

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 19, 2008

1:34 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 202

"An Act relating to expenditures in aid of or to implement the provisions of the federal Real ID Act."

HEARD AND HELD

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."

MOVED CSSB 234(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 202

SHORT TITLE: PROHIBIT STATE SPENDING FOR REAL ID ACT

SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS

01/16/08 (S) STA, JUD
02/14/08 (S) STA AT 9:00 AM BELTZ 211
02/14/08 (S) Heard & Held
02/14/08 (S) MINUTE(STA)
02/19/08 (S) STA RPT 2DP 1DNP 1AM
02/19/08 (S) DP: MCGUIRE, FRENCH
02/19/08 (S) DNP: BUNDE
02/19/08 (S) AM: STEVENS
02/19/08 (S) STA AT 9:00 AM BELTZ 211
02/19/08 (S) Moved SB 202 Out of Committee
02/19/08 (S) MINUTE(STA)
02/27/08 (S) JUD AT 1:30 PM BELTZ 211
02/27/08 (S) Heard & Held
02/27/08 (S) MINUTE(JUD)
03/19/08 (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
03/17/08 (S) Heard & Held
03/17/08 (S) MINUTE(JUD)
03/19/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

GEORGE ASCOTT, Staff
to Senator Wielechowski
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Provided information related to SB 202.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 234.

BILL OBERLY, Executive Director

Alaska Innocence Project (AIP)
Anchorage, AK

POSITION STATEMENT: Provided supporting testimony for
Conceptual Amendment 3 to SB 234.

DAN HOFFMAN, Chief
Fairbanks Police Department
Fairbanks, AK

POSITION STATEMENT: Expressed concern with Conceptual Amendment
3 to SB 234.

JOHN GLASS, Deputy Commissioner
Department of Public Safety
Anchorage, AK

POSITION STATEMENT: Stated that he needs to give Conceptual
Amendment 3 further study.

GARDNER COBB, Captain
Anchorage Police Department (APD)
Anchorage, AK

POSITION STATEMENT: Agreed with the intent of Conceptual
Amendment 3 to SB 234, but expressed concern with the mechanics.

GREGG STEWART, Supervisor
APD Evidence Section
Anchorage, AK

POSITION STATEMENT: Expressed concern with Conceptual Amendment
3 to SB 234.

ORIN DYM, Forensic Laboratory Manager
State Crime Laboratory
Department of Public Safety
Anchorage, AK

POSITION STATEMENT: Testified on SB 234 and described
procedures at the state crime lab.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration
Anchorage, AK

POSITION STATEMENT: Stated support for the mission of the
Alaska Innocence Project during testimony on SB 234..

DOUGLAS WOOLIVER, Administrative Attorney
Alaska Court System
Anchorage, AK

POSITION STATEMENT: Provided fiscal information related to SB 234.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:34:18 PM](#). Present at the call to order were Senators French, McGuire, Wielechowski, and Huggins. Senator Therriault arrived shortly thereafter.

SB 202-PROHIBIT STATE SPENDING FOR REAL ID ACT

CHAIR FRENCH announced the consideration of SB 202.

[1:34:43 PM](#)

SENATOR WIELECHOWSKI noted the previous hearings, and said an issue that's come up is whether or not the bill will impact the Division of Motor Vehicle's (DMV) ability to continue to do best practices. He suggested that his staff member explain how other states with similar provisions have confronted the issue.

CHAIR FRENCH remarked that this goes to his concern about whether the bill gives clear direction to the court and others should a suit result due to the implementation of the law. The question is whether DMV will know what it can and cannot spend money on, and whether a judge looking at a suit brought under this statute will know what money can and cannot be spent on.

GEORGE ASCOTT, staff to Senator Wielechowski explained that Montana, Washington, and Maine all passed legislation rejecting Real ID. None of those states indicated that doing so prevented them from conducting best practices, regardless of whether the practices coincidentally complied with some aspect of Real ID. Officials from each state seemed somewhat surprised at the suggestion that this would be an issue. In fact, they saw the legislation as reinforcing the state's ability to make its own decisions. Mr. Luckhaupt, the drafter of this legislation, agrees that under this legislation the administration could continue to conduct and implement best practices as long as it wasn't done specifically to comply with Real ID. Thus, he said, there is no need to amend SB 202.

CHAIR FRENCH summarized that he spoke with three states and the legislative drafter all of whom said that this legislation has not and would not prevent continued efforts to make driver's licenses secure.

[1:38:52 PM](#)

SENATOR WIELECHOWSKI added that some of those states have the most secure driver's licenses in the country. Those states were aiming to prevent the sharing of their databases with other states, which is what this bill does. That sharing exposes citizens to substantial security risk, he said.

CHAIR FRENCH said his concerns are satisfied.

SENATOR HUGGINS referred to an issue that came up in Fairbanks and Anchorage with respect to not using state money for enforcing federal immigration provisions, and asked if there might be similar unintended consequences with this bill.

[1:40:43 PM](#)

MR. ASCOTT relayed that, based on the recommendations of the 911 Commission, Maine is considering implementing a residency requirement to obtain a driver's license or an ID card. It's one of the few states that doesn't already have that requirement and although it would comply with Real ID, state officials don't foresee any problem.

SENATOR WIELECHOWSKI added that it's already against the law for illegal immigrants to get an Alaska driver's license. "In our opinion, this will not impede the state's ability to deal with illegal immigrants in any way," he said.

CHAIR FRENCH found no further questions, comments, or observations and asked for a motion.

SENATOR WIELECHOWSKI motioned to report SB 202 from committee with individual recommendations and attached zero fiscal note.

CHAIR FRENCH announced that without objection, SB 202 is moved from Senate Judiciary Standing Committee.

At ease from [1:42:19 PM](#) to [1:43:03 PM](#)

SB 234-CRIMINAL LAW/PROCEDURE: OMNIBUS BILL

[1:43:11 PM](#)

CHAIR FRENCH announced the consideration of SB 234. He explained that when the committee last met Senator Wielechowski moved Version C committee substitute (CS), and he had objected for discussion purposes. In the interest of setting that CS aside and getting a different one before the committee, he withdrew his objection.

SENATOR WIELECHOWSKI withdrew his motion to adopt Version C, CS to SB 234, labeled 25-GS2038\C, Luckhaupt.

CHAIR FRENCH asked for a motion to adopt Version E, CS to SB 234.

1:44:00 PM

SENATOR THERRIAULT joined the meeting.

SENATOR HUGGINS moved to adopt CS to SB 234, labeled 25-GS2038\E, Luckhaupt.

CHAIR FRENCH objected for discussion purposes. He explained this CS incorporates five changes as a result of the previous hearing. Sections 1 and 2 tighten language with respect to electronic database reporting such that the records will be submitted, as required, to local law enforcement agencies. Section 3 addresses the three-strikes assault provision. As currently written, only assaults that happen forward of the effective date of the bill would count as priors. It would only count felony assaults, felony sex assaults, and sex abuse of a minor as well as pain assaults in the misdemeanor realm, he said. The third change adds zopiclone (Lunestra) to the list of controlled substances in Section 7. The fourth change occurs in Section 17 [18]. Last week there was debate on how long the police should have to return a search warrant and this keeps the provision for two 30-day periods. "You have to make a return within 30 days; if you apply to the court you can get another 30 days if you show good cause." Although some suggested adopting a reasonable timeframe, it seems better to have a number and let that be the guiding principle, he said. The final change is to the applicability sections, making the assault provisions prospective rather than retrospective.

1:46:43 PM

SENATOR WIELECHOWSKI referred to page 3, lines 5-15, and said his understanding is that if someone has committed murder or assault on two or more occasions then the third assault is a felony.

CHAIR FRENCH asked Ms. Carpeneti to outline, for the record, the statutory references on page 3, lines 8-13.

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, explained that the predicate offenses are listed on lines 8-15. Line 8 [AS11.41.100 - 11.41.170] refers to

homicide convictions. Line 9 [AS11.41.200 - 11.41.220] refers to assault in the first degree—a class A felony, and assault in the second degree—a class B felony. Line 10 [AS11.41.230(a)(1) or (2)] refers to injury assault in the fourth degree. Fear assault in the fourth degree, which is a misdemeanor, is not included as a predicate offense. Line 11 [AS11.41.280 - 11.41.282] refers to assault of an unborn child in the first and second degree. Line 12 [AS11.41.260 - 11.41.270] refers to stalking in the first and second degree. Line 13 [AS11.41.410, 11.41.420.11.41.436. or 11.41.438] refers to sexual assault in the first and second degree and sexual abuse in the first and second degree.

[1:48:45 PM](#)

SENATOR WIELECHOWSKI asked if all those offenses, if conducted on their own, would already be felonies.

MS. CARPENETI replied all but the fourth degree injury assaults and stalking in the second degree.

SENATOR WIELECHOWSKI said if someone is convicted twice of stalking and then commits a fourth degree assault that would become a felony.

MS. CARPENETI said yes, as long as it's an injury assault and not a fear assault.

CHAIR FRENCH noted the memo from Mr. Wooliver and asked him to give his view of the fiscal impact of the three-strikes assault provision.

DOUGLAS WOOLIVER, Administrative Attorney, Alaska Court System, explained how the court counts and tracks cases and relayed that under the current statutory list of predicate offenses, had this bill been in effect in calendar year 2007, approximately 600 misdemeanor offenses would have been charged as felonies.

CHAIR FRENCH restated that under the current CS, that is 600 individuals who were charged with assault in the fourth degree and have two predicate priors. Mr. Wooliver agreed.

[1:52:18 PM](#)

SENATOR WIELECHOWSKI asked if the analysis was done under the provision in Version E or under the prior provision that only included crimes involving domestic violence.

MR. WOOLIVER replied the number 600 comes from an analysis under the CS that's before the committee.

SENATOR THERRIAULT asked if there would be latitude to plead down from the higher charge.

MR. WOOLIVER said yes; the number he gave is relevant for the court because what a person is charged with determines which court he or she will be in. What the person pleads to is a different matter and doesn't affect the fiscal note too much.

CHAIR FRENCH added that any felony charge means the person will be in superior court. For example, a person could be charged with 9 misdemeanors and a felony, and because of the one felony charge, they'd go to superior court.

MR. WOOLIVER agreed.

CHAIR FRENCH commented that he wouldn't have guessed the number would be that high, but if 600 people who have a number of priors are out there assaulting individuals, the message obviously isn't getting across. That illustrates the need for this kind of statute, he said.

MR. WOOLIVER added that in looking at the prospective application of the bill, he found that the Department of Corrections (DOC) has interesting statistics on the number of people who have three convictions within a 12-month period. "People wrack up these offenses very quickly," he said.

CHAIR FRENCH reminded the committee that there won't be 600 cases next year because it will take some time for the predicate priors to begin to count. "None of the convictions that are on the books today, will make a person a felon under this law. They've got to be convictions after the effective date of the Act," he said.

MR. WOOLIVER agreed.

CHAIR FRENCH added that "Better late than never." is the watchword for today.

[1:54:26 PM](#)

CHAIR FRENCH removed his objection. Finding no further objection, he announced that the CS is before the committee. Directing attention to page 7, lines 5-6, he suggested that the language about returning the search warrant based on the circumstances of the investigation is no longer necessary. It was necessary when the warrant had to be returned within a

reasonable amount of time, but not now that the timeframe is a firm 30 days. He asked Ms. Carpeneti to comment.

MS. CARPENETI agreed that the language is surplus.

[1:55:59 PM](#)

CHAIR FRENCH moved Amendment 1.

Amendment 1

Page 7, lines 5-6:

Delete "**as determined by the court based on the circumstances of the investigation**"

[1:57:02 PM](#)

SENATOR THERRIAULT asked if the end of the sentence should read, "... after the date of its issuance."

MS. CARPENETI said it works without the insertion, but adding the phrase does make the sentence sound better.

CHAIR FRENCH suggested that be addressed separately.

CHAIR FRENCH found no objection, and announced that Amendment 1 is adopted.

[1:57:59 PM](#)

CHAIR FRENCH moved Amendment 2.

Amendment 2

Page 7, line 5 following "date"

Insert "**of issuance**"

SENATOR THERRIAULT suggested the committee pass the amendment with "wiggle room" to allow the drafter latitude. Chair French added that if this inserts something horrific into the statutes he'd hope that the drafter would bring it to the committee's attention before the bill moves from the Senate.

CHAIR FRENCH found no objection, and announced that Amendment 2 is adopted.

[1:58:58 PM](#)

CHAIR FRENCH directed attention to a conceptual amendment in the form of a work draft and explained that it was a separate Senate crime bill that had he prepared. It seemed appropriate to

discuss it now, he said. The proposed amendment was circulated to the interested parties so that the committee could hear from both sides and have the debate. He expected to hear from the Department of Public Safety (DPS), the Department of Law (DOL), and affected law enforcement agencies today. It's controversial, he warned.

CHAIR FRENCH moved conceptual Amendment 3, labeled 25-LS1554\A, Luckhaupt.

[2:00:03 PM](#)

SENATOR THERRIAULT objected.

CONCEPTUAL AMENDMENT 3

"An Act relating to the preservation of biological evidence."

Section 1. AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Biological Evidence.

Sec. 12.36.200. Preservation of biological evidence. (a) Notwithstanding AS 12.36.010 - 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, a municipal prosecutor, or a municipal law enforcement agency shall preserve all evidence that is obtained in relation to an investigation or prosecution of a crime for the period of time that

(1) the crime remains unsolved; or

(2) each person convicted of that crime remains in the custody of the Department of Corrections or subject to registration as a sex offender or child kidnapper.

(b) Each agency required to preserve evidence under (a) of this section shall preserve the evidence in an amount and manner that is sufficient to develop a DNA profile from any biological material contained in or included on the evidence. An agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. When preservation of evidence of a crime is impracticable, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the material likely to contain relevant evidence related to the crime in a quantity sufficient to permit future DNA testing.

(c) Upon written request of a person convicted of a crime and in custody or subject to registration under (a)(2) of this section, an agency shall prepare an inventory of evidence that has been preserved in connection with the criminal case.

(d) An agency required to preserve evidence under (a) of this section may destroy evidence before the expiration of the time period in (a)(2) of this section if

(1) the agency is not required to maintain the evidence under another provision of state or federal law;

(2) the agency mails a certified delivery of notice of intent to destroy evidence to

(A) each person who remains in custody or subject to registration under (a)(2) of this section for that crime;

(B) the attorney of record for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney or municipal prosecutor responsible for prosecuting the crime;

(E) the attorney general;

(3) no person who is notified under (2) of this subsection, within 180 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

(e) When an agency is required to produce evidence required to be preserved under this section and the agency is unable to locate the evidence, the chief evidence custodian of that agency shall submit an affidavit, executed under penalty of perjury, describing the evidence that could not be located and detailing the efforts taken to locate the evidence.

(f) If a court finds that evidence was destroyed in violation of the provisions of this section, the court may impose an appropriate sanction and order remedies the court determines to be appropriate.

(g) In this section,

(1) "DNA" means deoxyribonucleic acid;

(2) "evidence" means the contents of a sexual assault examination kit, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other

identifiable biological material, and includes material, whether the material is cataloged separately or is present on other evidence.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE TECHNICIANS. (a) There is created in the Department of Law the Task Force on Standards and Training of Evidence Technicians. The task force consists of the following persons appointed by the governor:

- (1) the attorney general;
- (2) a district attorney;
- (3) the public defender;
- (4) the director of the officer of public advocacy;
- (5) a municipal prosecutor;
- (6) the commissioner of public safety;
- (7) a member of the Alaska state troopers;
- (8) a chief of a municipal police department; and
- (9) a representative of the Alaska Innocence Project.

(b) There shall be four ex officio members of the task force as follows:

- (1) the chief justice of the Alaska Supreme Court;
- (2) a member of House Judiciary Committee selected by the speaker of the house of representatives;
- (3) a member of the Senate Judiciary Committee selected by the president of the senate; and
- (4) the victims' advocate.

(c) Not later than December 31, 2010, the task force shall

- (1) devise standards regarding the proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions;
- (2) recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved evidence.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 12.36.200, enacted in sec. 1 of this Act, applies to all evidence in the possession of an agency listed in AS 12.36.200(a) on the effective date of this Act for crimes committed before the

effective date of this Act and all evidence collected on or after the effective date of this Act.

* **Sec. 4.** Section 2 of this Act is repealed January 1, 2011.

CHAIR FRENCH explained that the thrust of the amendment is to preserve evidence for a sufficient period of time to allow individuals to prove their innocence. The justice system in any state can go wrong and innocent people get put in prison and that is not a result that anybody should be willing to live with when it's not necessary, he said.

[2:01:21 PM](#)

BILL OBERLY, Executive Director, Alaska Innocence Project (AIP), said that AIP's mission is to identify and exonerate individuals who have been wrongfully convicted and incarcerated in the state of Alaska. The project is modeled on the New York Innocence Project, which has successfully resolved about 220 cases, a number of which were death row cases. He said that he is here today because AIP believes that this legislation is significant in bringing the criminal justice system and crime fighting in Alaska into the 21st century.

MR. OBERLY said that the science of criminal justice has seen great advances, particularly through the use of DNA. Many of the uses of evidence collected from crime scenes has increased crime solving, settling claims of innocence, cold-case resolutions, and identification of serial killers. Currently 25 states, the District of Columbia, and the federal government have evidence preservation laws. Exonerating innocent people is an unassailable goal, but claims of innocence can only be proved if evidence exists, he said. Also, if an innocent person is released, that means that a guilty person is out there and that same preserved evidence will assist in identifying and hopefully solving the crime.

MR. OBERLY said this legislation is important for legal, physical, and financial reasons. The most obvious legal reason is that the evidence is available to exonerate someone who has a claim of actual innocence. Almost weekly someone is cleared through the use of evidence that was preserved; he cited a recent example from Texas. Preserved evidence is also useful in resolving cold cases. In 1995 Charlotte North Carolina undertook a comprehensive program to preserve and organize evidence. As a result the police department said that 15 cases have been cleared, 14 individuals have been charged with murder, and 12 more cases have been opened for active investigation. Another

benefit is the identification and apprehension of serial criminals. DNA evidence collected today can be compared to evidence that has been preserved from other crime scenes to identify individuals who have committed multiple crimes over time. "To not take advantage of these advances by preserving evidence is an incredible waste of the criminal justice potential," he said.

MR. OBERLY highlighted that this legislation requires evidence to be preserved under two standards: 1) while the crime remains unsolved or 2) when the person who was convicted of the crime remains in custody or subject to registration as a sex offender. The alternative is to not preserve evidence, thus failing to solve crimes; denying justice to crime victims; preventing wrongfully convicted people from proving their innocence; and leaving the public vulnerable to previously unidentified but currently identifiable offenders.

MR. OBERLY said that the physical issues can be addressed in conjunction with the new crime lab bill, which the Senate is currently considering. "We're talking space here and if we're building a new crime lab, that is very easily addressed in this new legislation." Charlotte North Carolina, which had 110,000 residents in 1995 when it started this program, has all its evidence stored in a 6,700 square foot building. We're not talking about monumental room or monumental evidence, he said. The majority are small DNA samples, and this legislation says that if the piece of evidence is too large, then a small representative piece will be saved. It's not the case that an entire car has to be kept. "You just need to keep a little piece of the upholstery that has the biological evidence on it," he said. Although beyond the scope of this bill, this is an opportunity for public safety to consider a centralized storage facility with statewide cataloging, he added. This legislation also provides for premature disposition of evidence under controlled situations, he said. It establishes a way for the state to balance storage concerns with the loss of potentially probative evidence. So preservation is not absolute, it can be overcome if the balance is met.

[2:09:53 PM](#)

MR. OBERLY, turning to the fiscal aspect, said that the federal government believes that evidence preservation is so very important that it is currently soliciting grants, through the 2004 Justice For All Act, to applicants that can demonstrate statewide laws or practices that are in place that assure proper preservation of evidence. If this law passes, Alaska next year

will qualify to apply for a federal grant to help cover the costs. The expectation is that either this year or next, a grant proposal will be accepted that will include money to build crime lab capacity to catalog biological evidence. So this legislation will provide more economical criminal justice in Alaska, and it will help the state pay for it through federal grants, he said.

[2:11:42 PM](#)

MR. OBERLY characterized the legislation as a winner for everyone in Alaska. It allows the state to take advantage of the goldmine of potential justice contained in preserved evidence. Crimes can be solved, thus enhancing public safety and serving the victims whose cases were never solved, and the innocent will no longer need to endure the nightmare of wrongful convictions. The alternative is to condemn Alaska to 20th century crime fighting in the 21st century, leaving it behind the rest of the country. Failure to pass this legislation takes an important arrow out of the quiver of Alaska law enforcement and it takes away one of the only hopes of the wrongfully convicted. The reliability of the criminal justice system cannot depend on the serendipitous discovery of evidence. By establishing a reasonable preservation policy, Alaska will tap into the potential of preserved evidence and provide Alaskans with the quality of justice that it would be unconscionable to deny.

[2:13:15 PM](#)

DAN HOFFMAN, Chief, Fairbanks Police Department, said he echoes the concerns that law enforcement administrators have articulated. Certainly nobody wants innocent people to be convicted, and everyone understands the power that DNA evidence affords in terms of convicting and exonerating the right people. However, his concern relates to the provision that says that an agency shall preserve all evidence obtained in relation to an investigation, and the prosecution of a crime for the period of time that the crime remains unsolved. That is an onerous requirement because an enormous amount of evidence would need to be retained. That basically amounts to an unfunded mandate for a lot of municipalities. "Who down there in Juneau is going to be sending me the check to add on to my evidence room to accommodate the expansion that's going to be needed for this?" he asked.

CHIEF HOFFMAN said he was pleased to hear the prior speaker address the needed expansion of the state crime lab. Until it is at the point where it is no longer dealing with a backlog for current DNA evidence, it's hard for him to support initiatives that will further burden the state and municipalities. The

proper preservation of DNA evidence is a laudable goal, but this state has issues that need to be ironed out before that role is expanded further, he said.

2:16:13 PM

CHAIR FRENCH asked what evidence he saves now, and how he decides what to save and what to discard.

CHIEF HOFFMAN explained that evidence in unsolved homicides and sex assaults are retained forever. In any case where biological evidence may potentially identify a suspect, the evidence is already saved so he's not sure how much additional burden this proposal would create. His concern of his is that the language is far too broad, and sounds like all evidence in every burglary case needs to be saved.

CHAIR FRENCH asked if requiring retention of all biological evidence related to homicides or first degree rape cases would be more in line with what he's already doing.

CHIEF HOFFMAN said yes. "That would be a very strong step in the right direction." He'd also like to see a mechanism for municipalities to submit biological evidence for that category of case to the expanded state crime lab.

2:18:38 PM

JOHN GLASS, Deputy Commissioner, Department of Public Safety, said he would like to give the conceptual amendment further study. The potential liability for failure to act is a real concern. Many of the requirements are current procedure with respect to retaining evidence that comes into the crime lab. We like the concept and idea and would like to meet with the committee over the Interim to work toward an end product that satisfies all the parties involved, he said.

2:20:31 PM

GARDNER COBB, Captain, Anchorage Police Department (APD), said he's read the [conceptual amendment] and agrees with the intent. Putting the wrong people in jail is horrible, but this proposal raises serious concerns about cost, liability to some employees, and further overburdening the department's property and evidence section. APD currently employs 14 people to process up to 48,000 pieces of evidence each year. Currently 169,000 evidence items are stored in two warehouses that are about 98 percent full on a weekly basis. Finding room to keep evidence is a struggle already and expansion is desperately needed. "We strongly support the expansion of the state lab," he said. Currently APD

is being told that there is no storage room for some DNA samples that have been sent over for examination so they will be returned. In those samples there's probably a case or two that could be solved, he said.

CAPTAIN COBB said that the scope of the proposed amendment is too broad. He cited the requirement that all evidence that is obtained in relation to an investigation or prosecution of a crime shall be retained while the crime remains unsolved. APD already keeps forever all evidence in cases involving homicide, sexual assault, and sex abuse of a minor. Another concern relates to the notification requirement before evidence is disposed. And who determines what is practical and what is impractical with regard to retaining samples from large pieces of evidence, he asked. Also, what will be the fallout when some defense attorney says that relevant evidence was not retained? Another concern relates to training; who will pay and where will that training be held? "The intent of the bill is good; we're concerned about the funding and how it's going to be implemented. The scope seems to be pretty wide," he said.

[2:24:05 PM](#)

GREGG STEWART, Supervisor, Anchorage Police Department Evidence Section, said the evidence room is overcrowded. He explained that all homicide as well as adult and child sex crime evidence is already kept indefinitely, and he is concerned about the requirement to retain evidence from all unsolved crimes. The crime lab can't possibly process all the samples it has from cases with known suspects, let alone the many it has with unknown suspects, he said.

MR. STEWART referred to the training requirement and said that APD personnel already receive that training. Also, APD has mandatory evidence collection and packaging standards based on current state and national forensic policies. DNA evidence is treated appropriately. Because of the significant number of items that are already retained, this will potentially require doubling the storage space for evidence. Storage requirements for homicide cases vary from a few items that fit in a small box up to a container full. The requirement to send inventory notices to all affected parties by certified mail is troublesome. Currently APD sends those notices by certified mail or by fax depending on where the individual lives or is incarcerated. The state corrections system won't accept certified mail on behalf on an inmate and the federal corrections system will only accept certified mail. Finally

there is concern about individual liability with respect to destroyed evidence.

2:29:56 PM

CHAIR FRENCH asked if restricting the proposal to homicide investigations and prosecutions would comport with current practice.

MR. STEWART said yes.

2:30:37 PM

ORIN DYM, Forensic Laboratory Manager, State Crime Laboratory, Department of Public Safety, described how evidence is received, processed and retained. Each agency submits evidence that is entered into the screening section for the purpose of locating and identifying potential sources of stains or material to go on for DNA analysis. Typically cuttings or swabs are taken and moved on to the DNA unit and the bulk of the evidence is returned to the submitting agency. The lab barcodes and retains all those cuttings and swabs and as a result, space has become an issue. There is some discussion about returning the cuttings and swabs to the submitting agency since the lab is for evidence analysis, not evidence storage.

2:33:16 PM

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration, said he can't comment on the proposed amendment because he hasn't seen it, but he echoes the concerns Mr. Oberly articulated. "One of the most devastating things that can happen in the justice system is that an innocent person would be convicted. ... Mistakes do happen so what can be done to promote undoing the mistakes that...have happened, I believe is worth the effort," he said.

CHAIR FRENCH, hearing and seeing no further testimony, moved an amendment to Conceptual Amendment 3.

AMENDMENT TO CONCEPTUAL AMENDMENT 3

Page 1, line 8 before "investigation"

Delete "an"

Insert "**a homicide**"

Page 1, line 9

Delete "crime"

Insert "**homicide**"

SENATOR McGUIRE asked if the committee wanted to consider sex crimes as well as homicides.

CHAIR FRENCH suggested doing one thing at a time. He asked if there was objection.

SENATOR THERRIAULT asked if this purports to the way the system operates now with respect to the information that is being retained.

CHAIR FRENCH said yes; Chief Hoffman, Mr. Stewart and Mr. Dym from Anchorage all testified that homicide evidence is kept indefinitely.

[2:36:39 PM](#)

SENATOR WIELECHOWSKI asked why rapes aren't included.

CHAIR FRENCH said he's addressing one thing at a time. Finding no objection, he announced that the amendment to Conceptual Amendment 3 is adopted.

[2:37:06 PM](#)

SENATOR McGUIRE observed that a number of statutes already pertain to sex offenses so a definition here would need to be specific.

CHAIR FRENCH agreed there's a wide range of activity including rape, child pornography, touching, and penetration.

SENATOR WIELECHOWSKI said this can be revisited and he would suggest including only the most heinous acts now. He doesn't want to do something that will cost the state and municipalities potentially millions of dollars.

[2:38:14 PM](#)

CHAIR FRENCH said a benefit of the amendment is that it envisions a task force on standards and training of evidence technicians. It would put the attorney general, the district attorney, the public defender, the office of public advocacy, prosecutors, and public safety together to consider how to move forward with the idea. We heard that law enforcement wants to do this because it doesn't want to convict innocent people, but there is concern about cost, mechanics of how this works, and liability when evidence is destroyed by mistake.

SENATOR McGUIRE questioned creating a task force on just the one issue. The issue of the crime lab needs work, but the idea of keeping evidence for innocence purposes is just one part.

CHAIR FRENCH expressed the view that this relatively new concept to the statutes will require some implementation, and the best way to make that come about is to force the stakeholders to sit down and talk to one another in an official setting.

He observed that the drafters would need to clean up the amendment somewhat, since paragraph (2) on page 1, refers to registration as a sex offender and that probably would not apply to individuals convicted of homicide.

[2:41:58 PM](#)

SENATOR McGUIRE said she agrees that it's important to look at the wrongly convicted, but it's also important to consider the victims of crime who are suffering, too, under the system. She doesn't have language to offer now, but she would encourage the Chair to expand his thinking beyond the one problem.

CHAIR FRENCH agreed with her point and highlighted that the task force does include a victims' advocate as an ex officio member. He read paragraphs (1) and (2) on page 4, that outlines work that the task force shall do, and acknowledged that it doesn't fully address her concern.

SENATOR THERRIAULT observed that the list of task force members is fairly specific with the exception of the victims' advocate. He understands which advocate it refers to under Sec.24.65.110, but perhaps that should be specified.

At ease from [2:45:13 PM](#) to [2:45:59 PM](#).

CHAIR FRENCH said the discussion today has convinced him that this needs more work, and it can be done as a standalone bill.

SENATOR THERRIAULT withdrew his objection

CHAIR FRENCH withdrew Conceptual Amendment 3. We'll explore the idea in more depth at another time, he said.

CHAIR FRENCH stated that the governor's crime bill, as amended, is before the committee.

[2:46:42 PM](#)

SENATOR McGUIRE motioned to report CSSB 234, Version \E, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 234(JUD), 25-GS2038\E, as amended, is moved from the Senate Judiciary Committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:47:44 PM](#).