

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 17, 2008

1:38 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 293

"An Act relating to electronic communication devices and to personal information."

MOVED CSSB 293(JUD) OUT OF COMMITTEE

SENATE BILL NO. 234

"An Act relating to the crimes of assault in the fourth degree and of resisting or interfering with arrest; relating to the determination of time of a conviction; relating to offenses concerning controlled substances; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation and to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 293

SHORT TITLE: ELECTRONIC COMMUNICATION DEVICES

SPONSOR(s): SENATOR(s) MCGUIRE

02/19/08	(S)	READ THE FIRST TIME - REFERRALS
02/19/08	(S)	L&C, JUD
03/04/08	(S)	L&C AT 1:30 PM BELTZ 211

03/04/08 (S) Heard & Held
 03/04/08 (S) MINUTE(L&C)
 03/13/08 (S) L&C AT 1:30 PM BELTZ 211
 03/13/08 (S) Moved CSSB 293(L&C) Out of Committee
 03/13/08 (S) MINUTE(L&C)
 03/14/08 (S) L&C RPT CS 2DP 2NR NEW TITLE
 03/14/08 (S) DP: ELLIS, DAVIS
 03/14/08 (S) NR: BUNDE, STEVENS
 03/17/08 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 234

SHORT TITLE: CRIMINAL LAW/PROCEDURE: OMNIBUS BILL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/08 (S) READ THE FIRST TIME - REFERRALS
 01/18/08 (S) JUD, FIN
 02/22/08 (S) JUD AT 1:30 PM BELTZ 211
 02/22/08 (S) -- MEETING CANCELED --
 02/29/08 (S) JUD AT 1:30 PM BELTZ 211
 02/29/08 (S) Heard & Held
 02/29/08 (S) MINUTE(JUD)
 03/17/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

TREVOR FULTON, Staff
 to Senator McGuire
 Alaska State Capitol
 Juneau, AK

POSITION STATEMENT: Introduced SB 293 on behalf of the sponsor.

ALLISON FLEMING
 EPC Global

POSITION STATEMENT: Pointed out shortcomings of SB 293.

MELISSA NGO, Senior Counsel
 Electronic Privacy Information Center (EPIC)
 Washington D.C.

POSITION STATEMENT: Stated strong support for SB 293.

THERESA BANNISTER, Legislative Counsel
 Legislative Legal and Research Services Division
 Legislative Affairs Agency
 Juneau, AK

POSITION STATEMENT: Provided information related to SB 293.

DOUG PICKEREL, Sergeant

Anchorage Police Department
Anchorage, AK

POSITION STATEMENT: Testified on SB 234 and explained how electronic reporting works for the Anchorage Police Department.

JERRY LUCKHAUPT, Legislative Counsel
Legislative Legal and Research Services Division
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Provided information related to SB 234.

QUINLAN STEINER, Director
Alaska Public Defender Agency
Anchorage, AK

POSITION STATEMENT: Expressed concern with provisions in SB 234.

RON ADLER, CEO and Director
Alaska Psychiatric Institute (API)
Anchorage, AK

POSITION STATEMENT: Expressed concern with provisions in SB 234.

JOSHUA FINK, Director,
Office of Public Advocacy (OPA)
Department of Administration
Anchorage, AK

POSITION STATEMENT: Echoed the comments by Mr. Steiner and Mr. Adler with respect to SB 234.

ANNE CARPENETI, Assistant District Attorney
Criminal Division
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Answered questions related to SB 234.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:38:21 PM](#). Present at the call to order were Senators French, McGuire, Therriault, and Wielechowski.

SB 293-ELECTRONIC COMMUNICATION DEVICES

CHAIR FRENCH announced the consideration of SB 293. Before the committee was CSSB 293(L&C).

TREVOR FULTON, Staff to Senator McGuire, said SB 293 is intended to protect personal and consumer privacy and to nip the potential for identity theft in the bud. The bill does this by regulating the use of radio frequency identification detector (RFID) technology in the state of Alaska.

[1:39:40 PM](#)

MR. FULTON explained that RFID is wireless technology that includes three elements: a tag that has an antenna that is capable of transmitting data; a reader that receives data transmitted by the tag; and a database that stores the information that's exchanged. Common RFIDs include employee access passes, payment cards that don't require swiping, toll passes, and pet implants. Those sorts of RFIDs are good for the consumer and they won't be negatively impacted by this bill, he said.

MR. FULTON said that some less overt examples of RFIDs are U.S. Food and Drug Administration approved tags that can be implanted in humans and contain patient records for use in hospitals. RFID tags are also being used to track the movement of products from the manufacturer to the retailer and points in between. RFIDs bring convenience but it could be at the cost of security, which is why SB 293 was introduced. Private information such as bank account numbers, Social Security numbers, driver's license numbers, or health records that are transmitted by RFID tags and stored in RFID databases can leave consumers vulnerable to identity theft. SB 293 seeks to minimize vulnerability and protect personal and consumer privacy by regulating the use of RFID technology in the state of Alaska. As RFID use becomes more widespread it will become increasingly important that consumers are informed about products that carry RFID tags, that businesses obtain consumer consent to using this technology, and that minimum security standards are adopted for RFID use. Currently there are no minimum standards for encryption technology used to relay personal information from a tag to a reader or for securing information that's stored in databases either. SB 293 aims to set standards for both.

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MR. FULTON said that SB 293 establishes RFID regulations where none currently exist. It prohibits scanning or reading an RFID tag without the consumer's consent and it establishes that misuse of RFID devices would be an unfair trade practice. SB 293 is proactive and aims to stay ahead of those who would misuse this growing technology. He asked the committee to reflect on

how being more proactive about protecting consumer and personal information 10 years ago might have lessened the epidemic of identity theft that's seen today.

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CHAIR FRENCH referred to page 1, line 7, and asked if the provider of an RFID is the manufacturer. For example, HID Corporation is the provider for the capitol building RFIDs.

MR. FULTON clarified that the business or office that issued the RFID would be considered the provider.

CHAIR FRENCH referred to page 5, lines 28-29, that defines a provider as a person who sells, offers to sell, or issues an electronic communication device. He asked if the bill allows the consumer to know how much personal information is stored on the RFID tag they're carrying around.

MR. FULTON directed attention to page 3, line 31, through page 4, line 2, that says, "an electronic or written record; the record must, at a minimum, clearly and conspicuously state the provider's privacy policy and the manner in which information relating to the consumer will be collected and disseminated;".

SENATOR McGUIRE noted that page 2, lines 20-25, relate to consent. It says that the consumer shall be notified that the RFID transmits personal information and the consumer must give consent. But if it needs to be clearer then let's do so, she said.

CHAIR FRENCH commented that he'd think twice about using an RFID card if he knew that his bank account number, driver's license number, and Social Security number was on that card.

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MR. FULTON said that's a good point and he believes the sponsor would be happy to amend the bill to make that clear.

CHAIR FRENCH said Section 45.48.020 is close and adding a word or two would tighten it up.

SENATOR THERRIAULT commented that part of the concern relates to knowing what information your card is transmitting. That needs to be spelled out because a person may want to destroy or never accept a card that has too much personal information on it.

SENATOR MCGUIRE said that's the point of the bill. Although there are some very good uses for RFID technology, she believes that many Alaskans are unaware that their personal information is being collected and used. This is really more about information, she said.

[1:52:33 PM](#)

CHAIR FRENCH noted that the "Stanford Technology Law Review" article was useful and he was surprised to learn how easy it is for some people to read information on passports and other documents that he thought were highly secure. He asked if any financial transactions have been intercepted using technology that captures RFID transmissions.

MR. TREVOR replied he doesn't have documented examples, but it probably is occurring. The problem is that it's difficult to determine how identity theft occurs. It could be from RFID transmissions or from digging in someone's trash, or from stolen mail.

CHAIR FRENCH asked to what extent RFIDs are used commercially in Alaska.

MR. TREVOR replied it's difficult to quantify, but it's a growth industry worldwide. In 2006 there were about 1.3 billion RFIDs worldwide and the following year there were over 4 billion.

SENATOR MCGUIRE added that this bill will help to figure that out.

CHAIR FRENCH asked if there is any opposition to the bill.

MR. TREVOR replied two people spoke in opposition to the bill in the last committee; one was from EPC and the other was from the American Electronics Association.

[1:55:16 PM](#)

SENATOR THERRIAULT asked if some of the 4 billion RFIDs he mentioned are for tracking products which wouldn't present any sort of security risk.

MR. TREVOR said that's correct; most are probably used in supply chain management that has nothing to do with individuals. The scope of this bill is to address RFID devices that transmit personal information.

[1:56:31 PM](#)

SENATOR THERRIAULT asked how the transmitting tag works.

MR. TREVOR explained that there are two basic types of RFID devices - active and passive. Active RFID devices are larger, contain a power source, transmit a signal continuously, and transmit longer distances. Passive RFID devices are smaller and don't have a power supply. They use energy that's transmitted from the reader to create a signal and send it back to the reader.

CHAIR FRENCH commented that most RFIDs must vary with regard to strength. For example, his capitol building RFID must be fairly close to the reader for it to unlock the door, but it's not necessary to get that close with toll booth easy passes.

MR. TREVOR said that's a good example of the difference between a passive tag and an active tag. All toll passes are active so they transmit a signal all the time.

[1:58:28 PM](#)

SENATOR McGUIRE highlighted the document summarizing the changes made in the L&C committee.

CHAIR FRENCH asked if the bill is based on draft legislation from another state.

MR. TREVOR replied it's based on legislation from Washington State. He added that in the last several years over 50 pieces of RFID legislation have been drawn up in 27 different states.

CHAIR FRENCH opened public testimony.

[2:00:10 PM](#)

ALLISON FLEMING, EPC Global, said she is representing a not-for-profit GSI organization that works on international standards for RFID applications. Industries that participate in the standards development process include: aerospace, retail, entertainment, defense, healthcare, chemical, pharmaceutical, transportation and logistics. These industries use an electronic product code (EPC), which is a type of RFID application. They have unique numbers that are similar to a barcode. The number is stored on an RFID tag that combines a silicone chip and antennae. The EPC is read from the tag and can be associated with data that's held in a secure database where it'd be possible to find information like where an item originated or the date it was produced. EPC data is about products not people

so the tags do not carry an individual's personal information. They carry information related to a product.

MS. FLEMING said that EPC Global believes that EPC/RFID technology is in its infancy. In the short term EPC/RFID applications will be at the container, case, and pallet level. Wide scale item tagging applications are years away. RFID technology can be used for many different applications and it gives more information about a product than a barcode. In the future the extra information could help expedite all steps in the supply chain from manufacturing to checkout. Consumers will benefit from increased product availability and faster more efficient product recalls. Food safety is another potential benefit because the EPC allows manufacturers and retailers to monitor production, expiration dates, and temperature control to ensure food freshness. EPC can also reduce product counterfeiting.

MS. FLEMING said that the next several years will be crucial to the development of the technology. Laws requiring specific types of notice, written consent, or deactivation at the point of sale could stifle innovation and delay potential benefits to consumers and businesses in Alaska and elsewhere. Specific legislation regulating the technology isn't flexible and could negatively impact advancements of EPC and RFID as new post-purchase benefits and uses are uncovered. She urged the committee to be prudent and pragmatic in considering measures that regulates this technology.

CHAIR FRENCH asked if EPC is a particular sort of RFID that her organization uses.

MS. FLEMING said yes.

CHAIR FRENCH asked if the organization members use EPC in supply chain management or at point of sale where there is contact with an individual consumer.

MS. FLEMING said currently the technology is used at the case and pallet level. Item level tagging is probably years in the future, but there may be item level tagging pilot programs where consumers would have direct contact.

[2:06:09 PM](#)

CHAIR FRENCH asked if she's concerned with any particular part of the bill.

MS. FLEMING expressed concern with the notice section, the consent section, and the deactivation at the point of sale section.

SENATOR WIELECHOWSKI said he doesn't understand why stores would oppose this because from his perspective the bill is trying to prevent people from having RFID used in ways they don't agree with.

MS. FLEMING explained that stores have consumer guidelines that member companies agree to. That includes providing notice and giving the consumer choices about how the RFID tag is used. With regard to notice, the issue is that if Alaska has specific tagging requirements that would present problems for members that have a global supply chain. At this point there's really no effective means for retailers to automatically deactivate EPC tags at the point of sale. For the most part any tag a consumer comes into contact with would be on the packaging so the consumer could just throw that away, she said.

MS. FLEMING agreed with Mr. Fulton's statement that other states have proposed lots of RFID legislation, but there hasn't been any comprehensive bill like SB 293 that's been passed. The Washington State legislation originally looked like SB 293, but it was changed to look at the behavior of people who were using RFID for illegal means.

[2:09:22 PM](#)

CHAIR FRENCH commented that this issue cries out for a federal solution. He asked if anything is happening at that level.

MS. FLEMING replied there was a hearing about this technology about three years ago but she hasn't heard of any legislation since that time. A Senate caucus does meet to discuss technology and where it's going.

SENATOR McGUIRE said this is an opportunity for Alaska to be a leader. With respect to the bills that have been introduced but have gone nowhere, she said it's because of the tremendous pressure that lobbyists apply. We tried to do this quietly to "get out ahead of it and get it as far as we possibly could because we knew that the pressure would come down from the different companies." Clearly it's in their best interest to do what they want with respect to collecting and using personal data. As policy makers it's in our best interest to look out for our constituents, she said. For the most part they're completely unaware that their information is being collected and used. She

suggested EPC Global think about adopting an international policy that strikes a balance between the consumer and those that want to make money off the consumer

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MELISSA NGO, Senior Counsel at the Electronic Privacy Information Center (EPIC) in Washington D.C. said she submitted written testimony. EPIC is a non partisan public interest research organization that was established in 1994 to focus attention on emerging civil liberties issues. EPIC has considerable expertise on RFID technology and has testified about security problems before Congress and state legislatures and has submitted detailed analyses on FRID programs to different federal agencies. This technology is increasing rapidly. It is currently used in easy pass highway systems, passports, university ID cards, credit and debit cards, and in addition to supply chain management. As this technology is increasingly used it's important to be aware of the many problems inherent in using this technology. If security isn't adequate, RFID tags are remotely and secretly readable. In fact, last week the Dutch government reported an RFID security breach because several researchers were able to hack into the system. Worldwide there are 1 billion cards using these RFID chips including government building access cards and the Boston transportation system. Hacking into the system allows criminals to clone the cards. RFID technology for supply chain management has never been controversial, but once it's used to attach an identifier and create a profile on a person there's a problem.

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MS. NGO said that EPIC strongly supports SB 293 but it can be improved. The most important way is to address unique identifiers that are linked to databases containing personally identifiable information. Although companies have opposed this regulation, it should be included in the bill because the misuse of unique identifiers could be as risky as the misuse of Social Security numbers. Also, EPIC recommends an enforcement provision through a private right of action as well as through the attorney general, stronger provisions on deactivation of tags including permanent deactivation, and clear and prominent labeling of RFID readers and transponders.

MS. NGO said she agrees with the sponsor that Alaska should be a leader in protecting consumers from misuse of RFID technology.

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CHAIR FRENCH referred to the consent provisions on page 2, lines 22-25, and asked Ms. Bannister if the language is specific enough to capture the idea that the consumer would know what information is being disclosed.

[2:17:55 PM](#)

THERESA BANNISTER, Legislative Counsel, Legislative Legal and Research Services Division, Legislative Affairs Agency, said the bill doesn't specify what information is being disclosed, what is transmitted, or what's on item itself. It does indicate that it is personal information and the definitions section of the bill indicates what personal information means.

CHAIR FRENCH asked if she could draft an amendment that captures that idea.

[2:18:54 PM](#)

MS. BANNISTER said she's been working on a conceptual amendment to Sec. 45.48.020, on page 2, line 23.

CHAIR FRENCH moved conceptual Amendment 1.

Conceptual Amendment 1

Page 2, line 23, following "consumer":

Insert ", identify the type of personal information that is contained on or that may be scanned or read from the electronic communication device,"

Finding no objection, he announced that Conceptual Amendment 1 is adopted.

CHAIR FRENCH closed public testimony. Finding no further discussion, he asked for a motion.

[2:21:49 PM](#)

SENATOR McGUIRE motioned to report amended version E CS for SB 293 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that CSSB 293(JUD) is moved from committee.

SB 234-CRIMINAL LAW/PROCEDURE: OMNIBUS BILL

[2:22:13 PM](#)

CHAIR FRENCH announced the consideration of SB 234. He asked for a motion to adopt the draft committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt CS for Senate Bill 234, labeled 25-GS2038\C, as the working documents.

[2:22:53 PM](#)

CHAIR FRENCH objected for discussion purposes. He informed members that his intention is to work on the bill today and Wednesday and hopefully move it from committee that day.

At ease from [2:24:04 PM](#) to [2:27:59 PM](#).

CHAIR FRENCH said the idea for Sections 1 and 2, which was discussed in the crime summit, is to require electronic reporting of pawn shop transactions in communities that have more than 5,000 people. Transactions from garage sales, used book stores, and the Salvation Army wouldn't be reportable, but transactions from places that loan money on secondhand articles would be reported to law enforcement in an electronic and searchable format. This will make items that frequently end up in pawn shops as a result of burglaries and robberies more locatable.

CHAIR FRENCH, noting that Anchorage pawn shops already report electronically, asked Sergeant Pickerel to explain how this works and what benefit it provides.

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DOUG PICKEREL, Sergeant, Anchorage Police Department, relayed that there are about 3,500 pawn transactions per week in Anchorage. Many of those transactions include items that have been reported stolen and because of the reporting requirement, many of the items are recovered. Electronic reporting has made it easier for the police department since it's no longer necessary to visit each pawn shop to pick up the transaction lists.

CHAIR FRENCH asked what sort of push-back there's been from the pawn shops.

SERGEANT PICKEREL replied all but one of the pawn shops report electronically. He believes it's easier for shop owners as well as the police.

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CHAIR FRENCH asked how many of the 3,500 items per week have been stolen.

SERGEANT PICKEREL estimated 5 percent, maybe as high as 10 percent.

CHAIR FRENCH said if it's 5 percent that means that 175 items per week could be returned to the rightful owner because of this simple recordkeeping requirement.

SERGEANT PICKEREL reevaluated and said it's not that many, but a good number of items are recovered. It does provide leads in an investigation and aids in prosecutions. This has been a big help to the Anchorage Police Department and he's sure other jurisdictions will find it helpful as well.

SENATOR WIELECHOWSKI referred to page 1, Section 1, and asked for a definition of "A person who lends money on second hand articles..."

[2:32:28 PM](#)

JERRY LUCKHAUPT, Legislative Counsel, Legislative Legal and Research Services Division, Legislative Affairs Agency, explained that it's not defined. Provisions in Title 8 don't regulate pawn shops per se, but they talk about loaning money on items and the record keeping that must occur. "We refer to pawn shops but we always talk about whether or not it's a person that engages in the business of buying and selling second articles or lending money on second hand articles."

[2:34:17 PM](#)

SENATOR WIELECHOWSKI reviewed AS 08.76.010(a), which isn't in the committee substitute (CS), and said he was concerned about inadvertently extending the reporting requirement to anyone who might lend \$10 to another person.

MR. LUCKHAUPT said he doesn't see that the intent is to have this apply to persons who loan money to friends. He believes the section is referring to someone who is receiving an item in exchange for money and holding that item until the money is repaid.

CHAIR FRENCH asked if used book or clothing transactions would fall under this section.

MR. LUCKHAUPT replied he doesn't believe so because money isn't loaned on those items in exchange for holding them for

redemption. Similarly, transactions from a consignment shop wouldn't fall under this section. He doesn't know that current statute has ever been applied to those items. AS 08.76.040 was added in 1981 and it does use the term "pawnbroker" but the term isn't defined and it only relates to what happens when someone doesn't redeem their pawned item.

2:37:27 PM

CHAIR FRENCH directed attention to the language on page 2, line 3, and said the phrase "accessible on the Internet" will be changed to reflect that the information will be "electronically available." The idea is to have the transaction lists emailed to law enforcement rather than to have a database of pawned items that the public can search. This will comport with the suggestion made by Wasilla Police Chief Long.

2:38:20 PM

SENATOR McGUIRE remarked this is long past due and she's pleased this will be included.

2:39:16 PM

QUINLAN STEINER, Director, Alaska Public Defender Agency, said his biggest concern relates to the involuntary commitment proceedings. Preferable language was discussed in the House, but it's not reflected in version C. He offered to provide that language.

CHAIR FRENCH urged him to submit any suggestions to his office as soon as possible because he'd like to move the bill on Wednesday.

MR. STEINER said the commitment proceedings have been discussed at length with DOL and the issues have been fairly well hammered out. He summarized that Sections 9, 10, and 11 relate to involuntary commitment when a criminal defendant is found incompetent. The concern was that there was no outlet for cases that didn't really require commitment for an evaluation. Criminal trespass cases, for example, are relatively minor and the person may have been found incompetent numerous times. This provision could lead to almost a year commitment. Typically when a person's conduct isn't threatening or dangerous they would only receive 10 days. Language was drafted to require a coinciding finding of dangerousness, which would take care of the concern about more dramatic cases such as arson, he said.

MR. STEINER said there was also debate about Section 11, which is a rebuttable presumption of mental illness of someone who is

found incompetent. That is somewhat inconsistent with a possible basis for incompetency, which could be a disability rather than mental illness. There was no agreement on that issue, but it's worth review because someone could be found incompetent without being mentally ill. For example it could be due to mental retardation, developmental disability, or autism.

[2:43:41 PM](#)

CHAIR FRENCH asked his view on Section 8.

MR. STEINER said he believes that the reason that was written in was to ensure that all warrants are not called in. He asked the committee to consider that even in a state the size of Alaska, sometimes a judge should look at things.

CHAIR FRENCH asked if he had other comments.

MR. STEINER highlighted Section 3, which makes the third domestic violence assault a felony offense. The House changed this section substantially based on the concern that the two misdemeanor predicate crimes could be non-assaultive as could the C felony offense. That body established that all the offenses had to be physical assaults and he believes a 10-year look back was included. He suggested the committee consider the broad definition of household member with respect to domestic violence and getting a restraining order. Under current statutes household members could include college roommates, people living on a fishing boat, or cannery workers.

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CHAIR FRENCH questioned whether a cannery worker who lives down the hall really would be considered a domestic partner.

MR. STEINER replied not with the common understanding of domestic partner, but there would be a legitimate argument for people sharing a house or rooms in a boarding house. He doesn't think that's the intent with regard to domestic violence but it does make sense in a protective order situation. There you're trying to maximize protection under a short timeframe. In the criminal environment where there's more time to examine culpability then the broad definition makes less sense. An interesting part of the definition of household member is dating. He doesn't have a good definition for that but it could mean widely different things depending on location and perception of the people who are dating. One person may call it a date while another may not. It's totally undefined but it's

worth considering when looking at using that for the purpose of criminal culpability.

2:49:53 PM

RON ADLER, CEO and Director, Alaska Psychiatric Institute (API), said he too is concerned with the references to incompetency due to mental illness. He explained that someone could be incompetent to stand trial because their maladaptive behavior is a result of a developmental disability. But someone who is mentally ill could commit a crime and not be able to understand the charges because they're responding to internal stimuli.

2:51:24 PM

CHAIR FRENCH asked if his concern centers on the new Section 11 that talks about a defendant who is rebuttably presumed to be mentally ill.

MR. STEINER said that's correct.

CHAIR FRENCH questioned why a rebuttable presumption isn't the way to go. If the DA goes into court and says someone is mentally ill and has been found to be incompetent, a doctor could stand up and rebut the statement and end the dispute.

MR. STEINER asked where the defendant would be during the rebuttal. If he or she is already at API, there will be a capacity issue at the hospital with respect to bed space. API only has a 10-bed medium security forensic unit and all 10 beds are currently occupied.

CHAIR FRENCH asked what happens now if a district court judge finds someone to be incompetent to proceed and thus rebuttably presumed to be mentally ill.

MR. STEINER explained that the hospital would notify the licensing and certification agency about the extra person. Probably the seclusion and restraint room would be used to house the extra person. "It would create serious problems if we go over 11." In that event the fire marshal would also have to be notified, he said.

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CHAIR FRENCH asked how many times API has exceeded capacity in the last two years.

MR. STEINER estimated it's happened three times. His concern is that this bill could increase the number of referrals to the 10-bed medium security forensic unit.

CHAIR FRENCH asked if API tracks the number of defendants in the criminal system found to be incompetent to proceed. Data from the last several years would be useful information for the committee to have, he said.

MR. STEINER agreed to get the numbers to the committee before the next hearing.

[2:55:44 PM](#)

JOSHUA FINK, Director, Office of Public Advocacy (OPA), Department of Administration, echoed the comments by Mr. Steiner and Mr. Adler. He suggested the committee look at the definition of "household" because the application is far too broad. For example, two MatSu Valley cellmates recently got into a scuffle and initially they were going to be charged with domestic violence. This caused a situation because one of the definitions is "live with or ever lived with" so that includes cellmates, people in assisted living homes, and college roommates. This is a real issue. He agrees that when the definition was written in Title 18 it was to give the court broad discretion in fashioning a restraining order. It wasn't intended to define a domestic relationship for criminal liability purposes.

MR. FINK relayed that the House version of this legislation sets up a new section that defines domestic violence relationships and limits it to the present tense. The idea is to get to the familial and romantic relationships versus the broad definitions in Title 18.

[2:57:34 PM](#)

CHAIR FRENCH asked if he's comfortable with the three strikes language contained in the bill by Representative Holmes.

MR. FINK replied that bill has good language: the predicate crimes are assaultive in nature, there's a 10-year look back, and the definition of household is narrowed. "It's a tight bill and it gets at the public policy she wants implemented," he said.

CHAIR FRENCH told the committee that it's been his intention that the current Section 3 is a placeholder for the language Representative Holmes has developed. She's worked on it

extensively so that everyone is more or less happy. He expects to have that language by Wednesday.

CHAIR FRENCH directed attention to Section 4, which addresses detaining people who leave a commercial establishment with large amounts of merchandise in plain view. Previously merchandise had to be concealed for a store security guard to have authority to detain a person until the police arrive. This broadens that definition to allow theft to serve as a predicate.

SENATOR WIELECHOWSKI asked about the suggestion to add Lunestra [zopiclone] to the list of controlled substances in Section 6.

[2:59:55 PM](#)

ANNE CARPENETI, Assistant District Attorney, Criminal Division, Department of Law (DOL), said Lunestra is on the federal schedules said DOL doesn't object to adding it here.

CHAIR FRENCH agreed that it's a good idea to include it in the bill.

[3:00:37 PM](#)

MS. CARPENETI emphasized that Section 3 is very important to the Department of Law. She urged the committee to consider that the governor's bill didn't have an enhanced penalty for domestic violence offenses. It's not the most popular approach but it's more practical and it makes more sense for prosecutors to just provide that the third conviction of assault in the fourth degree be a class C felony if the person has been convicted of assaultive behavior within the last 10 years. She explained that there are different ways to consider what the predicate offenses are, but in Alaska law there isn't a crime involving domestic violence. It's not an element of any offenses so with each case it'd have to be proved to a jury beyond a reasonable doubt that the crime involved domestic violence. She believes that Mr. Steiner and Mr. Fink will say that the governor's approach is much cleaner and more preferable. Leaving that element out will still capture all the people you're trying to capture. In fact there's a good reason to apply this enhanced penalty to bullies on the street who beat up non family members. She urged the committee to consider Mr. Luckhaupt's draft that made another way to commit assault in the third degree by having committed non fear assaults in the first and second degree with various predicates.

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SENATOR WIELECHOWSKI expressed the view that it's cleaner and more practical to do what Ms. Carpeneti suggests. People who have assaulted others three times shouldn't be on the street.

MS. CARPENETI reminded the committee that some people have convictions for 10 and 12 assaults in the fourth degree. They're not all domestic violence, she added.

SENATOR McGUIRE echoed a similar sentiment. Someone who is exhibiting fourth degree assaultive behavior on a consistent basis is ratcheting up and it's time to say that behavior is a felony. "I'm supportive of just keeping it general," she said.

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CHAIR FRENCH asked her view on the sections about mentally ill and incompetency.

MS. CARPENETI observed that Mr. Steiner wasn't looking at the latest version of the bill. He and Mr. Fink worked with DOL on the provisions in version C, she said.

CHAIR FRENCH agreed, adding that he knows that his staff sent out the latest version. "We went out of our way to make certain that before the hearing he had the language. We'll try it again for Wednesday." He said his sense was that there had been conversations.

MS. CARPENETI agreed that they've spent hours together working on this language. "It would be interesting for you to get Mr. Fink's and Mr. Steiner's testimony because they've both represented to me that they liked the governor's version. It's a whole lot cleaner"

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SENATOR WIELECHOWSKI asked if she's considered extending this to other types of recidivist offenders. It would aim at those people who have 30, 40 and 50 offences. They're a menace to society and clearly they aren't correcting their behavior. At some point these people have to be sent to sit in a cell to think about their actions. He asked if she would support an amendment to that effect.

MS. CARPENETI replied she'd always be willing to consider it, but she knows that the price tag would be considerable. "This is a really good start in terms of people who beat up on other people, whether they be a domestic partner or a total stranger," she said.

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CHAIR FRENCH highlighted the fiscal note shows the cost of these provisions in 2012 to be \$9 million per year and nearly \$17 million per year in 2014.

MS. CARPENETI stated a preference for taking it one step at a time.

CHAIR FRENCH directed attention to Section 17, page 6, that relates to returning a search warrant. Although Mr. Svobodny made a fairly good case for relaxing the current 10-day rule, he said he'd prefer putting an upper-end limit on the number of days you'd have to wait for a search warrant to be returned. He asked her view on extending the limit to 30 days.

MS. CARPENETI said 30 days is reasonable as long as there's a statement about the possibility of going to the court and asking for an extension. That's what happens now and judges are generally good about cooperating, she said. She talked to Mr. Svobodny earlier and he indicated that 30 days with some extension provision would be acceptable.

CHAIR FRENCH reread the current provision and agreed that just two 10-day extensions are allowed. He said he wants to give the court guidance with regard to number of days. "We'll work on keeping some reasonable lid on that and we'll also give the public defender a chance to respond," he said.

CHAIR FRENCH held SB 234 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [3:11:15 PM](#).