**ALASKA STATE LEGISLATURE**
**HOUSE JUDICIARY STANDING COMMITTEE**
March 1, 2010
1:06 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Carl Gatto
Representative Lindsey Holmes

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 42
Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

- MOVED CSHJR 42(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 283
"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

- MOVED CSHB 283(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 316
"An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 316(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 42
SHORT TITLE: CONST. AM: TRANSPORTATION FUND
SPONSOR(S): TRANSPORTATION

| | | |
|---|---|---|
| 02/05/10 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/05/10 | (H) | TRA, JUD, FIN |
| 02/09/10 | (H) | TRA AT 1:00 PM CAPITOL 17 |
| 02/09/10 | (H) | Moved Out of Committee |
| 02/09/10 | (H) | MINUTE(TRA) |
| 02/10/10 | (H) | TRA RPT 6DP 1NR |
| 02/10/10 | (H) | DP: JOHANSEN, MUNOZ, JOHNSON, T.WILSON, PETERSEN, P.WILSON |
| 02/10/10 | (H) | NR: GRUENBERG |
| 02/17/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/17/10 | (H) | Heard & Held |
| 02/17/10 | (H) | MINUTE(JUD) |
| 02/22/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/22/10 | (H) | -- MEETING CANCELED -- |
| 03/01/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: HB 283
SHORT TITLE: PURCHASE/CONSUMPTION OF ALCOHOL
SPONSOR(S): CRAWFORD

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|---|---|---|
| 01/15/10 | (H) | PREFILE RELEASED 1/15/10 |
| 01/19/10 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/19/10 | (H) | L&C, JUD |
| 01/27/10 | (H) | L&C AT 3:15 PM BARNES 124 |
| 01/27/10 | (H) | Moved Out of Committee |
| 01/27/10 | (H) | MINUTE(L&C) |
| 01/29/10 | (H) | L&C RPT 5DP 1DNP |
| 01/29/10 | (H) | DP: LYNN, BUCH, HOLMES, T.WILSON, OLSON |
| 01/29/10 | (H) | DNP: NEUMAN |
| 01/29/10 | (H) | FIN REFERRAL ADDED AFTER JUD |
| 02/11/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/11/10 | (H) | Heard & Held |
| 02/11/10 | (H) | MINUTE(JUD) |
| 03/01/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |

BILL: HB 316
SHORT TITLE: POST-CONVICTION DNA TESTING; EVIDENCE
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

| | | |
|---|---|---|
| 01/27/10 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/27/10 | (H) | JUD, FIN |
| 02/05/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/05/10 | (H) | -- MEETING CANCELED -- |
| 02/08/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/08/10 | (H) | Heard & Held |
| 02/08/10 | (H) | MINUTE(JUD) |

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|---|---|---|
| 02/10/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/10/10 | (H) | Heard & Held |
| 02/10/10 | (H) | MINUTE(JUD) |
| 02/15/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/15/10 | (H) | Heard & Held |
| 02/15/10 | (H) | MINUTE(JUD) |
| 02/22/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |
| 02/22/10 | (H) | -- MEETING CANCELED -- |
| 03/01/10 | (H) | JUD AT 1:00 PM CAPITOL 120 |

**WITNESS REGISTER**

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Spoke as chair of the House Transportation Standing Committee, sponsor of HJR 42.

BECKY ROONEY, Staff
Representative Peggy Wilson
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** On behalf of the sponsor, the House Transportation Standing Committee, which is chaired by Representative P. Wilson, explained Amendment 1 to HJR 42 and responded to questions.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Sponsor of HB 283.

SHIRLEY GIFFORD, Director
Alcoholic Beverage Control Board ("ABC Board")
Department of Public Safety (DPS)
Anchorage, Alaska
**POSITION STATEMENT:** Responded to questions during discussions of HB 283.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska
**POSITION STATEMENT:** Provided comments and responded to questions during discussion of proposed amendments to HB 316.

DOUGLAS MOODY, Deputy Director
Criminal Division
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
**POSITION STATEMENT:** Provided comments during discussion of proposed amendments to HB 316.

WINDY HANNAMAN, Deputy Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska
**POSITION STATEMENT:** Provided comments during discussion of proposed amendments to HB 316.

WILLIAM B. OBERLY, Executive Director
Alaska Innocence Project
Anchorage, Alaska
**POSITION STATEMENT:** Provided comments during discussion of proposed amendments to HB 316.

**ACTION NARRATIVE**

1:06:57 PM

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Ramras, Herron, Lynn, and Gruenberg were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress. Representatives Gatto and Holmes were excused.

## HJR 42 - CONST. AM: TRANSPORTATION FUND

1:07:23 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 42, Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund. [Before the committee was the proposed committee substitute (CS) for HJR 42, Version 26-LS1411/S, Kane, 2/17/10, which had been adopted as the work draft on 2/17/10.]

CHAIR RAMRAS mentioned that members' packets now include a memorandum from Representative Gatto dated March 1, 2010, indicating that he has no objections to reporting HJR 42 from

committee; that memorandum in part read [original punctuation provided]:

> I respectfully withdraw my objection to moving Representative Wilson's HJR 42 of the House Judiciary Committee. Representative Wilson's office has coordinated with my staff to ensure that my concerns regarding the funding source for the proposed infrastructure fund were addressed. I have also concluded, upon further guidance from legal services, that there are no significant constitutional issues with HJR 42.

1:08:56 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, speaking as chair of the House Transportation Standing Committee, sponsor of HJR 42, mentioned that there is a forthcoming amendment which she would like to see adopted.

1:09:44 PM

CHAIR RAMRAS made a motion to adopt Amendment 1, labeled 26-LS1411\S.3, Kane, 2/25/10, which read:

> Page 2, line 5, following "law":
> Insert "and for costs related to motor vehicle licensing and registration that are designated by law"

REPRESENTATIVE HERRON objected.

1:10:05 PM

BECKY ROONEY, Staff, Representative Peggy Wilson, Alaska State Legislature, on behalf of the sponsor of HJR 42, the House Transportation Standing Committee, which is chaired by Representative P. Wilson, offered her understanding that Amendment 1 would "allow the costs for operating the [Division of Motor Vehicles (DMV)] to be deducted from the vehicle registration fees before they are deposited into the fund." Historically, operating costs have been around $2 million to $3 million per year, and there is a difference between what the DMV has been granted and what it needs to operate, and this has been coming from vehicle registration fees. She added, "We are planning to define that amount and ... what the funds may be used for in statute in another bill that actually ... puts the

boundaries on this fund and ... how it's going to be used." Amendment 1 merely allows for the use of those funds.

REPRESENTATIVE HERRON removed his objection.

CHAIR RAMRAS announced that Amendment 1 was adopted.

1:11:15 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 26-LS1411\S.1, Kane, 2/22/10, which read:

> Page 2, line 4, following "capital":
> Insert "and preservation"

REPRESENTATIVE HERRON objected.

REPRESENTATIVE GRUENBERG referred to the language on page 2, line 4, which currently says in part, "for capital projects", and said he wants to ensure that monies appropriated from the resolution's proposed transportation infrastructure fund could also be used for repairs. He questioned which types of repairs the sponsor is envisioning would be covered under the term, "capital projects".

MS. ROONEY, after indicating that deferred maintenance would be addressed in statute via the aforementioned other piece of legislation currently going through the process, stated:

> It will be the major maintenance projects that are covered under our normal capital budget. So it would be resurfacing roads and ... upgrading airports. But it doesn't include things like snow removal and street sweeping and other activities that are considered maintenance. And that's the reason that we didn't put [the term] "maintenance" in here - because we didn't want to supplant the normal maintenance ... activities with ... these funds; we wanted [them] to actually be something that ... our constituents will see - ... when these funds are put in place - to be actual improvements to our transportation system.

REPRESENTATIVE GRUENBERG pointed out, however, that the words, "and preservation" - which would be added by Amendment 2 - were intended by him to include the repair of large potholes, for example, that could lead to road deterioration. He asked,

therefore, whether those types of repairs would be provided for under HJR 42's existing language.

MS. ROONEY offered her belief that they would be.

REPRESENTATIVE GRUENBERG asked Representative P. Wilson whether such was her intention.

REPRESENTATIVE P. WILSON said yes, but cautioned that it is not the intent for monies from the proposed transportation infrastructure fund to be used to supplant general fund (GF) monies. She added, "Many states have done that, and they've just stopped putting ... funding in the general budget, and then the fund was used for everything." It is necessary, therefore, for the legislature to be very careful about what items it includes in the resolution's language.

REPRESENTATIVE GRUENBERG said he would accept that explanation as the intent of the sponsor with regard to the resolution's existing term, "capital projects for transportation and related facilities that are designated by law".

REPRESENTATIVE GRUENBERG then withdrew Amendment 2.

REPRESENTATIVE GRUENBERG, in response to a query, remarked that he does not support dedicated funds - with the exception of the Alaska permanent fund - but would not be objecting to reporting the resolution from committee.

1:15:33 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed committee substitute (CS) for HJR 42, Version 26-LS1411/S, Kane, 2/17/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 42(JUD) was reported from the House Judiciary Standing Committee.

## HB 283 - PURCHASE/CONSUMPTION OF ALCOHOL

1:16:21 PM

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 283, "An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

1:16:50 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 283, Version 26-LS1218\S, Luckhaupt, 2/24/10, as the work draft.

REPRESENTATIVE GRUENBERG objected to ask whether the only change between the original version and Version S is the deletion of the phrase, "**up to the lifetime of the defendant**" from proposed AS 12.55.015(a)(13).

1:17:29 PM

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor, said no, and explained that additionally, Version S no longer proposes a change to AS 04.16.047(b) - which addresses the civil fine - but does now propose changes to AS 04.21.050, [adding a new subsection (d) that states a driver's license or identification (ID) card issued when the person was under 21 years of age, regardless of the person's current age, is not acceptable as proof of the person's age for purposes of purchasing alcohol or as proof that the person is not restricted from purchasing alcohol], and providing a conforming change to subsection (b) - which allows licensees to refuse to accept anything but a valid driver's license or state ID card unless the person furnishes proof that he/she is not an Alaska resident.

REPRESENTATIVE HERRON suggested amending proposed AS 04.21.050(b) such that the word, "state" would be added to page 2, line 14, after the word, "valid"; the language would then in part read, "valid state identification card". He noted that that phrase is already used elsewhere in subsection (b).

REPRESENTATIVE CRAWFORD, in response to questions about proposed AS 04.21.050(d), offered his understanding that it is intended to work with previously-passed legislation that a makes a person's driver's license expire when he/she reaches the age of 21 thus requiring him/her to take a test regarding alcohol and drug awareness and safety before he/she gets a new one.

REPRESENTATIVE GRUENBERG expressed satisfaction with [that provision].

CHAIR RAMRAS asked what could be done to notify licensees and their employees and agents about the change encompassed in proposed AS 04.21.050(d), which addresses those who continue to use a minor's driver's license or ID card to purchase alcohol.

1:26:42 PM

SHIRLEY GIFFORD, Director, Alcoholic Beverage Control Board ("ABC Board"), Department of Public Safety (DPS), expressed favor with statutory efforts to curb alcohol abuse, driving while under the influence, and the serving of underage persons, but acknowledged that more could be done to notify the public about the use and updating of [driver's licenses and state ID cards]. She noted that even under existing 04.21.050(b), licensees and their employees and agents have the authority to not accept certain forms of ID. She suggested that perhaps the Cabaret Hotel Restaurant & Retailer's Association (CHARR) could assist with education efforts [regarding the proposed and recent statutory changes pertaining to driver's licenses and state ID cards], and acknowledged that perhaps the ABC Board could assist with those education efforts as well since it contacts licensees on a daily basis.

CHAIR RAMRAS suggested that the techniques in alcohol management (TAM) courses could perhaps be used to help educate licensees and their employees and agents about this issue. Characterizing HB 283 as a good piece of legislation, he indicated that the legislature could use the assistance of the ABC Board with regard to education and enforcement efforts.

MS. GIFFORD agreed to provide that assistance.

REPRESENTATIVE GRUENBERG surmised that there were no further changes incorporated into Version S.

REPRESENTATIVE HERRON referred to the word, "substantially" as used on page 4, line 8 - proposed AS 12.55.015(a)(13)(A) - and asked whether it's necessary to include that word.

REPRESENTATIVE CRAWFORD indicated that using the phrase "substantially influenced by the consumption of alcohol" is necessary because statutes don't currently define what an alcohol-related offense is. Using the phrase, "substantially influenced" provides some weight, and judges would have the discretion to determine whether this provision could apply in a particular case. For example, in a case involving domestic violence (DV), if the perpetrator had had just one drink before assaulting his/her [spouse/partner], alcohol probably didn't substantially contribute to the DV crime, but if the perpetrator was drunk when he/she committed the DV crime and that was really the cause of the DV behavior, then this provision could apply

and the judge would have the discretion to order the perpetrator to refrain from consuming alcoholic beverages for a period of time.

1:33:23 PM

REPRESENTATIVE HERRON [although the objection to adopting Version S as the work draft had not yet been withdrawn] made a motion to adopt Conceptual Amendment 1, to add the word, "state" to page 2, line 14, after the word, "valid", and elsewhere that [the drafter] deems appropriate.

REPRESENTATIVE GRUENBERG surmised that under Conceptual Amendment 1, the word, "state" would also be added to page 2, line 18, before the words, "identification card", and to page 2, line 26, such that the phrase, "an identification card" would be changed to the phrase, "a state identification card".

CHAIR RAMRAS, after ascertaining that there were no objections, announced that Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG then removed his objection to the adoption of Version S [as now amended] as the work draft. There being no further objection, Version S, as amended, was before the committee.

1:35:15 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 283, Version 26-LS1218\S, Luckhaupt, 2/24/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 283(JUD) was reported from the House Judiciary Standing Committee.

## HB 316 - POST-CONVICTION DNA TESTING; EVIDENCE

1:35:44 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 316, "An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

The committee took an at-ease from 1:36 p.m. to 1:39 p.m.

CHAIR RAMRAS, noting that public testimony on the bill had been concluded, relayed that the committee would next address amendments to HB 316.

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 1, and then withdrew Conceptual Amendment 1.

[Note to the reader: There was no Conceptual Amendment 1 included in members' packets, and therefore no text is available in this document for Conceptual Amendment 1.]

1:42:57 PM

CHAIR RAMRAS made a motion to adopt Amendment 2, labeled 26-GH2812\A.18, Luckhaupt, 3/1/10, which read:

> Page 3, lines 7 - 8:
> Delete "biological material contained in or found on evidence that is obtained in an investigation and relevant to the prosecution"
> Insert "biological material, contained in or found on evidence, relevant to an investigation and prosecution"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

1:43:06 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), explained that Amendment 2 was suggested by the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), and that it would require the retention of evidence gathered from a victim of sexual assault that's not part of the formal investigation or prosecution at that time but that might be at some point in the future.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS stated that Amendment 2 was adopted.

1:44:09 PM

CHAIR RAMRAS made a motion to adopt Amendment 3, which read [original punctuation provided]:

Page 3, line 9:
Following "crime,"
Insert "the person is required to register as a sex offender,"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

MS. CARPENETI explained that Amendment 3 would extend the period of time that biological evidence would be kept, to the period of time that the person convicted of a sex offense has to register as a sex offender. In some instances, under Amendment 3, the evidence would be retained for the person's lifetime if he/she were convicted of a sex offense that required him/her to register for life. Amendment 3's proposed additional language is already included in the [Senate companion bill], she added.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS, after ascertaining that there were no further objections, announced that Amendment 3 was adopted.

1:45:25 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, labeled 26-GH2812\A.11, Luckhaupt, 2/18/10, which read:

Page 3, line 31, following "storage":
Insert "unless the person does not have the ability to pay the costs"

Page 11, line 18, following "tested":
Insert "unless the applicant does not have the ability to pay the costs"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that the provisions Amendment 4 proposes to alter require the person to pay the cost of evidence retrieval, but the committee has heard testimony that some people would be financially unable to pay that cost. Amendment 4, therefore, provides an exemption from that requirement for those who are indigent and therefore do not have the financial ability to pay the cost of evidence retrieval.

REPRESENTATIVE DAHLSTROM asked where the funding for such evidence retrieval would come from.

REPRESENTATIVE GRUENBERG surmised that the State would pay that cost with general fund (GF) monies.

MS. CARPENETI pointed out that the State would already be paying that cost anyway if the person is indigent and represented by the Public Defender Agency (PDA), so she is not sure what would change with the adoption of Amendment 4. Furthermore, the cost associated with evidence retrieval would accrue to the local law enforcement agency where the evidence is stored. She mentioned that she is also a bit confused with regard to how Amendment 4 would work for those who aren't indigent but still aren't able to pay the cost of evidence retrieval.

REPRESENTATIVE GRUENBERG surmised that those who are unable to pay would be assigned a public defender who would then file the appropriate motions and already have proof of the person's financial inability to pay.

MS. CARPENETI acknowledged that point.

REPRESENTATIVE GRUENBERG, in response to a question, indicated that Amendment 4 would clarify the issue; otherwise, he predicted, the language currently in the bill could be interpreted to mean that the person is required to pay even if he/she were indigent.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 4 was adopted.

1:49:52 PM

REPRESENTATIVE HERRON made a motion to adopt Amendment 5, labeled 26-GH2812\A.17, Luckhaupt, 2/23/10, which read:

> Page 4, line 6:
> Delete "with proof of delivery by the United States Postal Service, or"
> Insert "by certified mail with proof of delivery by the United States Postal Service, or by a comparable delivery method with proof of delivery by"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HERRON, by way of explanation, indicated his belief that the term, "proof of delivery by the United States Postal Service" as currently used in the bill by itself wouldn't

necessarily require proof of delivery to the correct person. For example, a post office box could be shared by several people, but under the language currently in the bill, all that's needed is that the notice be delivered to that post office box. Under Amendment 5, the notice would have to be signed for by the correct person.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS, noting that there were no further objections, announced that Amendment 5 was adopted.

1:50:45 PM

REPRESENTATIVE LYNN made a motion to adopt Amendment 6, labeled 26-GH2812\A.6, Luckhaupt, 2/17/10, which read:

> Page 5, lines 5 - 6:
> Delete "However, the court may not reverse or vacate a conviction based solely on a violation of the provisions of this section."

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

MS. CARPENETI, in response to a comment and question, explained that the language Amendment 6 proposes to delete is in the bill mainly because the provision that language is in would be adding new duties to law enforcement agencies, and so the DOL thinks it's fair that as long as law enforcement agencies try to perform those new duties in good faith, that a conviction would not be reversed or vacated "solely" because of a failure to perform those new duties. She ventured that a forthcoming amendment [which later became known as Amendment 7] would better address this issue by specifying that the conviction would not be reversed or vacated based solely on a violation of those new duties as long as the violation occurred in good faith.

1:52:45 PM

REPRESENTATIVE GRUENBERG noted that Amendment 6 would delete the last sentence of proposed AS 12.36.200(h), whereas, [Amendment 7] would add the words "good faith" to that last sentence; [Amendment 7] read [original punctuation provided]:

> Page 5, line 6:
> Following "a"
> Insert: "good faith"

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE GRUENBERG expressed his hope that under Amendment 7, the burden of proving a law enforcement agency acted in good faith would be on the prosecution, rather than on the defendant to prove a lack of good faith.

MS. CARPENETI, in response to a question, opined that Amendment 6 would not be needed if Amendment 7 were adopted.

REPRESENTATIVE LYNN withdrew Amendment 6.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

1:54:55 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 7 [text provided previously].

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti whether the DOL would object to a conceptual amendment to Amendment 7 such that a "good faith violation" would have to be proven by the prosecution.

MS. CARPENETI said the DOL would not object.

REPRESENTATIVE GRUENBERG made a motion to conceptually amend Amendment 7 such that the burden of showing good faith shall be on the prosecution.

MS. CARPENETI, in response to a question, said that such a change would be fine.

CHAIR RAMRAS, noting that there were no objections, announced that Amendment 7 was so amended.

REPRESENTATIVE DAHLSTROM removed her objection to Amendment 7, as amended.

CHAIR RAMRAS announced that Amendment 7, as amended, was adopted.

1:58:05 PM

REPRESENTATIVE LYNN made a motion to adopt Amendment 8, labeled 26-GH2812\A.7, Luckhaupt, 2/18/10, which read:

Page 8, line 1, following "offense;":
Insert "and"

Page 8, line 4:
Delete "and"

Page 8, lines 5 - 7:
Delete all material.

Page 8, lines 29 - 30:
Delete all material.

Renumber the following paragraphs accordingly.

Page 9, line 27:
Delete "(8)"
Insert "(7)"

Page 10, line 12:
Delete "(12)"
Insert "(11)"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

CHAIR RAMRAS offered his understanding that Amendment 8 would delete the language that precludes a person who has admitted or conceded guilt from obtaining post-conviction deoxyribonucleic acid (DNA) testing, and that forthcoming Amendment 9 [also addresses that language]; Amendment 9 read [original punctuation provided]:

Page 8, line 7:
Following "offense;"
Insert the following:
"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

Page 8, line 30:
Following "conviction;"
Insert the following:
"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

REPRESENTATIVE GRUENBERG offered his understanding that Amendment 9 is not as inclusive as Amendment 8 and would not address concessions of guilt that were not contained within a plea.

2:02:03 PM

MS. CARPENETI concurred that Amendment 8 would completely remove the requirement that in order to obtain post-conviction deoxyribonucleic acid (DNA) testing, the person must not have admitted or conceded guilt in an official proceeding pertaining to his/her conviction. In contrast, Amendment 9 would add to that requirement language stating that for purposes of obtaining post-conviction DNA testing, a plea of guilty or nolo contendere is not an admission of guilt. The reason for this distinction is that some people plead guilty or nolo contendere for reasons other than actually being guilty. She said the DOL believes that Amendment 8 is too broad, and would allow someone to take the stand at trial and confess, under oath, to doing something which they then later deny doing, and this should not be allowed, whereas entering a guilty plea is something else altogether; confessions made under oath at trial should preclude a person from obtaining post-conviction DNA testing.

MS. CARPENETI, in response to a question, explained that for purposes of requiring a person applying for post-conviction DNA testing to not have admitted or conceded guilt in an official proceeding pertaining to his/her conviction, a law enforcement interrogation would not be considered an official proceeding and thus any admission of guilt made during such an interrogation would not preclude the person from later seeking post-conviction DNA testing. In response to another question, she noted that during a parole hearing, William Osborne - the defendant in the U.S. Supreme Court case, District Attorney's Office for the Third Judicial District v. Osborne - testified that he had committed the offense, and in the DOL's view, such testimony should preclude a person from bringing an application for post-conviction DNA testing.

REPRESENTATIVE GRUENBERG asked whether a defendant has a right to counsel during a parole proceeding.

MS. CARPENETI said she would research that issue.

2:05:27 PM

DOUGLAS MOODY, Deputy Director, Criminal Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), explained that defendants get appointed counsel if their parole is being revoked, but not if they are up for a discretionary parole-board hearing.

REPRESENTATIVE GRUENBERG surmised that the latter is an example of an official proceeding wherein a person could make an admission without benefit of counsel - with very dire consequences under the bill as currently written. He questioned whether Amendment 9 could be amended to address the issue of counsel being present.

MS. CARPENETI reiterated that it's the DOL's position that if a person admits guilt during a parole hearing, he/she should be bound by that admission regardless of whether he/she was represented by counsel during that hearing.

REPRESENTATIVE GRUENBERG expressed disfavor with that position.

MS. CARPENETI, in response to a question, indicated that neither Amendment 8 nor Amendment 9 would impact existing law.

REPRESENTATIVE GRUENBERG concurred.

REPRESENTATIVE LYNN withdrew Amendment 8.

2:09:09 PM

REPRESENTATIVE LYNN made a motion to adopt Amendment 9 [text provided previously].

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG expressed interest in hearing how the PDA, the Office of Public Advocacy (OPA), and the Alaska Innocence Project view Amendment 9.

REPRESENTATIVE LYNN questioned what constitutes an "official proceeding" as that term is used in the bill.

MS. CARPENETI explained that an official proceeding is statutorily defined in AS 11.81.900(b)(41) as:

> (41) "official proceeding" means a proceeding heard before a legislative, judicial, administrative,

or other governmental body or official authorized to hear evidence under oath;

2:13:26 PM

WINDY HANNAMAN, Deputy Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), characterized Amendment 9 as interesting in that it takes into consideration that there could be many reasons for a person to enter a guilty or nolo contendere plea other than that he/she is actually guilty. Her concern with Amendment 9 as currently written, she relayed, is that although it states that such pleas are not admissions or concessions of guilt, there is case law that indicates that although such pleas may not be admissions of guilt, individuals cannot [then] contest the underlying factual basis for the plea itself, and so she is not sure how the courts, in light of its previous rulings, would then interpret Amendment 9.

MR. MOODY said Amendment 9 would help alleviate one of the PDA's concerns, and would improve the bill.

2:15:40 PM

WILLIAM B. OBERLY, Executive Director, Alaska Innocence Project, after clarifying that his organization is not part of the defense bar and instead conducts independent reviews of cases that might involve innocent people who've been wrongfully convicted, remarked that although Amendment 9 would improve the bill, it's an insufficient improvement. People might make admissions of guilt at parole hearings solely in an attempt to obtain parole, and they would not then be eligible for post-conviction DNA testing, and neither would youthful defendants or those who are mentally impaired for one reason or another if they make an admission of guilt at trial. Precluding such people from post-conviction DNA testing is unfair and improper, he opined, and reiterated that he doesn't believe Amendment 9 goes far enough.

MS. CARPENETI, in response to a question, reiterated that some people plead guilty or nolo contendere for reasons other than actually being guilty, and said that Amendment 9, if adopted, would allow such people to apply for post-conviction DNA testing.

REPRESENTATIVE GRUENBERG indicated that he would research the concerns expressed by the OPA, the PDA, and the Alaska Innocence

Project further, and then perhaps later, as the bill continues moving through the process, offer an amendment aimed at addressing those concerns.

REPRESENTATIVE DAHLSTROM removed her objection to the adoption of Amendment 9.

CHAIR RAMRAS, after ascertaining that there were no further objections, announced that Amendment 9 was adopted.

2:19:28 PM

REPRESENTATIVE LYNN made a motion to adopt Amendment 10, labeled 26-GH2812\A.8, Luckhaupt, 2/17/10, which read:

> Page 9, lines 3 - 5:
> Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to request DNA testing"
>
> Page 9, lines 6 - 13:
> Delete all material and insert:
> "(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing;"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE LYNN indicated that he is questioning why a person should be precluded from obtaining post-conviction DNA testing simply for having followed his/her lawyer's bad advice.

MS. CARPENETI said the DOL opposes Amendment 10, believing it to strike the wrong balance between providing a procedure that allows innocent people who've been wrongfully convicted to bring an action, and providing a procedure that allows guilty people to keep trying out different defenses. Currently, the bill would preclude someone who waived the right to request DNA testing at trial, and the DOL is hoping that in the future, once the proposed new crime laboratory is set up, that every person - or his/her lawyer - will request testing at the outset, but in those situations where the person waived testing at that time, for whatever reason, then he/she should not get another chance to try out a different defense later.

REPRESENTATIVE GRUENBERG characterized Amendment 10 as extremely important in that it addresses the issue of justice. For example, if an innocent person went to trial many years ago with very little knowledge and very little input from his/her lawyer regarding DNA testing, then, if Amendment 10 is not adopted, he/she would be denied the right to an up-to-date defense that could completely exonerate him/her. Furthermore, as long as that innocent person stays in jail, the guilty person will remain free. So, to keep an innocent person in jail for a "gotcha" reason would be a real injustice, he concluded.

REPRESENTATIVE LYNN noted that science is changing - and better DNA testing is being developed - all the time, and so he doesn't want to deny a person access to the latest technology.

CHAIR RAMRAS agreed.

2:24:05 PM

MS. CARPENETI explained that the DOL believes that when a person presents a defense, then he/she should not be able to present a different defense later on, such as what Mr. Osborne did: he waived DNA testing at trial - while being represented by fine defense counsel - and then later came back and said he wanted the evidence tested. She added: "I think that when you have a lawyer who is helping you make decisions, and ... you choose the ... defense that you want to proceed with, that ... you shouldn't be able to go back and try something else the next time; I really don't feel like we are saying ... 'We gotcha,' under those circumstances."

REPRESENTATIVE GRUENBERG said he would be willing to offer an amendment to Amendment 10 that would allow the court to consider evidence presented by both sides and then order post-conviction DNA testing if the interests of justice compel it to but not if there really isn't a good reason to. He asked Ms. Carpeneti whether the DOL would support such a change.

REPRESENTATIVE LYNN indicated that he would be amenable to such an amendment to Amendment 10.

MS. CARPENETI indicated that she would be willing to consider the suggestion, but noted that the phrase, "tactical reasons" - as used in the language Amendment 10 is proposing to delete - means that the defense lawyer had reasonable grounds for not having his/her client get DNA testing.

REPRESENTATIVE GRUENBERG expressed a preference for giving the judge, in each case, the discretion to decide whether to order post-conviction DNA testing.

MS. CARPENETI indicated that she would have to see how such a change would relate to the [intent of the bill].

REPRESENTATIVE LYNN indicated agreement with Representative Gruenberg.

2:26:34 PM

REPRESENTATIVE GRUENBERG made a motion to amend Amendment 10 conceptually such that the judge would be allowed to consider the application for post-conviction DNA testing and then rule on it in the interests of justice.

REPRESENTATIVE LYNN expressed support for the amendment to Amendment 10.

REPRESENTATIVE DAHLSTROM objected.

MS. CARPENETI said she would be willing to discuss some form of an exception, but, again, the DOL feels that if a person's lawyer makes a tactical decision to proceed a certain way in a defense, then post-conviction DNA testing shouldn't then be available.

REPRESENTATIVE GRUENBERG attempted to clarify:

> I'm only talking about this one thing here, in [Amendment 10] ..., not the whole bill, not the whole section, because this could have been a tactical decision that was made yesterday and there's no good reason for a do-over, [or] it could have been something that was made 20 years ago and there's a good reason to allow it to take place. And so what I'm saying here is, let the judge take into consideration all the facts and all the arguments, and do justice.

MS. CARPENETI said that there might be some aspect of the proposal that they could work on, but she is concerned about its exact wording.

REPRESENTATIVE GRUENBERG pointed out that it would be a conceptual amendment to Amendment 10, and surmised that staff

could address Ms. Carpeneti's concerns when drafting it. In response to a question, he said that the conceptual amendment to Amendment 10 would provide the court with the authority to listen to the arguments and determine whether or not to allow the application for post-conviction DNA testing to be made. In response to another question, he added that there would have to be some reason in the interest of justice to grant the application.

2:30:28 PM

CHAIR RAMRAS surmised, then, that under the conceptual amendment to Amendment 10, new language would be added that said [something along the lines of], "The court would have the authority to listen to the argument and decide in the interest of justice whether to grant the application."

REPRESENTATIVE GRUENBERG concurred.

MS. CARPENETI indicated that whether she supports the addition of that language would depend on where in the bill it would be added.

REPRESENTATIVE DAHLSTROM expressed a preference for having the amendment to Amendment 10 be drafted by Legislative Legal and Research Services.

REPRESENTATIVE GRUENBERG withdrew the conceptual amendment to Amendment 10, and indicated that he would work on it as the bill continues to move through the process.

CHAIR RAMRAS said he would not vote for Amendment 10 without the adoption of the conceptual amendment to it.

REPRESENTATIVE GRUENBERG, in response, restated his motion to adopt the conceptual amendment to Amendment 10. He added that he would still continue to work on this issue after the bill moves from committee.

2:33:32 PM

A roll call vote was taken. Representatives Lynn, Gruenberg, and Ramras voted in favor of the conceptual amendment to Amendment 10. Representatives Herron and Dahlstrom voted against it. Therefore, the conceptual amendment to Amendment 10 was adopted by a vote of 3-2.

2:33:56 PM

A roll call vote was taken. Representatives Lynn, Gruenberg, and Ramras voted in favor of Amendment 10, as amended. Representatives Dahlstrom and Herron voted against it. Therefore, Amendment 10, as amended, was adopted by a vote of 3-2.

2:34:36 PM

REPRESENTATIVE LYNN made a motion to adopt Amendment 11, labeled 26-GH2812\A.9, Luckhaupt, 2/18/10, which read:

Page 9, lines 19 - 23:
Delete all material and insert:
"(8) the applicant identifies a theory of defense that would establish the applicant's innocence;"

Renumber the following paragraphs accordingly.

Page 10, line 12:
Delete "(12)"
Insert "(11)"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE LYNN, by way of explanation, read the language that Amendment 11 would insert into proposed AS 12.73.020(8).

MS. CARPENETI said the DOL has strong reservations about Amendment 11 because it would eliminate the requirement in proposed AS 12.73.020(8) that when applying for post-conviction DNA testing, the applicant not identify a new theory of defense that is inconsistent with the theory of defense presented at trial. If Amendment 11 is adopted, she predicted, a person could say during the trial that he/she committed the homicide, for example, but it was in self defense, and then in the application for post-conviction DNA testing instead assert that he/she was not at the scene of the crime at all.

CHAIR RAMRAS concurred with Ms. Carpeneti's concern.

2:38:28 PM

MS. HANNAMAN, in response to a question, indicated that the OPA has a concern with the aforementioned requirement because

defense counsel, oftentimes over the objection of the defendant, gets to choose the strategy at trial. For example, the defendant may all along be insisting that he/she is innocent, but the defense attorney instead chooses to go with a different defense strategy, deciding that his/her client would then have a better chance at trial. Furthermore, the courts have held that it's the defendant's attorney who ultimately gets to choose what strategy to take. In response to comments and a question, she said she understands the DOL's concern, and suggested that perhaps an amendment to Amendment 11 could address that concern, for example, by providing an exemption from the requirement if the defendant, counter to his/her attorney's strategy, takes the stand at trial and claims that he/she is innocent, or if, via an affidavit, he/she swears that all along he/she has maintained his/her innocence and that his/her attorney, even knowing this, simply chose to pursue a different strategy.

REPRESENTATIVE GRUENBERG expressed favor with Ms. Hannaman's suggestion, and predicted that the current language of proposed AS 12.73.020(8)(A) that says in part, "is not inconsistent" would engender litigation. He indicated that he would be willing to work with the DOL on this issue further as the bill continues moving through the process, rather than attempt to amend Amendment 11 at this time.

REPRESENTATIVE LYNN, in response to a question, indicated that he, too, would be amenable to working on the issue further.

MS. CARPENETI said she would be willing to work with the representatives, but cautioned that it's the DOL's position that [the requirements outlined in proposed AS 12.73.020] all pertain to factual findings made by the trial court.

REPRESENTATIVE GRUENBERG indicated that he would still like to attempt to address the concerns raised by the language currently in proposed AS 12.73.020(8).

MS. CARPENETI indicated that she, too, would be willing to try.

CHAIR RAMRAS indicated disfavor with Amendment 11 as currently written.

REPRESENTATIVE LYNN withdrew Amendment 11.

2:44:05 PM

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 12, which read [original punctuation provided]:

Page 9, line 29 delete "conclusively"

MS. CARPENETI explained that Amendment 12 is being suggested by the DOL as a compromise in order to address concerns regarding the requirement - outlined in proposed AS 12.73.020(10)(B) - that in order to grant an application for post-conviction DNA testing, there has to be a reasonable probability that the testing would "conclusively" establish the applicant's innocence.

CHAIR RAMRAS, after ascertaining that there were no objections, announced that Amendment 12 was adopted.

2:44:53 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 13, which read [original punctuation provided]:

Page 10, lines 11-23
Delete all material

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

CHAIR RAMRAS indicated that Amendment 13 would delete the entirety of proposed AS 12.73.040 - the provision pertaining to timeliness.

REPRESENTATIVE GRUENBERG observed that Amendment 14 and Amendment 15 also address that same provision.

CHAIR RAMRAS relayed that Amendment 14, labeled 26-GH2812\A.4, Luckhaupt, 2/15/10, read:

Page 10, line 12, following "12.73.020(12),":
Insert "there is a presumption of timeliness if the application is filed before the term of imprisonment of the applicant for the crime for which the evidence or biological material is preserved is completed. This presumption of timeliness may be rebutted if the court finds that the application is based solely on information used in a previously denied application."

Page 10, lines 13 - 23:

Delete all material.

CHAIR RAMRAS then relayed that Amendment 15 read [original punctuation provided]:

Page 10, lines 18 - 23:
Delete all material and insert:
"three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction."

CHAIR RAMRAS remarked that Amendment 13's approach - to delete the entirety of proposed AS 12.73.040, the provision pertaining to timeliness - is too aggressive for him.

MS. CARPENETI, in response to comments, clarified that the bill doesn't have a statute of limitations; instead, it contains a rebuttable presumption regarding the timeliness of filing an application for post-conviction DNA testing. This rebuttable presumption is intended to encourage bringing an action sooner rather than later if the option is available. She noted that Amendment 15 in part proposes to eliminate the restriction that a presumption of untimeliness may only be rebutted if the applicant was incompetent and that incompetence substantially contributed to the delay in filing.

2:49:01 PM

MR. MOODY said that Conceptual Amendment 13 would cure the problem he's raised, that being that some people might not realize they have reason to file an application for post-conviction DNA testing until after the proposed three year timeframe has passed. Moreover, although proposed AS 12.73.040 contains another stipulation that a presumption of untimeliness may be rebutted for "other good cause", trial courts, he predicted, are going to treat this provision as a statute of limitations. In response to a question, he expressed a preference for Conceptual Amendment 13, opining that the bill would be better off without proposed AS 12.73.040 as it's currently written.

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 13. Representatives Lynn, Dahlstrom, Herron, and Ramras voted against it. Therefore, Conceptual Amendment 13 failed by a vote of 1-4.

2:50:45 PM

REPRESENTATIVE HERRON made a motion to adopt Amendment 14 [text provided previously].

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HERRON indicated that under Amendment 14, there would be a presumption of timeliness if the application were filed anytime during the person's term of imprisonment.

MS. CARPENETI explained that [the DOL's] concern with Amendment 14 is that some of the people who are convicted of the crimes for which the bill's proposed new procedure would apply are going to be in jail for very long time - for example, felony sexual assault crimes have a maximum sentence of 99 years, as do homicides - so if a person has information upon which to base an application for post-conviction DNA testing, it would be a much better public policy - and better for the person - to encourage him/her to bring an application sooner rather than later. She proffered that the DOL's compromise on this issue would be to stipulate that a timely application shall be brought within 3 years, and to provide that a presumption of untimeliness could be rebutted for good cause. This is not a big hurdle, but if a person is actually innocent and has information that could show that, doesn't it make more sense for him/her to bring an application for post-conviction DNA testing earlier, rather than later, and thus get a new trial and be released sooner?

A roll call vote was taken. Representatives Gruenberg and Herron voted in favor of Amendment 14. Representatives Dahlstrom, Lynn, and Ramras voted against it. Therefore, Amendment 14 failed by a vote of 2-3.

2:54:13 PM

REPRESENTATIVE HERRON made a motion to adopt Amendment 15 [text provided previously].

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

MS. CARPENETI in response to a question, reiterated that Amendment 15 proposes to eliminate the restriction that a presumption of untimeliness may only be rebutted if the applicant was incompetent and that incompetence substantially contributed to the delay in filing. Furthermore, Amendment 15 - by eliminating the word "other" - is intended to address Mr.

Oberly's concern that the term, "other good cause" as used in proposed AS 12.73.040(2)(B) would be interpreted by the courts as being related to the issue of incompetence. Under Amendment 15, the presumption of untimeliness may be rebutted if the court finds any good cause.

REPRESENTATIVE GRUENBERG offered his belief that Amendment 15 could be interpreted by the courts such that it would be more restrictive than the current language its proposing to delete, language which he characterized as crystal clear.

MS. CARPENETI explained that the DOL has always thought of the current language in proposed AS 12.73.040 as providing for a very liberal timeliness presumption, but to the extent that Mr. Oberly doesn't, the DOL is willing to remove it via Amendment 15.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS, after ascertaining that there were no further objections, announced that Amendment 15 was adopted.

MS. CARPENETI, in response to a question, explained that proposed AS 12.73.010(a) states that only a person convicted of a felony against a person under AS 11.41 who has not been unconditionally discharged may bring an application for post-conviction DNA testing. Therefore, under Amendment 15, a person who is still on probation or parole could still bring an application if there is good cause for [the delay in bringing it].

2:58:12 PM

CHAIR RAMRAS made a motion to adopt Amendment 16, labeled 26-GH2812\A.16, Luckhaupt, 2/23/10, which read:

Page 15, line 13, following "PRESERVATION":
Insert "AND RETENTION"

Page 15, line 14, following "Preservation":
Insert "and Retention"

Page 16, line 3, following "cataloging,":
Delete "and"

Page 16, line 4, following "materials":
Insert ", and return of property to owners"

Page 16, line 9:
Delete the first occurrence of "and"
Following "materials":
Insert ", and return of property to owners"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

CHAIR RAMRAS explained that Amendment 16 would expand the proposed task force's duties to include recommending standards and protocols for the return of property, with the goal being to develop a mechanism by which property involved in the commission of a crime could be returned to its owner in an expeditious manner.

REPRESENTATIVE GRUENBERG said he had no objection.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 16 was adopted.

2:59:04 PM

CHAIR RAMRAS made a motion to adopt Amendment 17, which read [original punctuation provided]:

Page 15, between lines 24 and 25:
Insert the following:
"(9) the public defender;
(10) a member of the Alaska Senate appointed by the President of the Senate;
(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

CHAIR RAMRAS, after stating that there was an objection, noted that Amendment 18, labeled 26-GH2812\A.19, Luckhaupt, 3/1/10, addresses the same provision; Amendment 18 read:

Page 15, line 24, following "AS 24.65.020":
Insert ";
(9) the public defender;
(10) the director of the office of public advocacy;
(11) a representative of the Alaska Native Justice Center"

Page 15, line 25:
Delete "and (6)"
Insert "(6), and (11)"

MS. CARPENETI explained that in order to address concerns that the membership of the task force being established by the bill wasn't balanced enough, the DOL has suggested adding the public defender and a Senator and a Representative to the list of those who would serve on the proposed task force. Having legislators on the task force would allow it to also address policy issues.

CHAIR RAMRAS expressed a preference for having legislators serve on the task force.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 17 was adopted.

3:00:51 PM

REPRESENTATIVE GRUENBERG, referring to Amendment 18 [text provided previously], made a motion to adopt an amended version of Amendment 18 as follows:

Page 15, line 24, following "AS 24.65.020":
Insert ";
(9) the representative of the Alaska Innocence Project;
(10) the director of the office of public advocacy;
(11) a representative of the Alaska Native Justice Center"

Page 15, line 25:
Delete "and (6)"
Insert "(6), and (11)"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

CHAIR RAMRAS expressed disfavor with including a representative from the Alaska Innocence Project.

REPRESENTATIVE GRUENBERG indicated that although he was amenable to removing the reference to a representative from the Alaska Innocence Project from Amendment 18, as amended, he does still want to have the director of the OPA and a representative from

the Alaska Native Justice Center (ANJC) included on the task force.

CHAIR RAMRAS [although no motion was made] indicated that the removal of the reference to a representative from the Alaska Innocence Project would be an amendment to Amendment 18, as amended. There being no objection, Amendment 18, as amended, was again amended.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 18, as amended [twice], was adopted.

3:03:26 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 19, labeled 26-GH2812\A.13, Luckhaupt, 2/18/10, which read:

Page 16, line 3, following "cataloging,":
Insert "retention, disposal,"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 19 would stipulate that the task force shall also recommend standards and protocols for the retention and disposal of evidence and biological material. He characterized Amendment 19 as a technical amendment.

CHAIR RAMRAS concurred.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 19 was adopted.

3:04:19 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 20, labeled 26-GH2812\A.14, Luckhaupt, 2/18/10, which read:

Page 16, lines 17 - 20:
Delete all material.

REPRESENTATIVE GRUENBERG said he doesn't know why the meetings of the proposed task force shouldn't be open meetings or why its records shouldn't be subject to inspection and copying.

REPRESENTATIVE DAHLSTROM objected.

MS. CARPENETI said that the DOL had originally suggested [exempting the proposed task force from the provisions of AS 44.62.310, AS 44.62.312, and AS 40.25.110-220 via the inclusion of Section 16's proposed subsections (f) and (g)] because the DOL was thinking that the task force would be "pretty technical and would be dealing with medical records of individuals." She acknowledged, however, that policy makers and "a broader brush" [in terms of the task force's duties] have been added to the bill, and surmised, therefore, that the task force could simply go into executive session [to address confidential matters].

CHAIR RAMRAS stated that Representative Dahlstrom had removed her objection, and that Amendment 20 was adopted.

3:05:48 PM

CHAIR RAMRAS made a motion to adopt Amendment 21, which, along with hand-written changes, read [original punctuation provided except with regard to the handwritten portions]:

> Page 16, lines 28-30
> Delete all material
> Insert the following:
> (c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing."
>
> Renumber the following bill sections accordingly.

REPRESENTATIVE DAHLSTROM indicated that she would be objecting for the purpose of discussion.

CHAIR RAMRAS explained that Amendment 21 would provide that anyone convicted prior to July 1, 2010, has until July 1, 2013, to file an application for post-conviction DNA testing.

MS. CARPENETI observed that Amendment 21 also adds a "good cause" savings clause.

REPRESENTATIVE DAHLSTROM removed her objection.

CHAIR RAMRAS announced that Amendment 21 was adopted.

3:06:42 PM

REPRESENTATIVE GRUENBERG indicated that he would not be offering Amendment 22, labeled 26-GH2812\A.15, Luckhaupt, 2/18/10, because the language it's proposing to delete has already been amended via Amendment 21; Amendment 22 read [original punctuation provided]:

Page 16, lines 28 - 30:
Delete all material.

CHAIR RAMRAS mentioned that there were no further amendments for the committee to consider.

3:08:46 PM

REPRESENTATIVE DAHLSTROM moved to report HB 316, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 316(JUD) was reported from the House Judiciary Standing Committee.

3:09:51 PM

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:09 p.m.