ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 19, 2010
1:22 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- HEARD & HELD

HOUSE BILL NO. 366
"An Act relating to indemnification agreements that relate to motor carrier transportation contracts."

- MOVED CSHB 366(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 324
SHORT TITLE: FAILURE TO APPEAR; RELEASE PROCEDURES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/03/10	(H)	READ THE FIRST TIME - REFERRALS
02/03/10	(H)	JUD, FIN
03/19/10	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 366
SHORT TITLE: MOTOR CARRIER INDEMNIFICATION AGREEMENTS
SPONSOR(S): JOHNSON

02/23/10	(H)	READ THE FIRST TIME - REFERRALS
02/23/10	(H)	TRA, JUD
03/11/10	(H)	TRA AT 1:00 PM CAPITOL 17
03/11/10	(H)	Moved CSHB 366(TRA) Out of Committee
03/11/10	(H)	MINUTE(TRA)
03/12/10	(H)	TRA RPT CS(TRA) 5DP 1NR
03/12/10	(H)	DP: JOHNSON, T.WILSON, GRUENBERG, PETERSEN, P.WILSON
03/12/10	(H)	NR: JOHANSEN
03/19/10	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SUSAN MCLEAN, Division Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of HB 324.

JEANNE OSTNES, Staff
Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 366 on behalf of the sponsor, Representative Johnson.

AVES THOMPSON, Executive Director
Alaska Trucking Association (ATA)
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of HB 366.

DEAN McKENZIE, President
Alaska West Express
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during discussion of HB 366.

ACTION NARRATIVE

1:22:54 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:22 p.m. Representatives Ramras, Lynn, Gruenberg, Holmes, Herron, and Gatto were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress.

HB 324 - FAILURE TO APPEAR; RELEASE PROCEDURES

1:24:31 PM

CHAIR RAMRAS announced that the first order of business would be 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."

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SUSAN MCLEAN, Division Director, Legal Services Section, Criminal Division, Department of Law (DOL), after noting that there is debate about some provisions of HB 324, informed the committee that the bail statutes haven't been revised since 1966. Since the original bail statute was enacted, there have been additions to it such that there are now many layers. Therefore, the original goal of HB 324 is to streamline the bail statutes into a reasonable, user-friendly format. She reminded the committee that a constitutional amendment which gave rights to crime victims had been adopted. As a result, many parts to the bail statute were added. However, those didn't neatly fall into the bail statutes. Ms. McLean related that, therefore, the primary purpose of HB 324 is to streamline the bail statutes such that they are easier to use and give effect to the

constitutional rights of crime victims within the statutes. A major feature of HB 324 is that a person who is charged with a serious sex offense will be required to prove that the release conditions prior to trial will protect the victim and the public. The legislation will also adopt standards for persons appointed as third party custodians for persons released on bail. Moreover, HB 324 would prohibit a person found guilty of a serious sex offense from being released before sentencing or during appeal of the conviction. The legislation protects victims of domestic violence by establishing standards that the court must (indisc.) before allowing a perpetrator of domestic violence to return to the victim's residence. Finally, HB 324 would allow more time prior to a dependent's first appearance in court for the police to investigate, the prosecutor to make an informed charging decision, to bail arguments to be better presented on both sides, and the victim to be contacted so that he/she may be present at the first bail hearing.

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MS. MCLEAN then provided the committee with a sectional analysis of HB 324. Section 1 moves the crime of failure to appear, which currently resides in Title 12 to Title 11. The crime of failure to appear in Section 1 is similar to existing law, save that the failure to appear statute proposed for Title 11 addresses the "Moffitt" issue. The elements of the crime of failure to appear have always been understood to be that a person knowingly failed to appear in court, and that it's the state's burden to prove the person knew he/she had to appear in court. In 2009 the Alaska Court of Appeals decided Moffitt v. State which said that there's a second burden of proof for the state. The court found that implicit in the legislative intent was that the state has to also prove that the defendant wasn't prevented from the hearing by circumstances beyond his/her control. In response to questions, Ms. McLean related that she can't say the Defense Bar generally supports Section 1 because there may be provisions that the public defender agrees with that a private attorney does not. Furthermore, the American Civil Liberties Union (ACLU) wrote a letter when the companion legislation was presented in the Senate. She opined that not all public defenders or private attorneys would agree with everything in the ACLU's letter. However, she said that there are some members of the Defense Bar who perceive this as an attempt to create new law, whereas the administration views Section 1 as an attempt to clarify the legislative intent of the original law.

REPRESENTATIVE HOLMES surmised then that DOL believes Section 1 clarifies legislative intent, although it's counter to how it's currently being interpreted by the courts.

MS. MCLEAN replied yes, adding that this is a new interpretation by the courts. She noted that there have been conditions for failure to appear for 45 years.

REPRESENTATIVE GRUENBERG recalled that the committee recently heard HB 386, which included provisions making it a crime for failure to appear for a citation. He opined that [the aforementioned provision in HB 386] is similar to HB 324.

MS. MCLEAN stated that there's always been criminality attached with failure to appear in court. In fact, she said she didn't know of any state that doesn't have some sort of criminal sanction for failure to appear in court. Furthermore, in a felony case in Alaska, there is no court without the defendant, as the process can't go forward without the defendant.

REPRESENTATIVE GRUENBERG asked whether, in any state, there is any constitutional impediment to going forward when an individual fails to appear in court. He further asked if Alaska could have such a statute.

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MS. MCLEAN offered her understanding that the right to be present at every stage of a criminal proceeding is a fundamental right.

REPRESENTATIVE GRUENBERG posed a scenario in which an individual voluntarily and knowingly absents himself/herself. He also posed a scenario in which an individual walks out of the trial.

MS. MCLEAN pointed out that there is a statute and rule that addresses the aforementioned. If an individual voluntary absents himself/herself in the middle of a proceeding, the proceeding would go forward because he/she is voluntarily absent.

REPRESENTATIVE GRUENBERG then posed a scenario in which an individual is present at the date the trial is set, but then doesn't attend [the trial]. He surmised that currently the proceedings couldn't go forward. He then asked if there is any constitutional reason that there couldn't be a statute that would allow the proceedings to go forward.

MS. MCLEAN offered her understanding that the constitution would require that, at the point of trial, the defendant must be present.

REPRESENTATIVE GRUENBERG reiterated his question regarding whether such a statute could be enacted. He opined that in some cases, defendants do what they can to disrupt and delay the proceedings.

MS. MCLEAN informed the committee that in Alaska there have been several cases in which the defendant wasn't present for the jury question and the case was overturned on appeal. Therefore, she characterized a statute as proposed by Representative Gruenberg to be constitutionally on the edge.

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MS. MCLEAN informed the committee that Section 2 is noncontroversial as it's a conforming amendment. Section 2 conforms the language in certain cases from reasonable cause to probable cause so that all of the language in AS 12.25.030 reads "probable cause". Section 2 allows a law enforcement officer to arrest an individual for violation of conditions of release if the officer has probable cause to believe the individual has violated conditions of release. The language codifies what DOL thought was the law such that an officer can arrest, without a warrant, for a misdemeanor or felony committed in the officer's presence.

MS. MCLEAN explained that Section 3 adopts a new section that describes release procedures for those charged with crimes. She emphasized those procedures are similar to those under various sections of existing law. However, there are a few differences, including that before the third and subsequent bail hearings existing law and HB 324 require that certain prerequisites are met. The existing prerequisites are that 7 days has to have elapsed between bail hearings and 48 hours notice to the prosecuting attorney. The legislation requires 48 hours notice to the prosecuting attorney as well as to anyone who posted bail on behalf of the defendant. The legislation specifies that the individual who is released signs a release agreement that describes the conditions of release and includes the individual's promise to abide by the conditions of release. Furthermore, Section 3 eliminates the provision in existing law that allows a judicial officer to change, eliminate, or change conditions of release at any time because the law already

provides this as a bail hearing. He noted that allowing a judicial officer to change the conditions of release without following the required procedures has the potential of being unfair to the defendant, the prosecuting authority, and the victim.

MS. MCLEAN moved on to Section 4, which revises the law regarding the release before trial of an individual charged with a crime. Section 4 adopts standards and condition of release for specific crimes and melds them into one statute. She pointed out that AS 12.30.011(b) provides the conditions that a court may impose on an individual charged with a crime if, in the court's discretion, the condition will reasonably ensure the individual's appearance and the safety of other victims. Many, if not most, of these conditions are in existing law while others are included in the federal bail law. She explained that AS 12.30.011(c) describes the various circumstances the court should consider when deciding which conditions are reasonable to impose on the individual. The aforementioned are similar to existing law. Ms. McLean acknowledged that there has been some suggestion that this legislation could create warrantless searches. However, the legislation mirrors the existing law regarding conditions for release in that a judicial officer with a reasonable suspicion may require an individual to submit to various things, such as a breath test or a search for drugs, as conditions of bail. Ms. McLean specified that the provisions in HB 324 don't create new warrantless search provisions, except a change for the conditions of release for an individual who is on medication while before the court. In such a case, the court can, as a condition of release, require the individual continue to take their medication. The aforementioned is aimed at mentally ill individuals who don't get into trouble unless they're not taking their medications.

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REPRESENTATIVE GATTO asked if the condition of release for an individual who is on medication would apply to those individuals taking psychotropic drugs, antibiotics, and other drugs.

MS. MCLEAN indicated that she would further research the statutory language.

REPRESENTATIVE GRUENBERG pointed to the language found on page 6, lines 24-25. Representative Gruenberg, speaking as a diabetic with a heart condition, characterized it as a very good

provision. He then offered his assumption that the provision is constitutional.

MS. MCLEAN responded that she believes the provision is constitutional. She added that the Alaska constitutional law on conditions of release and probation is that the conditions have to be reasonably related to the crime, or to keep the public safe from that individual.

REPRESENTATIVE GRUENBERG pointed out that if he doesn't take his insulin, he's only hurting himself. He opined that it's important if this provision is simply requiring the individual to keep himself/herself safe by taking their medication. In response to the argument that individuals have the freedom to not take their insulin, he said he would like this provision to be applicable to those individuals under the court jurisdiction. He further expressed interest in there being strong authority in the record and debate that could be cited.

REPRESENTATIVE GATTO pointed out that an individual who doubles his/her dose of insulin could cause harm to another individual.

MS. MCLEAN, in response to Representative Gatto's original question, answered that the provision on page 6, lines 24-25, doesn't apply only to psychotropic drugs. The language specifies: "(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;". Therefore, the provision would include the situation Representative Gruenberg discussed.

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MS. MCLEAN moved on to Section 4(d), for which there is a great deal of debate. This subsection provides the evidentiary burden a court must apply in making a decision about the release of an individual. The burden of proof has always been on the prosecution to establish that particular conditions are reasonable and to ensure the defendant's appearance as well as the safety of the victim and others. This legislation would change that by creating certain offenses or procedural situations. For example, in a situation in which an individual is charged with domestic violence and has a prior conviction for domestic violence within the last five years, the burden of persuasion would be shifted to the defendant. The legislation creates a rebuttable presumption that there are no conditions of release or monetary conditions that assure the safety of the

victim or the community or the appearance of the defendant. The intent, she emphasized, is simply that the burden of going forward changes. Therefore, "the context in which the court begins the inquiry about the conditions of release starts with you're in this situation, explain to me what you're going to do."

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CHAIR RAMRAS questioned how the aforementioned proposed standard would place Alaska in terms of bail reform. How strict is the state becoming, he asked. He referred to the proposed change as a significant pendulum shift.

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MS. MCLEAN explained that everyone in the State of Alaska has a right to be released on bail except those charged with capital offenses. Therefore, everyone in the State of Alaska has the right to be released on bail because the state doesn't have capital offenses. The legislation specifies that for those who come before the court charged with certain offenses and certain criminal history, it's up to the defense to explain, and begin the dialogue for the proposal of why the defendant won't be dangerous to the victim or cause harm to the state. The court can listen to the defendant's proposal, and the state could then move to a rebuttable presumption and show the court by other evidence why the defendant will flee, be dangerous to the victim, or cause harm to the state. "The burden of proof never leaves the state," she stated. She further stated that the language is the federal law and has been challenged and confirmed as constitutional in every circuit of the U.S. In response to Chair Ramras, Ms. McLean related that she has researched 25 states, of which there are some with presumptions similar to that in HB 324. There are many states, such as Arizona, in which [the defendant] doesn't receive bail for the situations described in HB 324.

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REPRESENTATIVE HOLMES, referring to the language on page 5, lines 4-6, asked whether this means that during bail hearings the defense or the prosecution could introduce information that's counter to the rape shield laws or medical illness.

MS. MCLEAN answered that she wouldn't think so because of the statutes that govern confidentiality. However, she acknowledged

that the matter hasn't been litigated. The goal of the referenced provision is that the prosecution or the defense can make their proof by proffer or hearsay.

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MS. MCLEAN, referring to Section 4, pointed out that the preponderance [of evidence] situation is proposed when the defendant is charged with an unclassified felony, a class A felony, a sexual felony, or has a previous conviction for a felony and less than five years has elapsed. The [rebuttable] presumption would also apply if the offense was committed while the defendant was on release for another offense, for charges of crime involving domestic violence, or the defendant was convicted in the last five years of a crime involving domestic violence. Ms. McLean reiterated, "Again, we're not talking about not releasing people, we're just talking about the idea that the defendants should come forward with a plan for how he/she will be reliable and safe."

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REPRESENTATIVE GRUENBERG directed attention to page 7, lines 19-21, and explained that the burden of proof includes the twin burdens of going forward and burden of persuasion. Therefore, it's the concept of who has to proceed first and the quantum of proof. Representative Gruenberg opined that the reference to preponderance of evidence, unless it's specified otherwise in the legislation, implies the full burden of proof.

MS. MCLEAN clarified that all the federal cases construing the statute and DOL's understanding of the statute are that the accused individual has the burden of going forward and the state always has the burden of persuasion.

REPRESENTATIVE GRUENBERG opined that the legislation is not written in a way that he has ever seen it in Alaska. He pointed out that the language "preponderance of evidence" deals with the quantum of evidence, not the burden of going forward. He then explained that one theory, with regard to rebuttable presumptions, is that if evidence is brought forward to rebut the presumption, then the presumption goes away. He opined that this legislation doesn't just make the presumption go away, but rather flips the burden such that "you now have the burden of persuasion." The defendant would have to show, by 51 percent, that the presumption is not true.

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MS. MCLEAN interjected that the presumption to which Representative Gruenberg is referring is the presumption that there are no conditions of release that will assure the safety of the victim. She suggested that the defendant will have to show some conditions of release that assure the safety of the community and the victim. She reminded the committee that it's a burden of going forward.

CHAIR RAMRAS surmised that the policy call with HB 324 is in regard to with whom the burden will rest. Since 1966, the burden has largely rested on the court system and the prosecution. The proposed modernization of the bail provision is to flip it. He mentioned that there are differences between the rural and the urban problems. One of the unique characteristics of Alaska is that it has people living in remote rural communities and these people can't drive to a safe place. There are individuals who qualify for bail and can reenter the community. The test, albeit different for rural areas versus urban areas, is for who is most vulnerable. Therefore, Chair Ramras said that he will be using the rural test and seeking to satisfy safety for victims and communities. The rural test, he remarked, may be less appropriate for the proposed presumption and flipping the standard to the defendant, while heavy-handed for an urban application.

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MS. MCLEAN pointed out that the crimes of domestic violence and sexual assault have been identified as crimes for which the desire is to focus the inquiry on the subject of bail, such that the court stops, takes notice, and conducts the dialogue from a different point of view. The dialogue being: "You are here again for assaulting your wife. You're simply accused of it, but you were convicted of it last year. Why should I release you back to the village where there are 50 people and she can't hide from you," she said.

CHAIR RAMRAS reiterated that it needs to be a one-size-fits all bail provision, although the application is for two remarkably different groups.

REPRESENTATIVE GRUENBERG indicated a belief that the legislation could include conditions for the court to consider in the determination. The conditions could address the need to safeguard the victim while allowing bail for the accused. For

example, an individual is on trial in Barrow for a crime that allegedly occurred in a village. He opined that the court could enter an order prohibiting the [accused] from leaving the trial city, or returning to the village, as a condition of bail.

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MS. MCLEAN clarified that as a condition of bail on a limited basis, the court could enter an order specifying that the accused can't have contact with the victim or be within 50 feet of the victim. The language relates that [a condition of release] can be that the [accused] can't travel to a certain location. She emphasized that all of those conditions of release already can be issued by the court. The legislation, she reiterated, is trying to place a finer point on the focus.

REPRESENTATIVE GRUENBERG, referring to page 7, lines 23-31, pointed out that the categories are quite different. He then provided the committee with an example in which the defendant "Otto" was charged with one count of felony possession of heroin. The charge was that he shot heroin in his arm on one occasion. Ultimately, Otto was convicted. Representative Gruenberg then posed a scenario in which four years and nine months later Otto was charged with something similar. Representative Gruenberg expressed the need to review whether it's appropriate to flip the burden in such a case, a case in which there's no showing of any danger to anyone else.

CHAIR RAMRAS asked if the aforementioned scenario would be similar to an individual who has committed their sixth felony driving under the influence (DUI). He opined that he would focus on the safety of the community and the victim as the test and flip the presumption away from the individual who has committed the crime.

REPRESENTATIVE GRUENBERG acknowledged that would be the prosecutor's argument. However, the committee, and the legislature, is determining whether it's appropriate to flip the burden of proof.

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MS. MCLEAN noted that in most cases the possession of a drug wouldn't rise to the level of a class A felony. Therefore, she opined that the intent is "having a cutoff at which you say a lesser felony doesn't count."

REPRESENTATIVE GRUENBERG clarified that his problem isn't with subparagraph (A) on page 7, lines 23-24, but rather he is addressing subparagraph (B) on page 7, lines 25-28. He further clarified that he's merely flagging the issue.

REPRESENTATIVE HERRON expressed the need to find balance because it's bullies who have to be in control. Therefore, what happens in the village or an urban area are the same because [perpetrators] rarely go out of the range of their neighborhood or village.

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MS. MCLEAN, continuing with Section 4, turned the committee's attention to proposed AS 12.30.016, which allows the court to impose specific conditions of release for specific offenses, which already exist. She said that for the most part [those conditions of release] are similar to or identical to existing law. However, subsection (f) on page 10, lines 12-13, proposes a new condition of release.

REPRESENTATIVE GRUENBERG asked if there is a difference between "reasonable suspicion" and "probable cause". If so, is the use of "reasonable suspicion" on page 8, line 21, a change from the current law of "probable cause".

MS. MCLEAN clarified that there is a difference between "reasonable suspicion" and "probable cause", as "reasonable suspicion" reflects a lower standard than "probable cause". In further response to Representative Gruenberg, Ms. McLean stated that this is how the law is currently written.

[Members then spoke briefly about a recent relevant case.]

2:15:39 PM

MS. MCLEAN added that unless the court imposed the conditions, the police aren't authorized to perform the conditions of release. She clarified that it's a situation in which the court has ordered the individual to submit [to the condition of release] because there is reasonable suspicion. Returning the committee's attention to Section 4(f), Ms. McLean pointed out that it specifies certain conditions that the court may impose for an individual charged with a sex offense, which are similar [to existing law]. However, the subsection adds a provision such that the court is permitted to add a condition of release that the individual isn't allowed to have contact with an

individual under the age of 18. Furthermore, the provision, as in current law, requires the court to ensure the victim has been notified of any bail hearing, but adds that for sex offenses the victim should be allowed to speak and the court consider the victim's comments when determining conditions of release.

MS. MCLEAN moved on to Section 5, which adopts standards for a third-party custodian. Current statute authorizes the court to require a third party custodian to watch over an individual released on bail. Section 5 requires the court to obtain information about the proposed custodian, including ties to the community and the relationship to the defendant. The provision establishes some minimum standards for the custodian, such as the custodian must be able to keep the defendant in his/her sight or sound, the custodian can't have a pending charge, and the custodian isn't on probation for a felony. She noted that there is some dispute with regard to Section 5. The Alaska Court System expressed concern that it wouldn't be possible to find third party custodians who meet the qualifications of not having a misdemeanor offense within the past five years or a felony within the past ten years.

CHAIR RAMRAS stated his concurrence with that concern. He then asked how peace officers are going to be aware of or access the specific bail conditions of individuals.

MS. MCLEAN informed the committee that presently, in the less sophisticated communities, when an individual is released from jail, the court system provides the police agency with a copy of the conditions of release. The conditions are then posted on a clipboard so that all officers would know. She then related her understanding that the Alaska Court System, in conjunction with the Departments of Public Safety and Law, are attempting to create a computerized system whereby there are real-time conditions of release when the court imposes them.

2:20:16 PM

REPRESENTATIVE GRUENBERG directed the committee's attention to the language on page 11, line 7, which read:

> is physically able to perform the duties of custodian of the person;

REPRESENTATIVE GRUENBERG then expressed his concern for whether a custodial would be mentally able to perform the necessary duties.

MS. MCLEAN acknowledged that perhaps that should be added. She added, drawing from her experience, that it has never been necessary for a third party custodian to stop the individual from violating the conditions of release, rather the custodian's duty is to report any violation.

2:21:45 PM

REPRESENTATIVE GRUENBERG offered his understanding that it has been difficult to obtain third party custodians, which seem to be used more often in Alaska than elsewhere. He mentioned that he'd like information regarding the current ability/inability to obtain custodians and the impact HB 324 will have.

CHAIR RAMRAS related his understanding that an individual who received his/her first DUI within the last five years wouldn't be satisfactory as a custodian.

MS. MCLEAN indicated that's the case, and added that this point is being discussed with the Alaska Court System.

CHAIR RAMRAS interjected that the aforementioned is unacceptable because there are some remarkable, upstanding citizens who would fall into this category of individuals who wouldn't be satisfactory as a custodian under these proposed rules.

2:23:49 PM

MS. MCLEAN continued her sectional analysis, and explained that Section 6 amends the statutes addressing the general conditions of release for an individual charged with a crime involving domestic violence by conforming to the newly adopted sections of HB 324. Section 6 doesn't include any substantive change. Section 7 amends the law that prohibits the court from allowing an individual charged with a crime involving domestic violence from returning to the home of the victim. In Williams v. State, 151 P.3d 460 (Alaska App. 2006), the court said that the law allowing the court not to allow anyone to return to the victim's residence during the entire pendency of the time was overly broad. The court struck down that law as unconstitutional. Therefore, Section 7 attempts to limit [the condition] in a manner that's not overly broad while giving a cooling off period as well as a period to assess the level of dangerous. Under Section 7, the court isn't allowed to permit an individual accused of domestic violence to return home for 20 days, which is the same length of time as is provided for an emergency

restraining order. After the 20 days has elapsed, and the victim consents, it will be allowed if the offender can establish in the particular case that he/she could return to the victim's residence without posing any danger to the victim. She said she didn't know of any opposition to Section 7.

REPRESENTATIVE GRUENBERG relayed concern as it's possible to obtain a protective order that's ex parte. As a family lawyer, Representative Gruenberg related that sometimes individuals use a protective order to bootstrap themselves into custody. Therefore, he expressed the need to ensure that this provision wouldn't prohibit a court from adjusting bail conditions, if necessary to prevent misuse. He noted that it has happened on more than one occasion.

2:28:24 PM

REPRESENTATIVE HERRON inquired as to the definition of "residence" in Section 7.

MS. MCLEAN answered that "residence" is defined as "where the victim lives."

REPRESENTATIVE HERRON asked if that definition can be expanded.

MS. MCLEAN answered that she didn't believe so. She reminded the committee that the court, as a condition of release, has always had the authority to not allow an individual to have any contact with the victim. In fact, most often the aforementioned is a condition of release. This provision simply expresses the desire for there to be a period in which the victim doesn't have to let the [perpetrator] live with the victim. As long as the term "residence" is narrowly defined, it doesn't create a problem in a situation in which an individual living in a group home attacks his/her caretaker. Since the group home isn't the caretaker's residence, the [attacker] could still live there. This provision, she clarified, is saying that the court can't impose a condition that allows the individual to return to the victim's residence. She offered to research whether the definition could be expanded further.

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

REPRESENTATIVE HERRON explained that he has concern for a situation in which a [perpetrator] can be forbidden to go to the [victim's] residence and has to stay 50 feet away. However,

[the perpetrator] could move into a home of a family member that is 100 feet away from the [victim's residence].

REPRESENTATIVE GATTO questioned whether Ms. McLean recommends adding the language "or place of business" following "residence" [in Section 7].

MS. MCLEAN characterized adding such language as "abundantly sensible" and likely to survive a constitutional challenge. She added that generally that's part of the conditions of release, although it's not included in the term "residence".

[HB 324 was held over.]

2:32:07 PM

The committee took an at-ease from 2:32 p.m. to 2:36 p.m.

HB 366 - MOTOR CARRIER INDEMNIFICATION AGREEMENTS

2:36:38 PM

VICE CHAIR DAHLSTROM announced that the final order of business would be HOUSE BILL NO. 366, "An Act relating to indemnification agreements that relate to motor carrier transportation contracts." [Before the committee was CSHB 366(TRA).]

2:37:23 PM

REPRESENTATIVE GRUENBERG recalled that there was no controversy regarding HB 366 in the House Transportation Standing Committee, the prior committee of referral. Subsequently, the House Judiciary Standing Committee has received a letter from the Ocean Carrier Equipment Management Association (OCEMA) requesting a change to CSHB 366(TRA).

2:38:08 PM

JEANNE OSTNES, Staff, Representative Craig Johnson, Alaska State Legislature, explained that HB 366 was initiated by the motor carriers, as presently the shippers could transfer all the liability to the motor carrier, thereby indemnifying themselves. She pointed out that the shippers were also included in the bill, as both shippers and motor carriers agreed to indemnify themselves. She noted that OCEMA, the Alaska Trucking Association (ATA), and Representative Johnson, the bill sponsor, have all agreed to the proposed Amendment 1.

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

2:39:51 PM

REPRESENTATIVE GRUENBERG directed attention to page 2, line 20 and noted that the language "packing or storage" was different from the amendment he had offered in the prior committee, which was "packing and storage." He asked to find out if there is any substantive difference.

REPRESENTATIVE GATTO offered his belief that there is a significant difference.

REPRESENTATIVE GRUENBERG concurred. He indicated that he would like to see the bill amended such that "and" is used instead of "or."

2:42:03 PM

MS. OSTNES referred to the letter from OCEMA, dated March 15, 2010, [Included in the members' packets.] which supported proposed Amendment 1 and listed other states with similar legislation.

2:42:18 PM

AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), relayed that ATA was fully supportive of the proposed amendment. He pointed out that the basic premise of HB 366 was to assign liability where it belongs.

2:44:42 PM

DEAN McKENZIE, President, Alaska West Express, stated that HB 366 is a very good bill and he encouraged support for passage of both the bill and the proposed amendment. He expressed that each party should be responsible for its own actions.

2:46:25 PM

REPRESENTATIVE GRUENBERG offered his belief that the proposed Amendment 1 would provide in state law that uniform indemnification agreements would not be contrary to public policy. He cited the synopsis of a Texas anti-indemnification case which he believed to be included in the members' packets.

MS. OSTNES agreed, and cited the Texas case as CMACGM America v. Empire Truck Lines.

REPRESENTATIVE GRUENBERG pointed out that HB 366 would reverse the result of the Texas case.

2:48:26 PM

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 366.

2:48:41 PM

REPRESENTATIVE GRUENBERG made a motion to adopt proposed Amendment 1, labeled 26-LS1434\E.2, Bannister, 3/18/10, which read:

> Page 2, following line 2:
> Insert a new subsection to read:
> "(c) This section does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or to another agreement that provides for the interchange, use, or possession of intermodal chassis, intermodal containers, or other intermodal equipment."
>
> Reletter the following subsection accordingly.

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG said that he would refer to the earlier House Transportation Standing Committee version of HB 366 as the basis for his earlier referenced question to the use of "and" as opposed to "or."

2:49:23 PM

REPRESENTATIVE DAHLSTROM moved to report CSHB 366(TRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 366(JUD) was reported from the House Judiciary Standing Committee.

2:49:43 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:49 p.m.