

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 26, 2010

1:13 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Max Gruenberg

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."

- MOVED CSHB 324(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
03/19/10	(H)	Heard & Held
03/19/10	(H)	MINUTE(JUD)

03/22/10 (H) JUD AT 1:00 PM CAPITOL 120
03/22/10 (H) Heard & Held
03/22/10 (H) MINUTE(JUD)
03/26/10 (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.

PEGGY BROWN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during discussion of HB 324.

JANE PIERSON, Staff
to Representative Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained Amendment 2, during discussion of HB 324.

QUINLAN STEINER, Director
Central Office
Public Defender Agency
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during discussion of Amendment 2 to HB 324.

DWAYNE PEEPLES, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during discussion of HB 324.

ACTION NARRATIVE

[1:13:26 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:13 p.m. Representatives Ramras, Lynn, Dahlstrom, and Herron were present at the call to order. Representatives Gatto and Holmes arrived as the meeting was in progress. Representative Gruenberg was excused.

HB 324 - FAILURE TO APPEAR; RELEASE PROCEDURES

1:13:50 PM

CHAIR RAMRAS announced that the only 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."

1:15:57 PM

REPRESENTATIVE DAHLSTROM moved to adopt CSHB 324(JUD), Version 26-GH2910\R, Luckhaupt, 3/26/10, as the working document. There being no objection, it was so ordered.

1:18:09 PM

CHAIR RAMRAS indicated that the committee would be addressing amendments to Version R.

1:18:36 PM

SUSAN McLEAN, Division Director, Legal Services Section, Criminal Division, Department of Law (DOL), explained that Version R attempts to address some of the questions and concerns that were raised during the earlier hearings on the bill. She directed attention to page 2, line 10 of Version A, and pointed to the deletion of "or judicial officer" in Version R. She opined that it would be reasonable for the attorney to contact the judicial officer. She pointed to the addition of "for any appearance of that person" on page 2, line 13, and described

this as a stylistic change. She stated that Section 1(c)(3) was deleted in Version R.

[1:21:30 PM](#)

MS. McLEAN described the next changes to be that on page 4, lines 14-16, Version A, Section 3(d)(2) is removed in Version R, and page 4, line 15 of Version R adds "the defendant shall notify the surety;". She shared the addition to Version R on page 4, lines 24-25, of "and any response by the person".

MS. McLEAN directed attention to Version A, Section 3(h), page 5, line 6, and stated that "before a judicial officer" and "in a court of law" are deleted in Version R. She explained that page 5, line 10 of Version R clarifies that it is the person's lawyer who is required to notify the court and prosecuting attorney should the person change residence.

[1:24:52 PM](#)

MS. McLEAN moved to page 6, line 11, Section 4(b)(12), Version R, and stated that this is now broadened to include contact with "a law enforcement officer or agency." On page 7, line 9, Version R, Section 4(d), "detention" has been deleted and for Section 4(d)(2), Version R, "that may be overcome by a preponderance of evidence," is also deleted. She acknowledged that there may be concern about this, but that the DOL has different language to suggest.

[1:27:23 PM](#)

MS. McLEAN said that page 9, line 29, Version R, changes the contact to include "electronic communication" in order to avoid litigation over any electronic technology. She moved on to page 10, line 29, Version R, which allows the third party custodian to appear by telephone.

[1:30:07 PM](#)

MS. McLEAN shared the next change to be that (c)(2) on page 11, line 21-23, Version A, is deleted. She stated that only crimes against persons should be grounds to not appoint a third party custodian. She also pointed to the deletion of "one or more of the following apply:" on page 11, lines 17-18, Version A.

[1:31:37 PM](#)

MS. McLEAN continued on page 11, lines 17-18, Version R, which added that a custodian could be a non-resident if they were residing in the state while serving as a custodian. She moved on to page 13, line 26, Version R, and noted that class C felony was now removed. She declared that page 16, line 24, Version R, was corrected to say "necessary delay" for a period of "forty-eight" hours. She directed attention to page 18, line 16, Version R, which is changed to read that the surety "has been notified" and agrees to the change.

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REPRESENTATIVE HERRON asked whether a surety would disagree with this change.

MS. McLEAN replied that she didn't think so, since this provision would ensure that the surety is notified. She opined that that there would not be an objection in every case, and that the bond should not be changed without permission.

[1:36:02 PM](#)

REPRESENTATIVE HERRON pointed to page 6, line 19, Version R, and asked how it was possible to force an individual to take new or additional medication.

MS. McLEAN, in response, explained that all of the items [paragraphs] listed are permitted to be ordered by the court as a condition of release. She pointed out that this is limited to medication already prescribed, not new medication, and assumes that the individual is already under the care of a licensed health care provider, as referenced in lines 17-18.

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REPRESENTATIVE GATTO referred to page 18, lines 15-17, Version R, and asked if the intent was to allow the surety to bind the court of making any changes should the surety not agree.

MS. McLEAN, in response to Representative Gatto, explained that a bail bond is a guarantee from the bondsperson, based on expectations of the arrested person. The court can say to the arrested person that the bondsperson won't agree to a bond continuation if the conditions are changed; therefore, the arrested person needs to work with the bondsperson for a new bond. She explained that this arose because of second arrests

while out on bond, and a bondsperson only had an agreement to bond for the initial crime.

REPRESENTATIVE HERRON asked both Ms. McLean and Ms. Brown for an explanation of page 9, lines 24-27, Version R.

MS. McLEAN explained that it allows a judicial officer, in a criminal court complaint for stalking, to order that any civil court protective orders are abided.

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REPRESENTATIVE HERRON asked whether this provision needs further clarification.

CHAIR RAMRAS, sharing an anecdote of his bail bond bill discussion with a judge, said that bail provisions generally have two main points: to prevent an individual from flight, and to protect the community.

[1:44:05 PM](#)

REPRESENTATIVE GATTO, referring to page 12, line 4, Version R, asked if this should also include the place of work of the victim.

MS. McLEAN apologized for the oversight, which was meant to be included into Version R.

[1:45:45 PM](#)

PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), reported that three issues were paramount for HB 324: how offenders are held accountable; how safety is provided to victims and communities; and how the governor's initiative is advanced. She suggested amendments to provide greater victim protection in two key provisions. First, she emphasized that persons with a history of violence against people not be allowed to be third party custodians. Second, directing attention to Section 19, she recommended that a defendant should not be notified that an application for a protective order against them has been denied.

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

MS. BROWN shared that DOL agreed that such changes would provide better protection for victims. In response to a question from Representative Herron, she asked for more time to consider an advocacy response.

[1:49:46 PM](#)

REPRESENTATIVE HERRON referred to Section 7(b), page 12, Version R, and asked about increasing the physical area under a protective order.

MS. BROWN replied that this was more often determined through judicial discretion.

[1:52:15 PM](#)

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

REPRESENTATIVE HERRON expressed concern that a defendant, even under a protective order, can put undue pressure on the victim's family. He asked if this is truly a concern.

MS. BROWN replied that this is quite common with domestic violence and sexual assault crimes, and can include family and friends of both the victim and the perpetrator. She described that her earlier proposed amendment to the third party custodian definition could assuage some of this.

[1:55:31 PM](#)

REPRESENTATIVE GATTO asked whether the proximity issue still needs to be refined.

MS. BROWN replied that incidences of public contact are common between defendant and victim, and that judicial officers try to set up "zones of safety or zones of no contact."

CHAIR RAMRAS expressed gratitude to Ms. Brown for her contributions toward legislation over the years.

[1:59:48 PM](#)

CHAIR RAMRAS closed public testimony on HB 324.

[2:00:46 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 1, labeled 26-GH2910\R.1, Luckhaupt, 3/25/10, which read:

Page 2, line 4, following "(3)":
Insert "knowingly"

Page 2, lines 5 - 6:
Delete "; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES expressed that this addressed the "crime of a failure to appear" and she requested a change to the mental state requirement. She reported that Amendment 1 would require that an individual is aware of missing the court appearance.

[2:02:41 PM](#)

MS. McLEAN explained that the addition of a knowing mental state beyond what is currently in Version R, places a burden on the state to disprove the reasons the person did not appear, without knowing what the reasons were. She relayed that the current burden on the state was to prove the person knew, and Amendment 1 would allow that "just forgetting is always a defense."

[2:05:01 PM](#)

REPRESENTATIVE HERRON asked how the defendant is notified.

MS. McLEAN, in response to Representative Herron, reported that the person is present in court and has signed conditions of release. The rules of court always require that the court announce the next court date during any court hearing.

[2:05:42 PM](#)

A roll call vote was taken. Representative Holmes voted in favor of Amendment 1. Representatives Lynn, Dahlstrom, Herron, Gatto, and Ramras voted against it. Therefore, Amendment 1 failed by a vote of 1-5.

[2:06:44 PM](#)

CHAIR RAMRAS moved to adopt Amendment 2, labeled 26-GH2910|A.1, Luckhaupt, 2/5/10, which read:

Page 1, line 1, following "arrest for":
Insert "**certain crimes and for**"

Page 3, line 3:
Delete "or"
Insert "[OR]"

Page 3, line 5, following "12.30.027;":
Insert "or
(D) committed a misdemeanor crime against a person under AS 11.41;"

REPRESENTATIVE HOLMES objected for discussion.

[2:06:58 PM](#)

JANE PIERSON, Staff to Representative Ramras, Alaska State Legislature, clarified that part of the amendment was based on page 3, line 3, Version A, and noted that it now refers to page 3, line 4, Version R. She explained that the amendment would give the authority to a police officer to make an arrest under another element of crime.

CHAIR RAMRAS opined that the draft read awkwardly, so he moved to adopt this as Conceptual Amendment 2.

MS. McLEAN explained that Conceptual Amendment 2 would allow a police officer to arrest for any violent misdemeanor crimes against a person under AS 11.41, and these do not have to have been committed in the presence of the police officer. She expressed the DOL concern with the ability for a police officer to arrest without a warrant, as it may not allow that enough time is taken to investigate and fully prosecute.

[2:11:00 PM](#)

MS. BROWN agreed with the DOL. She noted that she had not seen Amendment 2, and was still a bit unclear of the full ramifications.

CHAIR RAMRAS asked for a better explanation.

MS. McLEAN explained that a misdemeanor crime under AS 11.41 required a police officer to get an arrest warrant if they did not see the crime committed. She relayed that the necessity to

fill out a probable cause for a warrant would encourage the officer to further investigate, whereas the ability to simply arrest an individual would not.

[2:14:18 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency, Department of Administration, said that the amendment was a radical shift from the way things were currently conducted.

CHAIR RAMRAS withdrew Amendment 2.

[2:15:06 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 3, labeled 26-GH2910\R.2, Luckhaupt, 3/25/10, which read:

Page 5, lines 28 - 31:
Delete all material.

Renumber the following paragraphs accordingly.

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES offered her understanding that Amendment 3 would delete the requirements addressing employment. She stated that the purpose of a bail hearing is to determine if the defendant is a danger to anyone and if they will appear in court. She opined that the employment requirements had no bearing on either of these; hence, it was not relevant to the intentions of bail.

MS. McLEAN relayed that under the current bail statutes, the court first considers ties to the community, and the third consideration is employment. She opined that it was reasonable to maintain these requirements.

REPRESENTATIVE HOLMES withdrew Amendment 3.

[2:18:01 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 4, labeled 26-GH2910\R.3, Luckhaupt, 3/25/10, which read:

Page 6, line 18, following "recommendations":

Insert "if the treatment recommendations are necessary to prevent the defendant from being a danger to others"

Page 6, line 20, following "authority":

Insert "if the medication is necessary to prevent the defendant from being a danger to others"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES said that Amendment 4 addresses the requirement for a person to maintain medication and adds that this is necessary only if this will prevent the defendant from being a danger to others. She expressed that, instead, her intent was to limit this to psychotropic medications which may affect whether the defendant would appear.

[2:20:00 PM](#)

REPRESENTATIVE LYNN replied that an insulin shot may be necessary for the defendant to appear.

MS. McLEAN, in response, opined that Amendment 4 was superfluous.

REPRESENTATIVE HOLMES withdrew Amendment 4.

[2:20:59 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 5, labeled 26-GH2910\R.4, Luckhaupt, 3/26/10, which read:

Page 7, lines 9 - 29:
Delete all material.

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE HOLMES said that this "goes right to the heart of the bill." She declared that this section creates rebuttable presumption and shifts the burden from the prosecutors to the defendant. She opined that leaving this in the bill could lead to longer bail hearings, and it strikes at the right of all Alaskans to bail. She expressed her main concern to be with subparagraph (B), page 7, line 18, which shifts the presumption to anyone who's been charged with a felony and less than five years has elapsed since its unconditional discharge. She opined

that this could represent a large financial impact on the courts and DOL.

REPRESENTATIVE HERRON stated his agreement with Amendment 5, if the standard was kept higher for domestic violence.

REPRESENTATIVE HOLMES expressed an interest in a conceptual amendment to only delete subparagraph (B), page 7, lines 18-21.

[2:24:54 PM](#)

A roll call vote was taken. Representative Holmes voted in favor of Amendment 5. Representatives Dahlstrom, Herron, Gatto, Lynn, and Ramras voted against it. Therefore, Amendment 5 failed by a vote of 1-5.

[2:25:49 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 6, labeled 26-GH2910|R.7, Luckhaupt, 3/26/10, which read:

Page 8, lines 11 - 15:
Delete all material.

Renumber the following paragraphs accordingly.

Page 8, line 31, through page 9, line 4:
Delete all material.

Renumber the following paragraphs accordingly.

REPRESENTATIVE DAHLSTROM objected for discussion.

REPRESENTATIVE HOLMES explained that Amendment 6 deals with the issue of warrantless searches, which would require certain people released on bail to submit to warrantless searches, as a condition of bail. She stated that this forces an individual to give up a constitutional right in order to receive a constitutional right.

[2:27:03 PM](#)

A roll call vote was taken. Representative Holmes voted in favor of Amendment 6. Representatives Dahlstrom, Herron, Gatto, Lynn, and Ramras voted against it. Therefore, Amendment 6 failed by a vote of 1-5.

2:27:26 PM

CHAIR RAMRAS moved to adopt Amendment 7, labeled 26-GH2910\R.9, Luckhaupt, 3/26/10, which read:

Page 11, following line 10:

Insert a new paragraph to read:

"(2) the proposed custodian has been convicted in the previous five years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;"

Renumber the following paragraphs accordingly.

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

CHAIR RAMRAS moved to adopt a conceptual amendment to Amendment 7, as follows:

Delete "five years"

Insert "three years"

There being no objection, it was so ordered.

CHAIR RAMRAS offered his belief that people in alcoholic recovery were often in the three to five year [recovery] window, and this would allow them mentorship to others in recovery by acting as a third party custodian.

2:29:34 PM

MS. McLEAN agreed that Amendment 7, as amended, is a good compromise.

CHAIR RAMRAS pointed out that a person convicted of a violent crime against people would still be excluded as a third party custodian.

MS. BROWN agreed that it is a good compromise, and this would benefit many Alaskans.

CHAIR RAMRAS asked if three years is a correct number.

MS. BROWN agreed that three to five years is correct.

REPRESENTATIVE DAHLSTROM removed her objection.

There being no further objection, Amendment 7, as amended, was passed.

[2:31:12 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 8, labeled 26-GH2910\R.8, Luckhaupt, 3/26/10, which read:

Page 14, line 14:

Delete ", unless further detention is necessary to prevent a failure of justice"

REPRESENTATIVE DAHLSTROM objected for discussion.

REPRESENTATIVE HOLMES explained that proposed Amendment 8 referred to the detention of a material witness, as mentioned on page 14, line 12. She stated that a witness may not be detained if the testimony can be adequately obtained by a deposition. She offered her belief that Amendment 8 would delete wording that was broad and unnecessary.

[2:32:41 PM](#)

CHAIR RAMRAS expressed support for the more aggressive language which he deemed was in support of victims, and stated that he was against Amendment 8.

MS. McLEAN opined that in many cases the deposition will resolve the problem of a witness' failure to appear. She pointed out that a witness may give a deposition, but this may be challenged, so this allows the court some direction for adequately obtaining the testimony.

[2:34:17 PM](#)

REPRESENTATIVE GATTO pointed to page 14, line 13, and opined that the word "can" does not indicate "was", so the disputed phrase mentioned in Amendment 8 would be proper.

MS. BROWN expressed two concerns: one, it would seem that a material witness could be detained indefinitely until it was shown there was not going to be a failure of justice, and two, there was concern that it would be used "to force a witness to be a part of a mini-trial, if you will, the conditions of release that might endanger her safety."

CHAIR RAMRAS summarized:

The policy call here then, as I understand it, is the interest in the fact that a deposition may result in a failure of a witness to appear; so the concern of being able to prosecute and the benefit that would be derived by the victim and the victim's family [stands] against a concern that a reluctant witness may be forced to participate in a proceeding which may undermine their sense of safety and security.

CHAIR RAMRAS expressed his opposition to Amendment 8.

REPRESENTATIVE HOLMES withdrew Amendment 8.

[2:37:08 PM](#)

CHAIR RAMRAS moved to adopt Amendment 9, labeled 26-GH2910\R.10, Luckhaupt, 3/16/10, which read:

Page 16, line 14, following "chapter.":

Insert "**A judge may not order a peace officer to serve a petition that has been denied by the court.**"

REPRESENTATIVE DAHLSTROM objected for discussion.

[2:37:58 PM](#)

MS. McLEAN shared that some judges believe that protective order petitions need to be served on the respondent, regardless of whether it has been granted. She pointed to page 16, line 14, Version R, and explained that "process" is an order to come to court, and is not necessary if there is nothing to respond to. She said there is no reason to serve a non-complaint.

REPRESENTATIVE DAHLSTROM removed her objection.

There being no further objection, Amendment 9 was passed.

[2:39:17 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 10, labeled 26-GH2910\R.5, Luckhaupt, 3/26/10, which read:

Page 16, lines 15 - 26:

Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 31:
Delete "amendments"
Insert "amendment"

Page 20, line 31, through page 21, line 1:
Delete "secs. 20 and 21 of this Act apply"
Insert "sec. 20 of this Act applies"

Page 21, lines 2 - 3:
Delete "sec. 24"
Insert "sec. 23"

Page 21, line 5:
Delete "sec. 26"
Insert "sec. 25"

REPRESENTATIVE DAHLSTROM objected for discussion.

REPRESENTATIVE HOLMES explained that this would delete Section 20(a)(1), which changed the requirement for bail to be set within twenty-four hours to forty-eight hours, thus bringing it back to the original twenty-four hours. She expressed concern for the constitutional right to bail, and she opined that other court decisions had ruled that twenty-four hours was adequate. She expressed additional concern that this could become the default standard time for all bail.

CHAIR RAMRAS asked if the longer bail period would put any undue pressure on the intake centers.

[2:41:02 PM](#)

MS. McLEAN, in response, said she did not know if it will put any undue pressure, but she added that Alaska is one of only three states to draw that line at twenty-four hours.

MS. BROWN reflected that forty eight hours does allow for a cooling off period, but, if it is weighed against resource allocation in various communities, the only significant advantage is for more time to notify the victim.

CHAIR RAMRAS asked if the cooling off period for domestic violence victims was a safety and security issue. He opined that the policy decision was between this cooling off and the

concern that this would affect all detentions. He opined that HB 324 was a one size fits all bill for rural, urban, violent and non-violent crimes.

[2:42:52 PM](#)

DWAYNE PEEPLES, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), stated that a forty-eight hour default holding period would impact the unsentenced facilities, which he declared to be the most crowded of the facilities.

CHAIR RAMRAS asked if there was the capacity to absorb this without putting the staff and other detainees at risk.

MR. PEEPLES replied that there would be some impact, especially in the unsentenced facilities in the rural areas of the state.

REPRESENTATIVE HERRON offered his belief that an intention of the governor's initiative on domestic violence was for a higher profile. He reflected that forty-eight hours would be best in some instances, whereas twenty-four hours would be better in other instances.

MS. BROWN recognized that the extra twenty four hours could allow for better investigation.

REPRESENTATIVE HERRON opined that he liked the intention of Amendment 10, but he prefers that domestic violence be the most important aspect in this case.

REPRESENTATIVE LYNN asked if any time less than forty-eight hours was left to the discretion of the judge.

CHAIR RAMRAS summarized that if all bail was delayed for forty-eight hours, there would be a significant burden on the intake centers. He opined that the bail delay would only occur for some cases, and the Alaska Court System should recognize the benefit for a cooling off period in some of the domestic violence cases.

[2:47:55 PM](#)

MR. STEINER opined that the change to forty-eight hours would not apply in every case, but the risk of it being forty-eight hours to the first arraignment and an additional forty-eight

hours to the bail hearing would add four days to the first opportunity to get out of jail.

CHAIR RAMRAS reflected on the DOC fiscal note.

[2:48:54 PM](#)

REPRESENTATIVE HOLMES agreed that this is a hard issue. She stated her understanding for cases in which the added time would be beneficial, but she opined that the forty-eight hours was overly broad.

REPRESENTATIVE HERRON concurred with Representative Holmes. He reiterated that domestic violence in this proposed legislation should be held to a higher standard. He stated that he would not vote for Amendment 10.

CHAIR RAMRAS asked that Ms. McLean share this information with other committees as the bill moves forward.

[2:50:44 PM](#)

A roll call vote was taken. Representatives Holmes voted in favor of Amendment 10. Representatives Dahlstrom, Herron, Gatto, Lynn, and Ramras voted against it. Therefore, Amendment 10 failed by a vote of 1-5.

[2:51:08 PM](#)

REPRESENTATIVE HOLMES moved to adopt Amendment 11, labeled 26-GH2910\R.6, Luckhaupt, 3/26/10, which read:

Page 16, line 27, through page 17, line 17:
Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 31:
Delete "amendments"
Insert "amendment"

Page 20, line 31, through page 21, line 1:
Delete "secs. 20 and 21 of this Act apply"
Insert "sec. 20 of this Act applies"

Page 21, lines 2 - 3:
Delete "sec. 24"

Insert "sec. 23"

Page 21, line 5:

Delete "sec. 26"

Insert "sec. 25"

REPRESENTATIVE DAHLSTROM objected for discussion.

REPRESENTATIVE HOLMES explained this to be the second part of Amendment 10, which would change the forty-eight hours back to twenty-four hours in another section of the Direct Court Rule Amendment. She allowed that the debate would be similar to that for Amendment 10.

REPRESENTATIVE GATTO, referring to a packet submitted by the ACLU, pointed out that seven states explicitly permitted more than twenty-four hours to elapse, prior to the initial hearing. He opined that Alaska could follow the lead of those seven states.

[2:52:28 PM](#)

MS. McLEAN referred to a chart submitted by DOL which showed all the bail statutes of each state. She pointed out that twenty two states ruled "as quickly as necessary", while others were even more vague, but that many more than seven states allowed more than twenty-four hours. She stated that it was permissible.

[2:52:58 PM](#)

REPRESENTATIVE HERRON declared that he would vote for Amendment 11.

REPRESENTATIVE HOLMES pointed out that Alaska was one of the few states with a constitutional right to bail.

MS. McLEAN explained that this legislation is referring to the first appearance before a magistrate, whereas the Alaska State Constitution was addressing the court to find probable cause within forty-eight hours. She said the Alaska State Constitution guarantees the right to bail, unlike 18 states which have no bail at all for some capital offenses.

REPRESENTATIVE HOLMES relayed that timeliness is one factor for consideration.

[2:54:47 PM](#)

CHAIR RAMRAS pointed out that Alaska, statistically, has the highest domestic violence rates in the nation. He observed that those living in urban communities can flee domestic violence situations whereas those who live in rural communities may not be able to do so.

[2:56:10 PM](#)

A roll call vote was taken. Representatives Herron and Holmes voted in favor of Amendment 11. Representatives Gatto, Lynn, Dahlstrom, and Ramras voted against it. Therefore, Amendment 11 failed by a vote of 2-4.

[2:57:03 PM](#)

The committee took an at-ease from 2:57 p.m. to 2:59 p.m.

[2:59:36 PM](#)

REPRESENTATIVE HOLMES moved to adopt Conceptual Amendment 12, which stated:

Page 7, lines 18 - 21:
Delete subsection (d)(2)(B)

Re-number the following bill sections accordingly.

REPRESENTATIVE DAHLSTROM objected for discussion.

[3:00:45 PM](#)

MS. McLEAN clarified that HB 324 never mentions holding people without bail. This would address those who have been off probation for less than five years. She stated that those with long sentences committed serious crimes. She opined that it was not overly burdensome.

[3:02:07 PM](#)

MS. BROWN asked whether a sexual felony listed on page 7, (d)(2)(A), would be affected by Conceptual Amendment 12, when considering sexual felonies from any other state.

REPRESENTATIVE HOLMES replied that it should not, as this is a shift in burden.

MS. McLEAN clarified that even if a defendant is charged with a felony, it requires that they have been previously convicted.

[3:03:37 PM](#)

A roll call vote was taken. Representatives Holmes and Herron voted in favor of Conceptual Amendment 12. Representatives Gatto, Lynn, Dahlstrom, and Ramras voted against it. Therefore, Conceptual Amendment 12 failed by a vote of 2-4.

[3:04:02 PM](#)

MS. BROWN summarized that HB 324 does increase the offender's accountability and does provide more safety protections for victims of domestic violence and sexual assault. She opined that HB 324 would also advance the governor's initiative.

REPRESENTATIVE GATTO asked about the status of his earlier request to a change in Section 7.

[3:05:30 PM](#)

REPRESENTATIVE GATTO, in response to Ms. McLean, moved to adopt Conceptual Amendment 13, which stated:

Page 12, line 4:
Following "residence"
Add "or place of work"

There being no objection, Conceptual Amendment 13 was adopted.

[3:06:10 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 324 (JUD), 26-GH2910\R, Luckhaupt, 3/26/10, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HOLMES objected. She declared that although there were good policy discussions in the bill, more work needed to be done. She reiterated her stance against domestic violence.

[3:07:28 PM](#)

A roll call vote was taken. Representatives Lynn, Dahlstrom, Herron, Gatto, and Ramras voted in favor of CSHB 324(JUD), Version R, as amended. Representative Holmes voted against it. Therefore, CSHB 324(JUD) was reported out of the House Judiciary Standing Committee by a vote of 5-1.

CHAIR RAMRAS offered his belief that the three crime bills passed by House Judiciary Standing Committee would teach better values in homes, schools, and communities, and would start a ten year trend for safer homes, families, villages, towns, and cities.

[3:08:44 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:08 p.m.