HOUSE FINANCE COMMITTEE
April 12, 2010
1:45 p.m.

1:45:43 PM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:45 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Mike Doogan
Representative Anna Fairclough
Representative Neal Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

None

ALSO PRESENT

Senator Hollis French, Sponsor; Dan Sullivan, Attorney General, Department of Law; Sue McLean, Public Defender, Department of Law; Richard Svobodny, Deputy Attorney General, Criminal Division, Department of Law; Orin Dym, Forensic Laboratory Manager, Department of Public Safety; Quinlan Steiner, Public Defender Agency, Department of Administration; Quinlan Steiner, Public Defender Agency, Department of Administration; Whitney Brewster, Director, Division of Motor Vehicles, Department of Administration; Jan Rutherdale, Attorney, Child Protection Section, Department of Law; Alison Elgee, Assistant Commissioner, Finance and Management Services, Department of Health and Social Services.

PRESENT VIA TELECONFERENCE

Jeffrey Mittman, Executive Director, American Civil Liberties Union (ACLU) of Alaska; Amanda Metivier, Facing Foster Care in Alaska.

SUMMARY

HB 126 FOSTER CARE/CINA/EDUCATION OF HOMELESS

CSHB 126(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal notes: FN4 (DHS), FN5 (DHS), FN6 (DHS).

HB 283 PURCHASE/CONSUMPTION OF ALCOHOL

CSHB 283(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached new fiscal note by the Department of Administration, new zero note by the Department of Law, and previously published fiscal note: FN3 (DHS.

HB 324 FAILURE TO APPEAR; RELEASE PROCEDURES

CSHB 324 was REPORTED out of Committee with a "do pass" recommendation and with attached new zero note by the Department of Administration, attached new zero note by the House Finance Committee for the Alaska Courts System, and previously published fiscal notes: FN1 (ADM), FN3 (COR), FN4 (LAW), and FN5 (DPS).

CSSB 110 (FIN)
PRESERVATION OF EVIDENCE/DNA I.D. SYSTEM

HCSCSSB 110(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached new zero note by the House Finance Committee for Department of Law and previously published fiscal notes: FN4 (DPS) and FN5 (DPS).

CSSB 222 (JUD)
SEX OFFENSES; OFFENDER REGIS.; SENTENCING

(Minutes found in HFIN 041310 0818 AM, the 4/13/10 continuation of this meeting.)

CSSB 222(JUD) was REPORTED out of Committee with a "do pass" recommendation and with two new indeterminate fiscal notes by Department of Administration and previously published fiscal notes: FN2 (COR), FN4 (LAW), FN5 (CRT), and FN7 (DPS).

1:46:11 PM

#sb110
CS FOR SENATE BILL NO. 110(FIN)

"An Act relating to the preservation of evidence and to the DNA identification system."

1:46:55 PM

SENATOR HOLLIS FRENCH, SPONSOR, discussed SB 110. He explained that the proposed legislation addresses post conviction Deoxyribonucleic Acid (DNA) testing. He commended his Chief of staff, Cindy Smith who initiated a series of events allowing for provisions that move crime bills through the process. The governor introduced a bill this year with similar issues in respect to evidence preservation. The DNA provisions from the governor's bill are inserted into SB 110. He highlighted Section 3, Page 3 regarding evidence preservation. In the past rural law enforcement agencies were tasked with storing large amounts of evidence. With SB 110, an agency is not required to preserve physical evidence for a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. If the evidence is impracticable, the bill asks the agency to grab those small portions of biological evidence that may be useful in the future to allow for a claim of innocence or conviction if necessary. He noted the language insertion from the Department of Law (DOL) "or until 50 years passes" allowing a limit with respect to the amount of time evidence is retained in storage. The Alaska Native Justice Center was added to the task force. He noted that the task force will provide good feedback in respect to evidence preservation.

1:51:02 PM

Senator French discussed provisions on post conviction DNA testing. Individuals in prison can assert a claim of innocence because of DNA evidence that may not have been considered or available during conviction. The provision

ensures that no innocent individual is retained in an Alaska prison. He explained that SB 110 is modeled on Federal post conviction DNA statutes, which were passed in 2004 by a republican congress. He opined that the bill struck the proper balance between civil liberties and protection of the public order. Changes to HB 316 include the deletion of language requiring applicants to cover the cost of evidence retrieval. Timeliness provisions were changed in that current prisoners have ten years from the passage of the bill to initiate a claim. Provisions regarding guilt where the applicant did not conceive guilt under oath in an official proceeding can be waived by the court in the interest of justice. He explained that innocent people sometimes plead guilty to crimes. A requirement asking for an attorney affidavit was deleted. New language in Section 10 states that the proposed DNA testing of the specific evidence may produce new material that one would support the theory raised by the defense.

1:54:19 PM

DAN SULLIVAN, ATTORNEY GENERAL, DEPARTMENT OF LAW, sought guidance from the House Finance Committee about the three bills presented by the governor. He provided testimony during the first week of session regarding the ten year comprehensive plan to address the problem of domestic violence and sexual assault in Alaska. He noted that the way to combat the epidemic of sexual assault and domestic violence is with a ten year strategic plan. He mentioned that the help of the legislature has been instrumental in the initiative process. He focused on the implementation of the plan as a key aspect of the initiative. The strategic objective is focused on changing the culture through a comprehensive education and prevention campaign promoting a culture of respect. He noted the importance of law enforcement for interested communities. He discussed the issue of victim services availability. A summit of lawyers to increase the legal services via pro bono work is one potential solution.

2:00:51 PM

Mr. Sullivan mentioned the legislation before the committee. He recalled SB 222, SB 110 and HB 324, which have been improved by this body. He requested that the bills go out of committee as a package today. He pointed out bail reform as an important issue. Alaska has not had

significant bail reform since the 1960s and HB 324 is an effort to "catch up" to federal standards. He highlighted four key points in HB 324. The first point requires a person charged with a serious sex offense to prove that release conditions before trial will protect the victim and the public. The second point prohibits a person found guilty of a serious sex offense from being released before sentencing or during an appeal of a conviction. The third point protects the victims of domestic violence by setting standards that the court must find before allowing a perpetrator of domestic violence to return to the victim's residence. The fourth point allows more time before the defendant's first appearance in court for the police to investigate and the prosecutor to make an informed charging decision to present better bail arguments and to contact the victim so that they may be present at the bail hearing. He commented on the positive demonstration made by the administration, the House Finance Committee, and the Senate Judiciary Committee. He complimented the various staff members whose involvement created a strong package of three bills encompassing important components of the overall strategic plan to end sexual assault and domestic violence.

2:05:47 PM

SUE MCLEAN, PUBLIC DEFENDER, DEPARTMENT OF LAW, stated that the testimony from Senator French was consistent with the department's viewpoint. She expressed a strong interest in allowing a challenge of convictions with the advent of DNA testing. She stated that SB 110 strikes an appropriate balance.

RICHARD SVOBODNY, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, noted that the department worked well with the administration and Senator French's district. The requirements for obtaining post conviction relief under the state statute closely resemble the federal statute. He pointed out one instance on Page 6, Line 28 that does not follow the federal statute in which a person must be incarcerated prior to post conviction relief. With SB 110, incarceration is not a requirement. The change allows for the increased availability of post conviction relief.

2:09:17 PM

Co-Chair Stoltze opened public testimony.

JEFFREY MITTMAN, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF ALASKA, testified in favor of the bill.

Co-Chair Stoltze pointed out two fiscal notes from the Department of Public Safety (DPS) and one from DOL.

Mr. Svobodny explained the $4000 fiscal note from DOL. The court of appeals created standards on post conviction relief, but DOL believes that the legislature should determine standards for Alaska. The $4000 cost allows the task force to impose standards for the retention and return of evidence.

2:13:08 PM

Co-Chair Stoltze detailed the zero fiscal note from DPS and one zero fiscal note from the Senate Finance Committee.

ORIN DYM, FORENSIC LABORATORY MANAGER, DEPARTMENT OF PUBLIC SAFETY, stated that the fiscal note takes the form of a new crime lab. He explained that the department has gained efficiency in evidence handling and evidence storage providing reserves for the next two years.

Co-Chair Hawker asked about the fiscal note from DOL. He asked if the funding would be absorbed into the existing budget authority. Mr. Svobodny responded that the department could absorb the cost. Co-Chair Hawker commended the frugality of the zero fiscal note. Mr. Svobodny agreed to present the note as a zero fiscal note.

2:16:32 PM

Representative Gara moved AMENDMENT 1. Co-Chair Stoltze OBJECTED.

> Amendment One
>
> Delete "(A) is not inconsistent with a defense presented at trial; and (B)"

Representative Gara spoke to the amendment. He explained one outstanding issue on Page 8, Line 19 addressed by the amendment. This section of the bill states that if a person is innocent and able to prove it with DNA evidence, then the person will no longer be in jail. He wished to prevent

any additional road blocks for an innocent person. The DNA evidence is present for the person who is wrongly convicted. He noted the list of ten points that must be illustrated to prove innocence. If Line 19 is not amended, then an innocent person charged on misidentification, who chooses a plea of self defense as recommended by an attorney, will not be eligible for the benefits of DNA testing. The amendment states that an innocent person cannot be punished for a decision made by the trial attorney. He provided a hypothetical case in which this amendment would prove necessary.

2:21:47 PM

Ms. McLean noted that a balance must be obtained between assuring that an innocent person could utilize DNA evidence testing and those who might use the new law to perpetrate a fraud on the court. Normally in self defense cases the defendant would testify that he acted in self defense. She added that if a defendant had a lawyer that talked him into a fraudulent plea, then he has an opportunity to file for a petition for a post conviction relief based on the ineffective assistance of counsel leading to his conviction.

Representative Gara clarified that all circumstances must be covered to truly achieve a balance. He argued that balance is impossible if a person cannot use DNA evidence.

2:23:55 PM

General Sullivan responded that the bill does comprise a balance. He noted that the language states that the theory of defense is inconsistent, which provides some "wiggle room." The language achieves the balance in the federal statute.

Representative Doogan understood that if a person chose a plea and lost then they are rendered unable to file a petition for post conviction relief. He did not understand how amendment one would negatively affect any person or entity involved. Mr. Svobodny responded that most trial lawyers seek the truth. Representative Doogan commented that the person on trial does not pay the price in this circumstance. His attorney makes the decision.

2:29:16 PM

Mr. Svobodny stated that he was a prior public defender and he never advised a person to run a defense that was untrue. He recalled instances where a defendant requested a new lawyer because the current lawyer would not defend based on the story provided by the defendant. He believed that the courts should strive to tell the truth as opposed to misleading people.

Representative Doogan stated that the goal of the amendment is to prove innocence and tell the truth. He noted that without this, prosecutors will return to court and allow for further DNA testing. He cited that the DNA test provides infallible proof.

2:31:51 PM

Representative Austerman asked if chapter 73 of the bill was based federal law. Senator French answered yes; chapter 73 is largely patterned after post conviction DNA statutes.

2:33:29 PM

Representative Gara stressed that a lawyer can help an innocent person use DNA evidence to prove that they are innocent. He clarified that his hypothetical situation addressed an innocent person. He requested testimony from the department.

2:35:38 PM

QUINLAN STEINER, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, commented that the amendment addresses both section seven and eight. Section eight details the requirement of the perpetrator's identity disputed at trial. Subsection eight requires that the court find that the applicant was convicted after a trial, which is inconsistent with another section of the bill which permits a post conviction DNA relief after a guilty plea. The defense attorney could make a reasonable decision to run self defense, which creates an ethical dilemma.

2:38:45 PM

Representative Gara asked if there were circumstances where an attorney acting in good faith would run one defense during trial and later be precluded from using DNA evidence to prove that the client was innocent. Mr. Steiner replied yes, the most obvious example is a self defense claim which

identifies the defendant as the person who created the act with eyewitnesses stating that the person was acting in self defense. A defense attorney may elect to run self defense rather than an identification defense despite the fact that the client denies presence at the scene of the crime. The decision rests exclusively with the attorney.

Co-Chair Hawker commented on the debate. He stated that his aide is supportive of the amendment. He asked Senator French about the amendment and the balance of concerns.

2:41:07 PM

Senator French responded that research shows the federal statute is the gold standard. He stated that he approved of the bill without change.

Co-Chair Hawker asked the Attorney General his opinion about amendment one.

General Sullivan stated that each provision requires an element of balance. He sought to strike the proper balance. The procedures are intended to prevent the incarceration of innocent people. He respected the concerns raised in the amendment, but the procedures are a balance in judgment.

2:44:10 PM

Representative Fairclough spoke to the example provided by Representative Gara. She wondered if the defense attorney would have considered DNA evidence prior to the trial. She was unsure how the DNA evidence was obtained once the trial ended.

Mr. Steiner responded that similar decisions were made prior to sophisticated DNA testing allowing for strategic reasons to forgo testing. An attorney must make judgment calls regarding the evidence's likelihood of success, which includes questioning the defendant's testimony.

Representative Gara stated that the sophistication of DNA evidence is recent and unprecedented.

2:47:12 PM

Co-Chair Hawker informed that court officers intend to make good decisions and are seeking justice. People in the court system are not always part of the judiciary system.

Occasionally immigrants might not feel comfortable in the judicial system. This person may seek the best option out. He explained that the defense mechanism could be the result of fear or lack of understanding of the judicial system. He wondered if the requirement might be inconsistent.

2:51:03 PM

Mr. Steiner commented that the amendment may not completely address the issue. Subsection eight requires that identity be disputed and works in concert with Section seven.

Representative Joule commented that all native Alaskans look alike to some people. He wondered how the issue fits in to the amendment.

Senator French stated that the DNA testing might truly exonerate the defendant only with an eyewitness that proves that the blood on the victim fell on the defendant. The police would test any blood found on the victim. In order for DNA evidence to exonerate the defendant the blood on the victim would require testing.

2:54:19 PM

General Sullivan commented that the hypothetical situation assumes that the person is innocent and the blood is not presented at trial. He pointed out that a defense attorney might wisely avoid DNA testing, but then seek it out in the event of a conviction.

2:56:23 PM

Representative Kelly asked how many states have adopted the federal approach. Senator French did not know the answer.

Representative Gara explained that his hypothetical situation included a pre DNA evidence conviction. He accepted that many people do not fit the hypothetical, although if the amendment allows one innocent person to leave jail, then he will be content.

Representative Doogan asked to know the potential harm of the amendment if passed.

2:59:30 PM

Ms. McLean responded that the amendment opens the opportunity for those who are not in fact innocent and are continually bringing various motions on other theories. The harm is that the trial and appeals have occurred.

Representative Doogan asked if the amendment would harm the lawyer. He noted that the provision removed includes the words "I did not do it." Ms. McLean answered that those who present a defensive alibi yet were guilty can now use a plea of self defense. She stated that the harm is the manipulation of the system making it more difficult for those people seeking access to the system.

Representative Doogan reminded that a DNA test does not allow for a conviction change.

3:02:35 PM

General Sullivan clarified that he is not admitting to administrative convenience. He thought the harm to the system was in allowing new theories that may be inconsistent with previous theories and thereby encouraging a form of "crapshoot justice."

Representative Doogan expressed dissatisfaction with further argument versus an answer to his question regarding the potential harm of the amendment. He repeated the question "what is the harm in the amendment?"

Representative Fairclough pointed out the cost to the state's investment in correctional facilities when DNA evidence is utilized. The harm to the system is that state dollars would be spent to test theory after theory. She recalled an appeal process addressed in the CS.

3:07:02 PM

Senator French referred to Page 9, which addresses the summary dismissal if a person does not comply with the requirements of the discussed provisions.

Ms. McLean added that citizens always have the right to appeal a court order.

Representative Gara concluded that if the amendment passes, a person must present the affidavit and illustrate that the DNA evidence will prove innocence. If there was prior DNA

evidence, the defendant must illustrate the reason that the new DNA evidence is superior. The DNA evidence must be proposed as sound and valid. The balance will be the inconvenience of rotten people who abuse the system, but for an innocent person who might not have been sophisticated enough to insist on the best defense possible, the amendment could make the difference. He continued that he felt that the bill was good with strong standards and many hoops to jump through prior to utilizing DNA evidence.

A roll call vote was taken on the motion.

IN FAVOR: 6
OPPOSED: 5

Amendment one was ADOPTED.

3:12:09 PM

Co-Chair Hawker MOVED to report HCSCSSB 110(FIN) as amended out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCSCSSB 110(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached new zero notes by the House Finance Committee for Department of Law and previously published fiscal notes: FN4 (DPS) and FN5 (DPS).

#hb324
HOUSE BILL NO. 324

> "An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

3:13:38 PM

Co-Chair Hawker moved to adopt work draft 26-GH2910\S Luckhaupt 4/11/10.

Co-Chair Stoltze OBJECTED.

Mr. Svobodny stated that Section 1 of the bill moves the offense of failure to appear in court from Title 12 to Title 11. The current bail bill was passed in 1966 and has not been updated or moved when the criminal code was revised in 1978 by the legislature. The section moves the location of the crime from the criminal section of the law to the criminal law. The state must prove that a person knew that they must appear in court. This bill clarifies that we are not able to prove the negative. The section does not refer to strict liability which means that despite a person's excuse, if a law is broken, they are prosecuted. The law here provides an affirmative defense.

Mr. Svobodny continued with Section 2. He pointed out that the section allows for police arrest without a warrant for violating a condition of release. Section 3 establishes the procedures for obtaining bail in any particular case. The section aligns with present bail conditions and adds conditions deemed appropriate by the court system.

3:19:41 PM

Mr. Svobodny stated that the section requires a person released from court to be released on bail or their own recognizance. The signed conditions of release can cost the court system time in the state's view. For important events the state requires a signature for the conditions of release. A provision where a judge can change bail at any time he or she deems appropriate is dropped.

3:22:56 PM

Mr. Svobodny noted that the process describes the various circumstances regarding appropriate conditions of release. He pointed out Section 4 and the burden of persuasion or proceedings which establishes that the state has the burden of proving the person is a threat to society. A defendant must go forward to show that they are not a danger to the community. When the charge before the court is an unclassified felony, the defendant must show the court why they are likely to appear or why they do not present a

danger to the community. The next situation includes a previous felony offense which is included in the CS. A person seeking bail while engrossed in another case on bail must come forward to prove that they can follow the conditions release.

3:27:44 PM

Mr. Svobodny noted that Section 4 addresses situations of extradition. He commented on the debate about bail in a case of extradition. Alaskan courts have held that following a governor's warrant there is not bail following a case of extradition. A person who fled another jurisdiction may flee the current one or may prove a danger to the community. Evidence can be presented on the normal conditions of release if a court can be convinced.

Mr. Svobodny discussed special conditions that apply in special cases. He noted specific provisions for specific crimes. For alcohol related crimes, the court can impose certain conditions. He pointed out special provisions for crimes that involve drug offenses.

3:32:15 PM

Mr. Svobodny continued with Section 5 and the protection of the public. A third party custodian might be issued. Standards for the appointment of third party custodians do not yet exist. He provided an example. The bill does contain exclusions for people who are seeking third party custodians.

Representative Gara suggested that the sectional analysis be reserved for questions.

3:35:00 PM

Mr. Svobodny stated that the Court of Appeals overturned a decision made by the legislature about a prohibition for people charged with committing a crime of domestic violence that resolves the dispute. The law requires a twenty day cooling off period. The defendant must show that they will not present a danger to the person. Currently the law states that a person must be brought before a court within twenty four hours to set bail, but this bill changes the time to forty eight hours.

3:37:40 PM AT EASE

3:39:33 PM RECONVENED

QUINLAN STEINER, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, commented page seven, line eight, which could impact the agency in terms of the conduction of bail hearings. If judges interpret the section in a highly technical manner, the change would require the defense council to use evidence related to the defense to rebut that presumption. The section could be interpreted differently, but if elected, defense attorneys are required to make a decision. He commented on Page 12, Line 13 in which defense is required to use evidence about the event itself to meet the burden that might commit them to a defense of the disclosure of defense theories and evidence.

Vice-Chair Thomas asked if Mr. Steiner had spoken with the sponsors of the bill about his concerns. Mr. Steiner responded yes.

Mr. Svobodny responded that a person must illustrate whether they are a danger to various entities. He continued with Page 12, Line 13 the addresses domestic violence situations and cooling off period. The section allows for a finding that the court must make in the circumstances with a domestic case.

3:46:33 PM

JEFFREY MITTMAN, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION (ACLU) OF ALASKA (via teleconference), expressed ACLU's concerns with respect to the constitutionality of the bill. He noted that prior correspondence with the Judiciary Committee has been placed on the BASIS system in the documents section. He pointed out Page 3, Lines 23 which encompasses the change to a forty eight hour period for an initial hearing. He stated that ACLU believes that the standard of 24 hours in Alaska is effective and it may be unreasonable to statutorily or legislatively change from a 24 hour to a 48 hour period. Page 5, Line 23-24 along with Page 6, Lines 12-15 allow for conditions that enable the court to mandate that a person maintain employment or that they follow a medical provider's treatment. These requirements apply to a person that has been charged but not yet convicted making their rights those of an innocent person. He believed the requirement unconstitutional as a judicial mandate on an individual who is not yet under court supervision. He

continued with Page 7, lines 8 and 9, which is the area of greatest concern for the ACLU. The Alaska constitution sets forth that a person has a right to bail. To reverse the statute by legislative action is constitutionally inappropriate. He commented that the exception for the presumption of bail was with capital offense where the evidence is great. That high standard governs and to create a rebuttable presumption would prove improper. He continued with Page 8, Lines 8-28 which include the mandate that an individual would be required to submit to a search without a warrant. He continued with Page 10, Line 15-19 and the imposition of third party custodian status. The presumption for bail is that a person is entitled to bail and the court imposition of conditions should be less restrictive. He recommended additional language stating that a court finding of an imposition of a third party custodian is the least restrictive means to assure that a person appears for the safety of the victim.

3:52:50 PM

Representative Doogan asked about the unconstitutional nature of the bill.

Mr. Svobodny addressed the concerns presented by Mr. Mittman. He addressed the initial concern about the change from 24 to 48 hours. He noted that Alaska is one of three states with a 24 hour requirement. He pointed out that the Supreme Court agreed to 72 hour limits.

Mr. Svobodny addressed Mr. Mittman's complaints regarding conditions of bail including use of medication are conditions commonly set by the court. Often, people are incarcerated that have mental illness or diabetes. Conditions of release are typically set by the court at a hearing where there has been a finding of probable cause that a person has committed the crime. The court then has a responsibility about the least restrictive alternative for the person. The law presumes that the person will be released on their own recognizance unless they present a danger to flee or a danger to the victim or the community. The judge must then establish conditions of release to protect the interests of the people.

Mr. Svobodny continued with Page 7, Lines 8 and 9. A presumption includes the person who proves the proposition that a person is a flight risk or a danger to the

community. The presumption is found in the federal law and many other states.

3:59:40 PM

General Sullivan stated that HB 324 is the most important legislation this session since bail legislation has not been reformed since the 1950s. He acknowledged the value of victims' safety. He commented that if a community has the guts to put a person in jail and he is eligible for bail that places innocent people at risk. He outlined the broad approach to the issue of bail. He believed that the provisions were important as they promote safety. He believed that the presumption issue suggested that the state must keep up with the federal rules. He emphasized that the approaches in the bill were important to keeping Alaskan communities and victims safer.

4:05:13 PM

Representative Doogan requested clarification on the issue. Mr. Svobodny responded that every person has a right to bail. If the state notes that a person is dangerous then the right to bail is limited. The presumption shifts when a defendant can prove that they are not flight risks. He referred to Page 8, Line 28 and the reference to searches. He clarified that the police cannot search a person indiscriminately. The law states "to submit to a search of the defendant's personal property, residence, vehicle, or any vehicle over which the defendant has control for the possession of alcoholic beverage or illegal drugs and drug paraphernalia by a peace officer has a reasonable suspicion that the defendant is violating the terms of the defendant's bail release." If there is a nexus between the condition and the crime, conditions of bail release can be imposed including searches based upon reasonable suspicion.

Mr. Svobodny addressed the question regarding the third party custodian. He noted that a third party custodian is a tool the judge uses to retain the defendant. Third party custodians exist following a court finding of probable cause that the person has committed the crime.

4:09:47 PM

Co-Chair Stoltze removed his objection. There being NO OBJECTION, it was so ordered and Version S was ADOPTED.

Representative Kelly asked about Page 7 and the rebuttable presumption. He asked about other state's policies regarding rebuttable presumption. Ms. McLean answered that eleven states have expressly rebuttable presumption.

4:12:29 PM AT EASE
4:13:32 PM RECONVENE

Co-Chair Stoltze noted all zero fiscal notes except one for $50 thousand for the draft CS recently adopted.

Representative Gara explained that with rebuttable presumption additional time is not necessary. He MOVED to Zero out the fiscal note dated 4/12/10. The $50 thousand was reduced to zero.

4:16:09 PM

Vice-Chair Thomas MOVED to report CSHB 324 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 324 was REPORTED out of Committee with a "do pass" recommendation and with attached new zero note by the Department of Administration, attached new zero note by the House Finance Committee for the Alaska Courts System, and previously published fiscal notes: FN1 (ADM), FN3 (COR), FN4 (LAW), and FN5 (DPS).

4:18:07 PM

#hb283
HOUSE BILL NO. 283

"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

4:20:00 PM

WHITNEY BREWSTER, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION, spoke to the fiscal note. Currently the Department of Motor Vehicles places a restriction on a license when a court order is received for driving under the influence of alcohol or refusal offenses. She understood that the allowable offenses would be broadened to include any offense with two misdemeanor offenses or when alcohol has been determined to be a

substantial influence. She explained that the department took approximately 8000 people convicted of a misdemeanor who have had two prior convictions and added them to the 6000 felony convictions. Not all judges will use an alcohol restriction as a term of sentencing, nor will all offenses be alcohol related. The cost of license production is $2.50. The fiscal note for $17.500 is strictly for supplies. She pointed out the change in revenue will equal $350 thousand.

4:22:11 PM

Co-Chair Hawker MOVED to report CSHB 283 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 283(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached new fiscal note by the Department of Administration, new zero note by the Department of Law, and previously published fiscal note: FN3 (DHS).

#hb126
HOUSE BILL NO. 126

> "An Act relating to continuing the secondary public education of a homeless student; relating to the purpose of certain laws as they relate to children; relating to tuition waivers, loans, and medical assistance for a child placed in out-of-home care by the state; relating to foster care; relating to children in need of aid; relating to foster care transition to independent living; and relating to juvenile programs and institutions."

4:24:57 PM

Co-Chair Hawker moved to adopt CSHB 126 26-LS0309\Q, Mishel, 4/9/10. Co-Chair Stoltze OBJECTED.

Representative Gara informed that HB 126 increases the chance for the approximately 2000 foster youth in the state to succeed in greater numbers. Similar efforts have occurred in many states. President Bush signed a law called the Fostering Connections Act in 2008. Fostering connections recognized that the former foster care model was ineffective. Some foster youth are not prepared to

leave the home environment as early as those from stable families. The effort in HB 126 is to extend foster care to age 21 where it is in the child's best interest. Educational achievement in states providing foster care until a child is 21 are twice as high as those states that provide foster care until 18 years of age. He shared a story about foster youth leaving home at age 19 with unsavory results. The cost for extending foster care to age 21 will equal $470 thousand per year. Matching federal funds are available under the Fostering Connections Act.

4:28:26 PM AT EASE
4:53:41 PM RECONVENE

Representative Gara discussed other provision in the bill, which came out of the HESS committee. The co-chair of the HESS committee worked on language under Section 2. If a foster child has opted out of state custody after age 16, but then desires reentry the standards in Section 2 are used. He pointed out that a young person must prove that they are in need of foster care to avoid personal harm or homelessness or to enhance the ability to continue in education or successful transition. The department may request conditions prior to reentry. Reasonable terms might include an education plan, a job training plan or other reasonable terms deemed so by the court. He stated that he endeavored to expedite the process by eliminating the requirement of annual court status reports. The Department of Law opined that it was best to retain the annual court status reports. He mentioned a separate bill section that is since unnecessary as is passed as a separate bill on the House floor recently.

4:57:56 PM

AMANDA METIVIER, FACING FOSTER CARE IN ALASKA (via teleconference), stated that for youth who exceed the age requirement for care in Alaska, forty percent end up homeless, thirty percent end up incarcerated, and a high rate of early pregnancy exists. He explained that foster care extensions beyond age 18 create better overall outcomes and those children are more likely to graduate high school and receive postsecondary education and training. The program helps youth reenter foster care successfully.

Co-Chair Stoltze acknowledged the substantial support for the program.

5:01:43 PM

Representative Fairclough asked about the differences between the CS and the original bill. Representative Gara discussed an additional provision in which the Covenant House faced a problem with federal funding because they housed greater than 20 people and under federal law a state law must certify that more than 20 people can be housed. A separate piece of legislation was filed by the Senate Health and Social Services (HSS) committee, which led to deletion of the issue from the CS.

Co-Chair Stoltze asked which section of the bill (Z version) passed the HSS committee. Representative Gara responded Page 3, Lines 14-18.

Representative Fairclough asked about Page 2 of the HSS version beginning on Lines 3-23, which appears as new language. Representative Gara responded that the language is included in the CS currently before the committee. In the Z version of the bill, the court's one year renewal period was inadvertently removed but the Q version inserts them. Beginning on Line 9, Page 2 the provision to reenter foster care is found. Specific language listing standards was requested. He stated that the language on Page 3, Line 2 of the current bill clearly states "you're in need of out of home care to avoid personal harm or homelessness or to enhance the person's ability to continue the person's education or training or otherwise improve the person's successful transition to independent living and if requested by the department agrees to reasonable terms for resuming state custody that may include matters relating to the person's education, attainment of a job, or life skills or other terms found by the court to be reasonable and in the person's best interest." He noted that DOL requested the use of the word resume to make clear that the section referred to reentry into foster care.

5:06:39 PM

Representative Fairclough pointed out that Page three of the Z version shows bolded type different from the version presented to the committee. She noticed words that were removed, but she did not know the consequence of the

removal as compared to the recommendations from the HSS committee.

Representative Gara informed that on Page 2, Line 9 of the Z version, the language, except for the words "resume care" is the same as the new version beginning on Page 2, Line 14-24. One change is some language from Page 2, Lines 4-6 which addressed the old procedure of the yearly hearing. He stated that the annual review for younger children was removed.

Representative Fairclough requested an explanation of the difference on Page 2, Line 11. Representative Gara replied that the language between the two sections includes the definition of youth who left care and wish to reenter. He noted that DOL recommended new language to define the group as people who resume care. Before the youth were described as "persons released for a reason other than court ordered reunification with person's parent." The new language asks if the children were released to their own custody as stated on Page 2, Line 31.

Representative Fairclough noted that the HSS committee recommended that the new language provides an exception if the foster child were removed due to a court order.

5:11:25 PM

Representative Gara explained that there was no substantive reason for the change. The DOL intended to define the youth that leave care and then seek reentry. The DOL advised that a youth released to a youth's own custody was more informative language.

5:12:33 PM

Representative Kelly recalled the late Representative Richard Foster's great support of state involvement in foster care.

Vice-Chair Thomas requested that the Attorney General's office speak to the questions.

JAN RUTHERDALE, ATTORNEY, CHILD PROTECTION SECTION, DEPARTMENT OF LAW, stated that she was not involved in the earlier versions of the bill, but was familiar with the current version. Substantively, the difference between the

two bills is that the new section is lumped into the old sections. The action of removing the section and creating a new subsection preserves the old section. She stated that the requirement is no longer an annual return to court. She noted that the change provides a protection for the child.

Vice-Chair Thomas asked if the different versions of the bill are the same. Ms. Rutherdale informed that the difference addresses the annual court review. In version Z, no court review exists until the end of the youth's foster care. This allows for a yearly review. If the child changes their mind about the reentry, they can always petition.

Co-Chair Stoltze asked if she followed the debate in the HSS committee. Ms. Rutherdale responded in the affirmative.

5:17:55 PM

Representative Fairclough asked if there were any exceptions for release to their own custody in the way of a court order. Ms. Rutherdale answered that the Version Q explains that when a child is released, it is typically to their parents, commonly known as reunification.

Representative Fairclough stated that she is supportive of the concept, but was respectful of changes made by the HSS committee. She asked about potential conceptual amendments made to the bill during the HSS committee hearings. She expressed trepidation about the new CS that does not have a HSS committee recommendation.

5:20:05 PM

Representative Gara responded that the language in HSS committee was an express written amendment. The substance of the standard of required proof for reentry is the same now as it was in the HSS committee. He noted that the original version stated that reentry was possible if economic hardship was faced by the youth. He stated that the words "economic hardship" were removed from the version. The issue in the HSS committee was that standards for reentry were set.

5:21:45 PM

ALISON ELGEE, ASSISTANT COMMISSIONER, FINANCE AND MANAGEMENT SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, spoke to the three fiscal notes. She stated that

the fiscal notes for the first year comprise a six month time period. The greatest of the fiscal notes is the foster care base rate note which represents the additional cost for extending foster care to these elder youth. Another fiscal note covers the foster care special needs provisions for extraordinary costs that foster care families incur. The third fiscal note addresses the changes necessary to the case management system as a result of the legislation.

Representative Gara pointed out that he was economically prudent by delaying the effective date on fiscal note number six to January 1st, which was the time period necessary for the department to implement the program.

Co-Chair Hawker asked if the maximum advantage of federal funds available were utilized. Ms. Elgee responded yes. She noted the difficulty in estimating the amount of federal reimbursement for foster children.

Co-Chair Hawker asked Representative Gara if federal reimbursement was availed.

Representative Gara answered yes, the bill is called Fostering Connections and was signed in by George Bush in 2008.

Co-Chair Hawker MOVED to report HB 126 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 126(FIN) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal notes: FN4 (DHS), FN5 (DHS), FN6 (DHS).

5:26:08 PM

#sb222
CS FOR SENATE BILL NO. 222(JUD)

> "An Act relating to the crimes of harassment, distribution and possession of child pornography, failure to register as a sex offender or child kidnapper, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for human trafficking or for certain sex offenses; relating to aggravating factors in sentencing; relating to

reporting of crimes; relating to administrative subpoenas for certain records involving exploitation of children; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

The meeting was RECESSED at 10:07 PM.

#
RECESSED

(Find continued minutes in HFIN 041310 0818 AM)