 30, stipulates the same thing for the taking of fingerprints. In response to a question, she offered her understanding that most states have statutory provisions that allow for the detention of material witnesses, and that SB 206 is a very mild version of such provisions.

MR. MONEGAN, in response to questions, explained that should the need arise, a police officer could simply call for another unit to come and bring any necessary photography or fingerprinting equipment to the site, though he acknowledged that such might not be possible in some of the more rural areas of the state. And although it would be hoped that in such areas, law enforcement officers would have all the equipment necessary to photograph or fingerprint a witness [that did not provide a photo ID], it might be good idea, he indicated, to stipulate in the bill that if a person has to be taken back to the [police station] to get photographed or fingerprinted, that the necessity for doing so must be articulated by the officer.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 206.

SENATOR BUNDE opined instead that law enforcement officers will simply have to have the necessary equipment with them if they are not to unreasonably delay a person.

2:29:36 PM

REPRESENTATIVE GARA suggested substituting the words, "reasonable suspicion", with the words, "probable cause", [on page 2, line 5]; taking out proposed AS 12.50.201(a)(1)(B); and replacing "may have" on page 2, line 12, with "has". He said he doesn't like the language allowing a person to be detained simply for being in the vicinity, because that language is too broad and eliminates the need for probable cause that the person really is a witness.

MR. MONEGAN referred to the 1982 case involving Charles Meach and his shooting to death four teenagers in Russian Jack Springs Park, and said that that case was solved because a witness mentioned seeing a brown van speeding away from the area. When that van was intercepted, it was determined that the driver had nothing to do with the shooting but the police took his personal information; later when the police were stymied with the case, they went back and spoke with the driver who then recounted that while walking through the park that night he'd spotted a bicycle laying in the brush, and he admitted that he been thinking about taking it but had instead fled the scene when he heard shots fired. With the information the driver provided about the bicycle, the police were subsequently able to trace it back to Charles Meach who confessed to killing the four teenagers. So even though the driver of the van was never at the place where the teenagers were being killed, and was stopped blocks away from where the shooting actually occurred, he was able to provide the police with the needed piece of information that allowed them to solve the case.

MR. MONEGAN pointed out that because nothing like SB 206 was in place at that time, if the driver of the van had instead been stopped while walking, he could have refused to provide the police with his ID and then the police wouldn't have been able to contact him again. He again pointed out that the standard of reasonable suspicion is used to stop a person, whereas the standard of probable cause is used to arrest someone - the latter being much more severe than just stopping someone to ask whether he/she had heard or seen anything.

REPRESENTATIVE GARA said he would still prefer the standard to be probable cause, and reiterated that he would also prefer to

have page 2, line 12, say, "has information" instead of "may have information".

MR. MONEGAN warned that if the person being stopped happened to be a "guilty witness," then the information obtained from him/her could be quashed because law enforcement wasn't able to meet the standard of probable cause in stopping the person to begin with.

REPRESENTATIVE GARA again reiterated his preferences, adding that he is uncomfortable allowing the police to stop someone on a hunch.

2:36:44 PM

REPRESENTATIVE GRUENBERG opined that law enforcement should be able to stop a person and ask for information with far less cause than that which is needed to arrest a person, and all that is being asked for via the use of the bill's current language is the ability to detain someone for questioning, otherwise evidence will be lost, the people will leave the scene, and memories will fade. He mentioned that he has participated in ride-alongs with the police and therefore knows that people, at least those from his part of town, can fade into the woodwork fast.

REPRESENTATIVE GARA said the lower standard is a problem because it shouldn't be easy to stop and detain an innocent person.

REPRESENTATIVE GRUENBERG disagreed, pointing out that such a person is not being accused of a crime or arrested - he/she is just being questioned as a witness - and therefore requiring law enforcement to meet the higher standard of probable cause is not justified.

REPRESENTATIVE GARA offered his belief that if a person was at the scene of a crime, then law enforcement would have probable cause and therefore could detain that person for questioning.

MR. MONEGAN remarked:

> Probable cause being the high standard that it is, if I came up and said, "Les, I think you saw something here," and you wanted to be obstinate about it, you would say, "Prove it." And I can't, because I wasn't there when the event happened; I arrived three or four minutes later as ... an emergency responder, and [so]

> when I get there ... you could say, "I just heard the shots - I came over like ... everybody else to see what was going on - I don't know anything." The fact that they're standing there doesn't necessarily mean ... anything, ... [and so] the reasonable standard helps us not have that argument. It just [allows an officer to say], "Look all I need is some information - your name, your phone number, and did you see anything," and they can say, "I'll give you my name and my number, but I didn't see anything," and that's fine. ... [The person can't just] turn around and say: "No; ... I know the law, it says probable cause, which means you have to prove that I was here." ...

2:41:08 PM

MS. CARPENETI said that she would be very concerned about adopting a probable cause standard. The courts have upheld law enforcement's ability to, with reasonable suspicion, temporarily detain a person to ask for his/her identification so that law enforcement can follow up on issues later. "I think making [it] a probable cause standard would ... confuse people and make it more difficult for the police to investigate a crime," she added.

REPRESENTATIVE GARA said:

> That's just not how probable cause works, though. You don't have to be right that the person was a witness. Probable cause means that you had probable cause to believe that the person's a witness, even if you were wrong. So if the witness says to you, "I wasn't here - prove it," that has nothing to do [with] whether you had probable cause to stop the person. The question is, did you as an officer have a strong belief that the person was there, even though you might be wrong later. So it's not a defense when the person says to you, "I wasn't here", to a probable cause standard. And I think there should be a higher standard when you're dealing with innocent people than when you're dealing with people who've done something wrong.

SENATOR BUNDE indicated that if it were possible to know who is guilty and who is innocent at the outset, such a standard might be useful. He pointed out that the standard of reasonable suspicion is currently used, for example, when an officer sees a car changing lanes ineptly; the officer can stop the car to see

whether the driver is drunk. He said he can envision a situation in which important witness testimony gets thrown out of court because in obtaining that testimony the standard of probable cause wasn't met.

CHAIR McGUIRE relayed that SB 206 would be set aside to allow members time to consider possible amendments.

SENATOR BUNDE said he would like to see Mr. Monegan's suggested change considered as well.

[CSSB 206(FIN) was set aside.]

HB 322 - SAFE SURRENDER OF BABIES

2:45:23 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 322, "An Act relating to infants who are safely surrendered by a parent shortly after birth." [Before the committee was CSHB 322(HES).]

The committee took an at-ease from 2:46 p.m. to 2:49 p.m.

2:49:46 PM

REPRESENTATIVE GABRIELLE LeDOUX, Alaska State Legislature, speaking as one of prime sponsors of HB 322, relayed that a member of her staff would be presenting the bill.

2:50:31 PM

CHRISTINE MARASIGAN, Staff to Representative Gabrielle LeDoux, Alaska State Legislature, relayed on behalf of Representative LeDoux, one of the prime sponsors of HB 322, that this bill has the potential to save the lives of infants, and that 46 other states have enacted similar legislation - with Alaska, Hawaii, Nebraska, and Vermont being the only states that have yet to do so. The first such law was adopted in Texas in 1999 after 13 infants were found abandoned within a 10-month period, and now such laws are sometimes known either as "Baby Moses laws" or "safe haven laws". She then spoke briefly of the changes that were incorporated into CSHB 322(HES), and relayed that the intent of the bill is to deter women - typically young and unmarried women who are concealing their pregnancies and giving birth in private - from simply disposing of their newborn babies. Specifically, HB 322 would save an infant in imminent

danger and enable a parent to avoid prosecution if she leaves an infant at a designated safe location.

CHAIR McGUIRE, after ascertaining that no one wished to testify, closed public testimony on HB 322.

REPRESENTATIVE ANDERSON moved to report CSHB 322(HES) out of committee [with individual recommendations].

2:52:43 PM

REPRESENTATIVE LeDOUX drew attention to the fiscal note provided by the Department of Health and Social Services (DHSS), Office of Children's Services (OCS).

CHAIR McGUIRE said she wants HB 322 to move from committee without that fiscal note.

REPRESENTATIVE GRUENBERG, speaking as one of the prime sponsors of HB 322, referred to the age limit of 8 days old - located on page 1, lines 10-11, and page 3, line 19 - and said that he would instead prefer to have an age limit of 31 days old.

REPRESENTATIVE LeDOUX pointed out that HB 322 is geared towards young, single women who hide their pregnancy and deliver their baby in private with the intention of getting rid of it immediately; "we want that person to know that ... she doesn't have to leave [the baby] ... in a trash can somewhere" but can instead leave it at a safe location. She remarked that abandoning an infant who is 3 days old or 8 days old is different than abandoning a baby that is 31 days old because by the time a baby reaches the age of 31 days, then the mother "really has the baby" and hadn't immediately sought to get rid of it.

REPRESENTATIVE GRUENBERG said he would prefer to err on the side of letting a woman leave a baby at a safe location even if the baby is a little older.

REPRESENTATIVE LeDOUX said she want to try to ensure that infants get taken to a safe haven immediately, before there is the possibility that they will be abused or neglected. She then noted that a representative from the Office of Children's Services (OCS) has just relayed to her that the OCS would be amenable to a 30-day age limit.

2:56:03 PM

JAN RUTHERDALE, Assistant Attorney General, Child Protection Section, Civil Division (Juneau), Department of Law (DOL), relayed that although the DOL doesn't have any legal problems with the concept of HB 322, she would like to work with the drafter on some structural issues.

REPRESENTATIVE GARA suggested that the DOL bring any amendments pertaining to structural issues to the bill's first committee hearing in the Senate.

2:58:10 PM

TAMMY SANDOVAL, Deputy Commissioner, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), mentioned that the OCS had merely suggested an age limit of 21 days as some sort of middle ground, since some states have a younger age limit and some states had an older age limit. She offered her belief that there haven't been any abandonment cases in Alaska to use as an example, and indicated that the OCS isn't committed to a particular age limit.

CHAIR McGUIRE reiterated her intent to not have the DHSS's fiscal note move with the bill, because the public education campaign proposed in the fiscal note is an optional program rather than one being mandated by the bill. She suggested that with the DHSS's fiscal note, the bill would have to be heard in the House Finance Committee, thus lessening its chances of passing this year; therefore, she will be requesting that the motion to move the bill from committee specify that the bill would be moving forward without the DHSS's fiscal note.

MS. SANDOVAL said she will look for ways to educate the community regarding this bill, but relayed her hope that not having the funds referenced in the fiscal note won't result in the OCS being held responsible for anything bad that happens to infants that are abandoned in unsafe locations.

CHAIR McGUIRE, remarking on the complex nature of fiscal notes, reiterated her concern that attaching the aforementioned fiscal note will delay the bill to the point where it doesn't have time to pass.

MS. SANDOVAL acknowledged that point.

CHAIR McGUIRE suggested that perhaps an indeterminate fiscal note might be more appropriate.

REPRESENTATIVE GARA again suggested that any amendments be offered in the Senate, including any proposed changes to the age limit because he is not comfortable just picking a number.

MS. MARASIGAN, referring to an earlier comment, clarified that there have been infants found abandoned in Alaska, and noted that she now has several newspaper articles detailing such cases.

CHAIR McGUIRE surmised that any media coverage of the bill passing will alert the public to some degree.

3:05:51 PM

REPRESENTATIVE GRUENBERG [made a motion to adopt Amendment 1], to change page 1, line 10, and page 3, line 19, from "eight days" to "21 days".

REPRESENTATIVE GARA pointed out that the OCS was merely picking a number when it suggested an age limit of 21 days.

REPRESENTATIVE GRUENBERG opined that 8 days of age was not a sufficient age limit.

REPRESENTATIVE LeDOUX acknowledged that at one point there had been discussion of perhaps having an age limit of 3 days but the House Health, Education and Social Services Standing Committee instead chose an age limit of 8 days.

REPRESENTATIVE GRUENBERG acknowledged that the original version of HB 322 had an age limit of 12 months, but again offered his belief that an age limit of 8 days is not sufficient.

The committee took an at-ease from 3:08 p.m. to 3:09 p.m.

REPRESENTATIVE GARA removed his objection to Amendment 1.

CHAIR McGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

3:09:43 PM

REPRESENTATIVE KOTT made a motion that the committee authorize the chair to adopt a zero fiscal note from the DHSS. He surmised that [the OCS] ought to be able to do a lot of public

education through public service announcements (PSAs) and posters in healthcare providers' offices.

CHAIR McGUIRE, after ascertaining that there were no objections, announced that the motion to adopt a zero fiscal note was adopted.

3:11:14 PM

REPRESENTATIVE ANDERSON started to make a motion to report the bill, as amended, from committee.

REPRESENTATIVE GRUENBERG interrupted the motion to note that according to a chart in members' packets, some states' laws specify that either a parent or a parent's agent can surrender an infant. He asked the sponsor whether she would like to include similar language in HB 322.

REPRESENTATIVE LeDOUX said no.

REPRESENTATIVE ANDERSON moved to report CSHB 322(HES), as amended, out of committee with individual recommendations and the accompanying zero fiscal note as authorized by the House Judiciary Standing Committee. There being no objection, CSHB 322(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

3:12:16 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:12 p.m.