

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 29, 2010

1:08 p.m.

MEMBERS PRESENT

Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Jay Ramras, Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 271

"An Act relating to the offenses of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to submit to a chemical test."

- HEARD & HELD

HOUSE BILL NO. 144

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

- MOVED HB 144 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 271

SHORT TITLE: DUI PENALTIES

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/08/10	(H)	PREFILE RELEASED 1/8/10
01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	JUD, FIN
01/29/10	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 144

SHORT TITLE: UNIFORM PROBATE CODE; TRUSTS, WILLS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/23/09	(H)	READ THE FIRST TIME - REFERRALS
02/23/09	(H)	L&C, JUD
04/08/09	(H)	L&C AT 3:15 PM BARNES 124
04/08/09	(H)	Scheduled But Not Heard
04/13/09	(H)	L&C AT 3:15 PM BARNES 124
04/13/09	(H)	Moved Out of Committee
04/13/09	(H)	MINUTE(L&C)
04/14/09	(H)	L&C RPT 6NR
04/14/09	(H)	NR: LYNN, BUCH, COGHILL, NEUMAN, HOLMES, OLSON
01/29/10	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 271.

JULI LUCKY, Staff

Representative Mike Hawker

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 271 on behalf of the sponsor, Representative Hawker.

JOSEPH A. MASTERS, Commissioner

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 271.

RODNEY DIAL, Lieutenant, Deputy Commander

A Detachment

Division of Alaska State Troopers

Department of Public Safety (DPS)

Ketchikan, Alaska

POSITION STATEMENT: During discussion of HB 271, expressed concerns regarding Section 1, and responded to questions.

DOUGLAS MOODY, Deputy Director

Criminal Division

Central Office

Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 271.

WINDY HANNAMAN, Deputy Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to comments during discussion of HB 271.

KERRY HENNINGS, Manager
Driver Licensing
Director's Office
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 271.

RICHARD SVOBODNY, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 271.

JANE W. PIERSON, Staff
Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 144 on behalf of the sponsor, Representative Ramras.

BETHANN B. CHAPMAN, Attorney at Law
Faulkner Banfield, PC
Juneau, Alaska

POSITION STATEMENT: Testified in Support of HB 144, and responded to questions.

ACTION NARRATIVE

[1:08:47 PM](#)

VICE CHAIR NANCY DAHLSTROM called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Dahlstrom, Gatto, Lynn, and Herron were present at the call to order. Representatives Gruenberg and Holmes arrived as the meeting was in progress.

HB 271 - DUI PENALTIES

1:09:00 PM

VICE CHAIR DAHLSTROM announced that the first order of business would be HOUSE BILL NO. 271, "An Act relating to the offenses of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to submit to a chemical test."

1:09:43 PM

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor, explained that HB 271 is intended to address people's concerns about repeat driving under the influence (DUI) offenders. One concern centers on the fact that DUI offenders who have their vehicles impounded as a result of the DUI can just reclaim their vehicle and drive away. The bill would require, via court order, that any such vehicle be equipped with an ignition interlock device before it can be taken out of impound by the DUI offender and that the DUI offender be prohibited from driving any vehicle that doesn't have an ignition interlock device, and would amend the repeat [DUI] offender [and repeat refusal to take a chemical test] statutes such that second and subsequent offenses within 10 years would trigger those felony provisions that are currently triggered by third and subsequent offenses within 10 years.

REPRESENTATIVE GATTO offered his understanding that ignition interlock devices have been effective, and that research from other states indicates that immediate incarceration for a DUI does have an effect on DUI recidivism rates. He observed that the [Department of Corrections' (DOC's)] fiscal note estimates a cost of \$7 million [for the implementation of Section 2 of HB 271], and mentioned that members' packets now include a proposed amendment, labeled 26-LS1271\R.1, Luckhaupt, 1/29/10, which read:

Page 1, following line 3:
Insert a new bill section to read:

"* **Section 1.** AS 12.25.180(a) is amended to read:

(a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

(1) the person does not furnish satisfactory evidence of identity;

(2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;

(3) the crime for which the person is contacted is one involving violence or harm to another person or to property;

(4) the person asks to be taken before a judge or magistrate under AS 12.25.150; [OR]

(5) the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, "crime involving domestic violence" has the meaning given in AS 18.66.990; or

(6) the crime for which the person is contacted is a violation of AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032."

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

REPRESENTATIVE HAWKER noted that current law requires certain DUI offenders to use an ignition interlock device in order to regain driving privileges after conviction, whereas the bill is proposing to require released DUI offenders to use an ignition interlock device prior to their trial - prior to conviction. He offered his understanding that current law already provides for immediate incarceration.

REPRESENTATIVE HOLMES concurred that DUI crimes are a huge problem in Alaska, particularly on the Seward Highway.

REPRESENTATIVE HAWKER noted that a felony DUI conviction results in the DUI offender having his/her driving privileges permanently revoked.

REPRESENTATIVE GRUENBERG asked whether Legislative Legal and Research Services has issued an opinion, either formal or informal, regarding the constitutionality of the bill.

1:22:00 PM

JULI LUCKY, Staff, Representative Mike Hawker, Alaska State Legislature, on behalf of the sponsor, Representative Hawker, said that although a formal legal opinion was requested, the sponsor hasn't received one, but discussions with the drafter indicate that there is no definitive answer, even on the issue of whether the use of ignition interlock devices can be required prior to conviction. In response to a question, she agreed to submit a written request for a formal legal opinion.

REPRESENTATIVE GRUENBERG remarked that it was that issue - whether it's constitutional to require something that would be an element of the punishment phase, "before they've even been charged" - which concerned him. He asked whether any other potential constitutional issues were addressed in discussions with the drafter.

MS. LUCKY said no, and offered her understanding that some other states do require the use of ignition interlock devices before conviction, but she is unfamiliar with whether there have been any constitutional challenges to such laws. She mentioned that she is researching that issue further, though, and so would provide information to the committee as soon as it's available.

REPRESENTATIVE GRUENBERG, referring to Section 2, asked whether any constitutional issues have arisen with regard to permanently revoking someone's driving privileges for a second DUI, specifically whether doing so would constitute cruel and unusual punishment.

MS. LUCKY said that issue has not yet been raised by the drafter, and offered to research that point further. She noted that some states and the [United States Virgin Islands] do make a second DUI conviction a felony, though she is not sure whether those laws have been challenged; that issue is being researched further as well. In response to questions, comments, and a request, she agreed to conduct further research regarding any potential constitutional problems with the bill, adding that it is the sponsor's intent to have any such issues put on the table for members to discuss.

REPRESENTATIVE HOLMES expressed interest in receiving any statistics illustrating that those who get stopped for DUI are then reoffending before they go to trial for the initial offense.

REPRESENTATIVE HAWKER said that sort of analysis did not enter into his consideration of the bill; instead, he is bringing HB 271 forward at the request of his constituents, who feel threatened by [repeat DUI offenders].

REPRESENTATIVE GRUENBERG asked that the aforementioned proposed amendment be labeled.

VICE CHAIR DAHLSTROM expressed a preference for not doing so at this time because there could be other forthcoming amendments that need to be addressed first.

1:30:35 PM

JOSEPH A. MASTERS, Commissioner, Department of Public Safety (DPS), relayed that although the DPS has not yet had much time to review HB 271, the issue of highway safety is an important one for the DPS and deserves serious attention from everyone. He noted that the DPS is currently arresting approximately 6,300 people yearly for DUI; that in 2007, 2008, and 2009, 43 percent, 45 percent, and 25 percent, respectively, of fatal crashes were alcohol related; that over a 10-year period, there were 44,238 motor vehicle accidents, with 454 being fatal, 8,888 involving injuries, and 2,900 caused by multiple-DUI offenders; that of those 2,900 motor vehicle accidents, 92 were fatal and 1,024 involved injuries.

REPRESENTATIVE GATTO expressed interest in receiving statistics illustrating the link between DUI offenders, and - in terms of their alcohol consumption - sex offenders and domestic violence (DV) perpetrators.

COMMISSIONER MASTERS agreed to attempt to compile such information, but cautioned that it might not be possible given the current capability of the DPS's database system.

REPRESENTATIVE GRUENBERG asked how [Section 1] would work in areas of the state where ignition interlock devices are not available.

COMMISSIONER MASTERS said the DPS is already investigating that issue, and indicated that Lieutenant Dial could address it

further. In response to other questions, he said that according to his experience, very, very few people who are stopped for a possible DUI actually refuse to submit to a chemical test; and indicated that there are several ways for law enforcement to determine a person's sobriety or lack thereof when he/she is stopped for a possible DUI.

REPRESENTATIVE HOLMES expressed interest in receiving statistics illustrating the percentage of first-time DUI offenders who never reoffend again, the percentage of second-time DUI offenders who never then reoffend again, and the percentage of DUI offenders who simply continue to reoffend.

COMMISSIONER MASTERS indicated that he would attempt to provide such statistics, as well as any other information requested by the committee.

1:43:01 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), expressed concern with Section 1's proposed AS 12.30.022(2) in that vehicle impound policies vary across the state, and so this provision would have different effects in different parts of the state; in that the wait time for the installation of ignition interlock devices also varies across the state, and so this provision could result in some vehicles being left in impound accruing more daily impound fees, perhaps accruing to an amount greater than the value of the vehicle; and in that because a vehicle can't be released until it has an ignition interlock device installed, that installation could cost more because it might have to occur in the impound lot. In response to an earlier question, he mentioned that his research indicates that ignition interlock devices can be installed in all parts of Alaska, though the wait times, installation costs, and difficulties with installation will vary depending on the location.

REPRESENTATIVE GATTO questioned whether a first-time DUI offender's vehicle could simply be taken to his/her own property instead of to an impound lot.

VICE CHAIR DAHLSTROM pointed out that if one of her family members were to be struck by a DUI offender, she would have great concern if the DUI offender still had easy access to his/her vehicle.

REPRESENTATIVE LYNN, in response to comments, asked whether [Section 1] could be altered such that DUI offenders living in smaller communities could be treated differently than those living in larger communities.

REPRESENTATIVE GRUENBERG predicted that an equal protection issue would then have to be addressed.

COMMISSIONER MASTERS surmised that someone other than himself could better address that point.

REPRESENTATIVE GATTO offered his understanding that under current law, people in remote locations are already exempted from having to install an ignition interlock device.

REPRESENTATIVE HERRON indicated that in his district, because of a lack of storage space, the local impound company refuses to accept every vehicle that's impounded.

[1:54:34 PM](#)

LIEUTENANT DIAL in response to a question, explained that when a person is arrested for DUI, he/she is asked to take a breathalyzer test - generally via DataMaster equipment- but if he/she refuses, law enforcement informs him/her that he/she would also be charged with the crime of refusal to take a chemical test. Those arrested for DUI have the right to obtain, at their own expense, an independent test of their intoxication levels - this currently involves a blood test. In response to another question, he explained that modern breathalyzers undergo "failsafe checks" both before and after a test is administered, and are frequently, routinely calibrated, and are thus very accurate.

REPRESENTATIVE GRUENBERG asked whether proposed AS 12.30.022(2) would apply to a vehicle that the DUI offender was driving but neither owned nor had registered in his/her name. He also asked what occurs now in situations involving a family vehicle.

LIEUTENANT DIAL, on the latter question, explained that as of January 2009, courts have been requiring those convicted of DUI to install an ignition interlock device on every vehicle he/she owns - even work vehicles - though currently there is no way to verify that such has occurred.

[2:00:34 PM](#)

DOUGLAS MOODY, Deputy Director, Criminal Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to a question, indicated that he'd not considered there being any due process problems with Section 1, and noted that the courts have broad leeway with regard to setting bail restrictions.

2:03:42 PM

WINDY HANNAMAN, Deputy Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), in response to comments, agreed to research the aforementioned issues as well.

2:05:09 PM

KERRY HENNINGS, Manager, Driver Licensing, Director's Office, Division of Motor Vehicles (DMV), Department of Administration (DOA), in response to questions, said that there is a provision in law that allows the DMV, when there is a court order, to indicate on a person's driver's license that he/she must use an ignition interlock device; that the DMV does this automatically when it receives notice from the court; and that when such a person comes into the DMV to reinstate his/her driving privileges, he/she is required to show proof of installation.

REPRESENTATIVE GRUENBERG offered his understanding that the Alaska Court System (ACS) is too understaffed to provide such notice, and questioned whether the bill should have a provision added that would require the DUI offender himself/herself to notify the DMV that he/she must use an ignition interlock device.

MS. HENNINGS offered her belief that many DUI offenders are already out of compliance with their court-ordered ignition interlock device installation requirements, and predicted that such people could not be relied upon to notify the DMV that they have such requirements; without notification from the courts, the DMV would be unable to place a restriction on a person's driver's license, and law enforcement, as a result, would have no indication that the person is required to use an ignition interlock device.

REPRESENTATIVE GRUENBERG characterized the placing of such a restriction on a DUI offender's driver's license as important.

LIEUTENANT DIAL clarified that because the court is currently required to notify the DMV within five business days that the person must use an ignition interlock device, that notification information is reflected in the Alaska Public Safety Information Network (APSIN), which law enforcement accesses when pulling the person over; if the person is found to be out of compliance, he/she is then charged with violating a court order.

REPRESENTATIVE GRUENBERG asked whether a car rental agency in another state, for example, would have any way of knowing that a customer from Alaska is required to use an ignition interlock device.

MS. HENNINGS said that any such restrictions are defined on the back of the person's driver's license, but acknowledged that it would be up to the rental car agency to scrutinize the person's driver's license carefully.

2:11:48 PM

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), in response to earlier questions, indicated that proposed AS 12.30.022(2) would not apply to a vehicle that the DUI offender was driving but neither owned nor had registered in his/her name; and that Section 1 would not be a violation of due process, and would not constitute a potential equal protection violation, because it is a privilege to drive and not a right. The court currently has the authority to prohibit a person from driving at all, and that's more onerous, he opined, than simply telling a DUI offender that he/she can only drive a car that has an ignition interlock device. In conclusion, he characterized Section 1 as constitutional.

REPRESENTATIVE GRUENBERG asked whether a vehicle could be searched once it's been impounded by law enforcement.

MR. SVOBODNY noted that "impound" searches already occur and are meant to protect law enforcement from accusations of theft. In response to a further question, he surmised that the bill is not intended to force the company installing an ignition interlock device to do that installation without the DUI offender's permission.

VICE CHAIR DAHLSTROM offered her understanding that that is not the intention of the sponsor, either.

REPRESENTATIVE GRUENBERG surmised, then, that [proposed AS 12.30.022(2)] is not requiring a particular company to install an ignition interlock device, but is instead just granting the court the authority to prohibit an impound agency from returning a motor vehicle to a DUI offender until an ignition interlock device is installed.

MR. SVOBODNY concurred, but noted that currently there is no criminal sanction for violating such a prohibition.

[2:20:57 PM](#)

MS. LUCKY, with regard to an issue raised earlier, noted that a previous iteration of the bill would have required that an ignition interlock device be installed on any vehicle involved in a DUI offense regardless of who owned the vehicle, but the drafter had expressed constitutional concerns with such a requirement, and so as currently written, [proposed AS 12.30.022(2)] would not apply to a vehicle that the DUI offender was driving but neither owned nor had registered in his/her name. With regard to a point made earlier, she noted that the DMV has compiled a list of areas of the state where the installation of an ignition interlock device is not required in order to comply with existing law, but explained that this type of exemption wouldn't apply under HB 271 because [Section 1] is simply setting conditions of bail. On the question of whether installation would occur at the impound lot, she relayed that it's not the sponsor's intent that vehicles would be left in impound until installation occurs, but rather that vehicles would be released upon proof that the DUI offender intends to install an ignition interlock device, and so the committee might wish to add language regarding what would constitute sufficient proof; without such additional language, the onus would be on the impound company to keep the car and deal with any civil liability associated with the car, and that's not the intent of the sponsor. House Bill 271 is a basic bill, a starting point for discussion purposes.

MS. LUCKY pointed out that existing law regarding ignition interlock devices provides that the [DUI] fines imposed upon conviction may be reduced [in order to allow the offender] to pay for the device, but there is not a similar reduction under HB 271 because [fines don't accrue until after conviction], and the bill, again, is addressing conditions of bail; the question of whether the courts have the authority to reduce the amount of bail [in order to allow the offender to pay for the device], however, is something she would be researching further. There

has also been a concern expressed about requiring the use of an ignition interlock device on a first offense as a condition of bail, but since the sponsor's intent is to target repeat DUI offenders, the committee might wish to consider whether that provision should be altered to apply only on a second or subsequent offense. Such a change could reduce potential problems regarding impound, she surmised, since according to her understanding, the majority of [first-time] DUI offenders do not go on to reoffend a second time. Furthermore, if [Section 1 were changed such that it] only applied to those who reoffend, it could mitigate constitutional concerns because the court could show that the proposed conditions of bail were warranted in order to protect the community from those who've demonstrated a propensity for continuing to drink and drive.

VICE CHAIR DAHLSTROM relayed that HB 271 would be held over.

HB 144 - UNIFORM PROBATE CODE; TRUSTS, WILLS

[2:25:23 PM](#)

VICE CHAIR DAHLSTROM announced that the final order of business would be HOUSE BILL NO. 144, "An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

[2:25:57 PM](#)

JANE W. PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, explained on behalf of the sponsor, Representative Ramras, that HB 144 would update Alaska's trust laws, thereby enabling Alaska to maintain its frontrunner position as a premier location for trusts and estate planning. Specifically, HB 144 would add provisions allowing the settlor of a trust to designate a representative who can bind an incapacitated person in future proceedings related to trust administration - this would streamline the process and would not always require a guardian ad litem (GAL); and would establish that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and the transfer was made more than 30 days before marriage or with the consent of the decedent's spouse - this is similar to Delaware law. An augmented estate, she explained, consists of property owned by both the decedent and his/her spouse, and its

value is only calculated if the surviving spouse declines the amount left by will and instead claims a share of the decedent's estate; the [allowable] amount [varies from state to state], and in Alaska that would be one-third of the combined estate and is called the widow's election.

MS. PIERSON explained that HB 144 would also create a procedure for the establishment of will and trust validity before death; essentially, a person would be able to probate a will before death and have it validated. This would address situations in which questions arise regarding the person's capacity to execute a will or trust, or regarding whether the document was executed as a result of undue influence, duress, fraud, or mistake. This new procedure would allow issues to be brought before the courts while the testator or settlor is still alive and evidence is fresh. Three other states have a similar provision, she noted. The bill would also provide for venue of a probate proceeding if the decedent was not domiciled in Alaska but had significant assets located within the state.

[2:29:33 PM](#)

BETHANN B. CHAPMAN, Attorney at Law, Faulkner Banfield, PC, after mentioning that she has practiced trust and estate law for the past 22 years and that she is a member of the informal group of trust and estate attorneys that has been recommending specific changes to Alaska's trust and estate laws, said she supports HB 144. In response to a question, she offered her understanding that the bill itself doesn't need to be altered, adding her belief that the provisions regarding what she called the "pre-death probate procedure" in particular will be very effective in reducing litigation among families.

REPRESENTATIVE GRUENBERG referred to proposed AS 13.06.120(3), which says in part that a person representing another person is not liable for acts or omissions made in good faith, and questioned the use of this standard.

MS. CHAPMAN indicated that that [provision] would not be applicable to trust and estate attorneys, but rather to anyone [else] who is representing another beneficiary in a trust matter - for example, one sibling representing another sibling. If an attorney were representing a beneficiary, the attorney would still be held to his/her professional standards. The good faith standard in proposed AS 13.06.120(3) is the same standard used with regard to a trustee's actions, as is noted in the [American

Law Institute's (ALI's) Restatement (Third) of the Law of Trusts].

REPRESENTATIVE GRUENBERG asked whether the good faith standard in proposed AS 13.06.120(3) would apply to a bank or other professional institution that represents a beneficiary.

MS. CHAPMAN replied, "It's the nature of the representation that we're focusing on, not necessarily who the individual is, and even if it were a bank, when we have banks serve as trustees, there is always a threshold of good faith." In response to a further question, she offered her understanding that the standard of good faith is defined in case law and in the Restatement (Third) of the Law of Trusts, but not yet in Alaska statute. It means that one is acting in the best interests of the person whom one is representing.

[2:36:53 PM](#)

REPRESENTATIVE GRUENBERG referred to proposed AS 13.12.545(4) - part of the provisions regarding validating a will before death - and noted that it says in part that in order for a will to be declared valid, the petition must be signed by two individual witnesses. He questioned whether language stating that those two individuals cannot be beneficiaries ought to be added to the bill.

MS. CHAPMAN pointed out that under current law, witnesses to a will do not need to be disinterested parties and can in fact be beneficiaries; this is the generally-recognized rule throughout the country. In response to questions, she assured the committee that the standard of good faith stipulated in proposed AS 13.06.120(3) won't absolve someone who acts negligently or unreasonably, that there is no chance that this standard could be misinterpreted, and that the court has already issued rulings on [this standard] and no one considered it to be a loophole.

REPRESENTATIVE GRUENBERG said he supports HB 144, and indicated that he would be researching the issues raised further as the bill continues through the process. Again, of particular interest to him, he relayed, is to ensure that the standard of good faith stipulated in proposed AS 13.06.120(3) would be interpreted as Ms. Chapman asserts it would be, since that standard would be at the heart of certain types of litigation.

MS. CHAPMAN, in response to a question, indicated that a typed will would need to be signed by two witnesses but wouldn't need

to be notarized, and that in contrast, a handwritten will need only be signed by the person.

REPRESENTATIVE GRUENBERG, referring to the provisions regarding validating a will before death, offered an example in which an absent heir later sues the estate, claiming that the will is not binding on him/her because he/she didn't have a right to participate in the validation proceeding due to his/her absence. He asked what the result would be in such a situation.

MS. CHAPMAN explained that notice must be provided to all heirs of the individual whose will is being probated before death; therefore, if any heirs are not provided adequate notice in accordance with the statutes, then the will won't be binding on those heirs. In response to a further question, she explained that those who are not named in a will have no standing to challenge the will absent producing "a contract to make a will."

REPRESENTATIVE GRUENBERG - referring to proposed AS 13.12.540(a), which, in the provisions pertaining to validating a will before death, addresses venue - questioned whether dual, and perhaps dueling, probates would be required in situations involving testators domiciled outside of Alaska.

MS. CHAPMAN relayed that multiple probates already occur in situations involving testators with property in multiple states. Generally, one court will take the original jurisdiction, and [the bill] allows - consistent with what she termed the "conflicts of laws" provisions - for Alaska to take the original jurisdiction if that's the wish of the decedent. In response to a question, she confirmed that there is already a body of law addressing such situations.

[2:47:44 PM](#)

REPRESENTATIVE GATTO moved to report HB 144 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 144 was reported from the House Judiciary Standing Committee.

[2:48:07 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:48 p.m.