ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 6, 2009
1:40 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 148
"An Act relating to limitation of state liability on certain federal highway programs; and providing for an effective date."
MOVED CSSB 148(JUD) OUT OF COMMITTEE

SENATE BILL NO. 85
"An Act relating to limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to a local option area and to penalties for violations of those limitations; relating to probation for minor consuming or in possession or control of alcoholic beverages; relating to civil fines for liquor licensees whose agents or employees furnish alcoholic beverages to a person under 21 years of age; and providing for an effective date."
MOVED CSSB 85(JUD) OUT OF COMMITTEE

SENATE BILL NO. 110
"An Act relating to the preservation of evidence."
MOVED CSSB 110(JUD) OUT OF COMMITTEE

SENATE BILL NO. 176
"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 148
SHORT TITLE: LIABILITY FOR TRIBAL ROAD CONSTRUCTION
SPONSOR(s): TRANSPORTATION BY REQUEST

03/13/09	(S)	READ THE FIRST TIME - REFERRALS
03/13/09	(S)	TRA, JUD
03/24/09	(S)	TRA AT 1:00 PM BUTROVICH 205
03/24/09	(S)	Moved SB 148 Out of Committee
03/24/09	(S)	MINUTE(TRA)
03/25/09	(S)	TRA RPT 4DP 1NR
03/25/09	(S)	DP: KOOKESH, MENARD, DAVIS, MEYER
03/25/09	(S)	NR: PASKVAN
03/30/09	(S)	JUD AT 1:30 PM BELTZ 211
03/30/09	(S)	Heard & Held
03/30/09	(S)	MINUTE(JUD)
04/06/09	(S)	JUD AT 1:30 PM BELTZ 211

BILL: SB 85
SHORT TITLE: ALCOHOL: LOCAL OPTION/LICENSING/MINORS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/09	(S)	READ THE FIRST TIME - REFERRALS
01/26/09	(S)	CRA, JUD, FIN
02/03/09	(S)	CRA AT 3:30 PM BELTZ 211
02/03/09	(S)	Heard & Held
02/03/09	(S)	MINUTE(CRA)
02/17/09	(S)	CRA AT 3:30 PM BELTZ 211
02/17/09	(S)	Moved CSSB 85(CRA) Out of Committee
02/17/09	(S)	MINUTE(CRA)
02/19/09	(S)	CRA RPT CS 2DP 2NR NEW TITLE
02/19/09	(S)	DP: MENARD, KOOKESH
02/19/09	(S)	NR: OLSON, FRENCH
02/23/09	(S)	JUD AT 1:30 PM BELTZ 211
02/23/09	(S)	Heard & Held
02/23/09	(S)	MINUTE(JUD)
03/20/09	(S)	JUD AT 1:30 PM BELTZ 211
03/20/09	(S)	PRESERVATION OF EVIDENCE
04/01/09	(S)	JUD AT 1:30 PM BELTZ 211
04/01/09	(S)	PRESERVATION OF EVIDENCE
04/06/09	(S)	JUD AT 1:30 PM BELTZ 211

BILL: SB 110
SHORT TITLE: PRESERVATION OF EVIDENCE
SPONSOR(s): FRENCH

02/17/09	(S)	READ THE FIRST TIME - REFERRALS
02/17/09	(S)	JUD, FIN

02/25/09	(S)	JUD AT 1:30 PM BELTZ 211
02/25/09	(S)	Heard & Held
02/25/09	(S)	MINUTE(JUD)
03/20/09	(S)	JUD AT 1:30 PM BELTZ 211
03/20/09	(S)	-- MEETING CANCELED --
04/01/09	(S)	JUD AT 1:30 PM BELTZ 211
04/01/09	(S)	-- MEETING CANCELED --
04/06/09	(S)	JUD AT 1:30 PM BELTZ 211

BILL: SB 176
SHORT TITLE: COMPACT: EDUCATION OF MILITARY CHILDREN
SPONSOR(s): HUGGINS

04/01/09	(S)	READ THE FIRST TIME - REFERRALS
04/01/09	(S)	JUD, FIN
04/06/09	(S)	JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

PETER PUTZIER, Senior Assistant Attorney General
Civil Division
Opinions, Appeals, & Ethics
Department of Law
Anchorage,
POSITION STATEMENT: Commented on SB 148.

DOROTHY SHOCKLEY, Staff
to Senator Albert Kookesh
Alaska Capitol Building
Juneau AK
POSITION STATEMENT: Provided information related to SB 148.

ANNE CARPENETI, Attorney
Criminal Division
Department of Law
Juneau, AK
POSITION STATEMENT: Provided information on SB 85 and explained amendments to SB 110.

DIANE CASTO, Project Manager
Prevention and Early Intervention Services
Division of Behavioral Health
Department of Health and Social Services,
POSITION STATEMENT: Testified in support of SB 110.

MICHELLE COLLINS, DNA Unit Supervisor
Statewide Crime Laboratory

Department of Public Safety
Anchorage, AK
POSITION STATEMENT: Provided information about the Statewide Crime Laboratory as it relates to SB 110.

ORIN DYM, Forensic Laboratory Manager
Statewide Crime Lab
Department of Public Safety
Anchorage, AK
POSITION STATEMENT: Stated support for Amendment 3 to SB 110.

JEFFERY MITTMAN, Executive Director
ACLU of Alaska
Anchorage, AK
POSITION STATEMENT: Testified that the ACLU generally supports SB 110 but has some concerns with Amendment 2.

BILL OBERLY, Interim Director
Alaska Innocence Project
Anchorage, AK
POSITION STATEMENT: Expressed some concern with Amendment 2 to SB 110 to the extent that it deals with intentional conduct.

JOSH TEMPLE, Staff
to Senator Huggins
Alaska Capitol Building
Juneau, AK
POSITION STATEMENT: Introduced SB 176 on behalf of the sponsor.

RICK MASTERS, Special Council
Interstate Compacts
Council of State Governments
POSITION STATEMENT: Testified in support of SB 176.

THOMAS HINTEN, Senior State Liaison
Office of the Undersecretary of Defense
Department of Defense
Washington, D.C.
POSITION STATEMENT: Provided supporting testimony to SB 176.

CAROL COMEAU, Superintendant
Anchorage School District
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 176.

ACTION NARRATIVE
1:40:30 PM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:40 p.m. Present at the call to order were Senators Therriault, Wielechowski and French. Senator McGuire arrived soon thereafter. He related that on Wednesday the committee would hold the confirmation hearing on the Governor's appointee as attorney general. Public testimony will be taken at 5:30 pm.

SB 148-LIABILITY FOR TRIBAL ROAD CONSTRUCTION

1:41:39 PM
CHAIR FRENCH announced the consideration of SB 148 and asked for a motion to adopt work draft committee substitute (CS), version \E, as the working document.

SENATOR WIELECHOWSKI moved to adopt work draft CS for SB 148, labeled 26-LS0685\E. There being no objection, version E was before the committee.

CHAIR FRENCH explained that the language in the CS is the result of lengthy negotiation between the Department of Law and representatives from the plaintiffs' bar in Anchorage. His understanding is that the language is mutually agreeable. He asked Mr. Putzier his perspective.

PETER PUTZIER, Senior Assistant Attorney General, Civil Division, Opinions, Appeals, & Ethics, Department of Law, Anchorage, said he hasn't seen a copy of the CS, but he had agreed to something in principle.

CHAIR FRENCH said he would have a copy posted online. In the meantime, he read subsection (d) starting on page 1.

1:44:51 PM
MR. PUTZIER said the language differs in some respects to what was agreed upon, but the changes probably will be acceptable. "I will want to look at it more closely, but I think we can proceed on this basis," he added.

CHAIR FRENCH agreed that the drafters changed the language in the definition of "independent negligence" but he feels confident that the phrases mean nearly the same thing.

MR. PUTZIER said that is his initial impression as well.

CHAIR FRENCH suggested that with the possible exception of several words on page 1, line 13, this is a concept everyone can

agree to. He noted the letter of support from the Manley Village Council.

1:46:49 PM
SENATOR THERRIAULT asked why the phrase "other federal transportation programs or transportation grants designed to benefit tribes" was deleted and what the impact is.

MR. PUTZIER explained that the plaintiffs' bar expressed concern that the phrase didn't define specific programs or grants. That made it unclear whether the Federal Tort Claims Act would apply under all circumstances and therefore whether there would be a guaranteed ability to sue the tribe under the Act. As a compromise DOL narrowly defined the largest programs and those that are subject to the Federal Tort Claims Act. The impact is that future transportation programs and grants won't be covered so the legislation will probably require amendment to address situations that might arise.

SENATOR THERRIAULT said he just wanted it on the record if that is in fact what is anticipated.

1:48:36 PM
CHAIR FRENCH, noting that Mr. Putzier now had a copy of the CS, asked him to take a minute to review the language before the committee moves on.

SENATOR THERRIAULT observed that the original bill talked about the "catch line," which is a phrase he never heard before, and the CS substituted that phrase with "section heading."

CHAIR FRENCH acknowledged that he too is unfamiliar with the phrase and he suspects the legislative drafters made the substitution.

SENATOR THERRIAULT asked if all the money comes directly to the tribes or if it flows through the state coffer and is appropriated to the program.

1:50:15 PM
DOROTHY SHOCKLEY, Staff to Senator Kookesh, explained that for the most part the money goes directly to the tribes. She noted that she had submitted a list showing the amount of money going to each community as well as the roads in their inventory.

SENATOR THERRIAULT asked if the tribal entities apply directly to the IRR Program for the money.

MS. SHOCKLEY replied they apply through the Bureau of Indian Affairs (BIA).

SENATOR THERRIAULT remarked he knows that someone is keeping track of all federal stimulus dollars and he's mindful that there will be a leveling effort.

CHAIR FRENCH asked Mr. Putzier if he had further comments on the CS.

MR. PUTZIER expressed the view that the final clause is awkward, and he would suggest inserting "due to" before the phrase "the state's approving or accepting" on page 2, line 1.

1:53:07 PM
CHAIR FRENCH moved Conceptual Amendment 1.

CONCEPTUAL AMENDMENT 1

Page 2, line 1:
Insert "due to" before the phrase "the state's approving or accepting"

Finding no objection, he announced that Conceptual Amendment 1 is adopted.

CHAIR FRENCH expressed small qualms related to the language on page 1, lines 12 and 13. He consulted Mr. Putzier and proposed Amendment 2.

AMENDMENT 2

Page 1, line 13:
Delete "occurs and" before the phrase "is not due to the state's selection,"

MR. PUTZIER said it sounds reasonable.

CHAIR FRENCH found no objection and announced that Amendment 2 is adopted.

1:55:08 PM
CHAIR FRENCH closed public testimony and asked the will of the committee.

SENATOR WIELECHOWSKI moved to report CS for SB 148, version E as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 148(JUD) moved from the Senate Judiciary Standing Committee.

SB 85-ALCOHOL: LOCAL OPTION/LICENSING/MINORS

1:57:07 PM
CHAIR FRENCH announced the consideration of SB 85 and asked for a motion to adopt work draft committee substitute (CS), version \S.

SENATOR WIELECHOWSKI moved to adopt work draft CS for SB 85, labeled 26-GS1009\S, as the working document. There being no objection, version S was before the committee.

ANNE CARPENETI, Attorney, Criminal Division, Department of Law, explained that this CS does not contain the provisions dealing with local options that were in the original bill. Those were removed primarily due to the reaction by the community of Bethel and their representatives.

CHAIR FRENCH noted the resolution in the packet from the City of Bethel opposing much of the original bill and stated his belief that the CS addresses most of the concerns expressed in the resolution.

MS. CARPENETI explained that the bill consists of three parts. The first two make minor technical changes to legislation that was adopted last year dealing with alcohol enforcement. She offered to again explain those changes and members indicated that wasn't necessary. The remaining issue is to adopt civil penalties for licensees or owners of bars and package stores if one of their agents or employees is convicted of furnishing alcohol to a minor while working on the licensed premises. Current law provides that a bartender can be prosecuted for a class A misdemeanor if he or she is convicted of furnishing alcohol to a minor. She noted that mistakes shouldn't happen very often now that Alaska driver licenses for minors have a vertical, as opposed to horizontal, format.

1:59:29 PM
MS. CARPENETI said under current law there are no real consequences to the owners of a bar or liquor store whose employee is convicted of furnishing alcohol to a minor. While most licensees are responsible and take steps to ensure that they don't serve minors, investigations of bars and package

stores have shown that about 20 percent fail to maintain that high standard. The administration would like to reduce that failure rate and has decided to take direction from the successful tobacco enforcement program. When civil penalties were adopted for the owners of stores whose employees or agents sold tobacco to under age people, the effect was dramatic.

SB 85 adopts less severe penalties than the ones that the Governor tried to adopt in previous years. This bill provides that for the first offense the owner receives a letter that explains the penalties for subsequent offenses. The second and subsequent offenses bring a $1,000 fine. The hope is that all bar owners will be more responsible.

2:02:25 PM
DIANE CASTO, Project Manager, Prevention and Early Intervention Services, Division of Behavioral Health, Department of Health and Social Services, said her section of behavioral health manages the tobacco enforcement and education program. This involves going out into communities to check business establishments for a number of things including sales to minors. These so called "SYNAR checks" tie the percentage of tobacco sales to minors to a state's ability to receive its federal substance abuse prevention and treatment block grant. Every year each state receives a block grant from SAMHSA (Substance Abuse Mental Health Services Administration) for treatment and prevention of substance abuse, but penalties are imposed if a state has a sell rate of tobacco to minors that is over 20 percent. We take our tobacco enforcement very seriously because we don't want to lose funding and because we don't want our youth smoking cigarettes and having access to tobacco, Ms. Casto said. According to the youth risk behavior survey, tobacco use by youths has dropped significantly every year since the more punitive penalties were imposed. Likewise, access to tobacco has reduced.

CHAIR FRENCH reviewed a chart on display and observed that 2002 was the break-over year.

MS. CASTO said that was the first year that penalties were imposed on businesses with tobacco endorsements. Those penalties are more punitive than the ones proposed in SB 85, but they have been proven to work, she added.

2:06:51 PM
CHAIR FRENCH clarified for the listening audience that Ms. Casto is arguing by analogy.

MS. CASTO said that's correct, but there are similarities. She explained that youths work with the tobacco investigators to try to purchase tobacco. That's how the compliance rates are determined. Under a partnership agreement these same youths have for the last several years also worked with the alcohol investigators to try to purchase alcohol. Interestingly, a youth that is able to purchase alcohol from a business is turned away when he or she tries to buy tobacco. One reason for that is that the penalties for selling tobacco to a minor are much more severe. "People are much more aware of not selling tobacco to minors than they are of alcohol," she said.

MS. CASTO referenced several research reports on regulatory strategies for preventing youth access to alcohol that look at commercial availability, social and public availability, and youth possession. This research found that administrative sanctions are a best practice for reducing youth access to alcohol. These sanctions target the licensee because they are in the best position to prevent future violations by setting good policies and providing good training for the clerks who sell alcohol. Under current law just the clerks receive a penalty for selling alcohol to a minor. Having clear and consistent penalties is an excellent part of a multi-strategy approach. But we aren't saying that retail stores and bars are the only way that youths get alcohol, Ms. Casto emphasized. In fact, a youth risk behavior survey indicates that youth get their alcohol through a licensed vendor just seven percent of the time. Other ways include raiding parents' liquor cabinets, standing outside an establishment and asking an adult to buy for them, and getting it from older friends. "We see this as part of a multi-strategy approach to impact all of these different areas," she said. Research also shows that to be effective there must be a credible threat of consequences that are swift, certain and continue over time. Administrative penalties are the most effective mechanism for deterring sales of alcohol to minors.

2:09:51 PM
SENATOR MCGUIRE joined the committee.

MS. CASTO related that as with most things in health and social services, they are looking to best practices that have research and evaluation behind them and that have data that show that the strategies that are used are effective. "Everything that has been studied has shown that administrative penalties for the licensee is a very effective method of reducing alcohol

accessibility to youth and I think the tobacco example is a perfect comparison," Ms. Casto stated.

CHAIR FRENCH said public testimony has been closed, but he would point out that the current CS removes the local option aspects of the bill so most of the concerns articulated in earlier public testimony have been addressed.

SENATOR THERRIAULT referred to page 1, line 12, and asked if the bill is clear on how the warning for a first conviction will be issued.

CHAIR FRENCH asked Ms. Carpeneti if she foresees the warning to be written or verbal.

MS. CARPENETI said she assumes it would be written but it would be helpful if it were spelled out.

CHAIR FRENCH asked Senator Therriault if he'd like to move a friendly amendment.

2:12:49 PM
SENATOR THERRIAULT moved Amendment 1.

AMENDMENT 1

Page 1, line 12:
Insert "written" before "warning"

CHAIR FRENCH found no objection and announced that Amendment 1 is adopted.

He noted that Mr. Mittman with the ACLU and Doug Moody with the Public Defender Agency are online to answer questions on the bill.

SENATOR THERRIAULT asked for clarification that just one warning will be issued per licensed premises and not one warning per employee.

2:14:36 PM
MS. CARPENETI said that's correct.

SENATOR THERRIAULT asked if there would be a way for a licensee to get around this by reformulating their business.

MS. CARPENETI replied DOL envisions this going to the license.

CHAIR FRENCH stated for the record that Sections 2-5 of this CS have not been changed.

MS. CARPENETI corrected her previous statement and said she reads the bill to say that if a bar owner transfers their license the new licensee would start over and get one free strike.

CHAIR FRENCH restated that the transgression does not travel with the paper license; it transfers with the person holding the license.

MS. CARPENETI stated agreement; that's the point of holding responsible the person who is running the business, setting the tone, and adopting the policies.

2:16:42 PM
SENATOR WIELECHOWSKI moved to report CS for SB 85, version S as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 85(JUD) moved from the Senate Judiciary Standing Committee.

At ease at 2:17 pm.

SB 110-PRESERVATION OF EVIDENCE

2:18:22 PM
CHAIR FRENCH announced the consideration of SB 110 and asked for a motion to adopt work draft committee substitute (CS) \E as the working document.

SENATOR THERRIAULT moved to adopt work draft CS for SB 110, labeled 26-LS0560\E. There being no objection version E was before the committee.

CHAIR FRENCH said Ms. Smith will go through the changes and then Ms. Carpeneti will discuss some amendments proposed by the Department of Law.

CINDY SMITH, Staff to Senator French, stated that the CS includes the following changes:

- Throughout the bill anytime a defendant is referred to an adjudicated juvenile is referred to as well.
- Page 2, lines 11 and 12, subsection (b), adds clarifying language that an agency shall follow written policies in

making decisions on what evidence it would or would not retain.

- Page 3, line 1, the conjunction "and" is inserted before paragraph (3) to correct the grammar.
- Page 3, lines 19, and 20, subsection (h), adds provisions providing immunity from civil liability. DOL will likely suggest substitute language, Ms. Smith said.
- Page 4, at the request of the court the ex officio task force position from the Alaska Supreme Court is eliminated.

2:21:01 PM
CHAIR FRENCH highlighted the letter from the Alaska Peace Officers Association opposing the bill and the letter from the Alaska Women's Lobby supporting SB 110. These letters have come in since the last hearing.

CHAIR FRENCH asked Ms. Carpeneti to explain the amendments DOL is proposing.

ANNE CARPENETI, Attorney, Civil Division, Department of Law (DOL), expressed appreciation for the cooperation from the sponsor and his staff in working on SB 110.

CHAIR FRENCH returned he sees DOL as a partner because this won't work without cooperation.

SENATOR MCGUIRE moved Amendment 1.

CHAIR FRENCH objected for discussion purposes.

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 110

Page 4, following line 3:
Insert new bill sections to read:

*** Sec. 2.** AS 44.41.035(g) is amended to read:
(g) A person from whom a sample has been collected under this section
(1) may inspect and obtain a copy of the identification data regarding the person contained within the DNA identification registration system; **and**
(2) may request the Department of Public Safety to destroy the material in the system

regarding the person under the provisions described in (i) of this section.

*** Sec. 3.** AS 44.41.035(i) is amended to read:

(i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT ORDER,] destroy the material in the system relating to a person **or minor upon the written request of the person or minor, if the request is accompanied by a certified copy of a court order indicating that** [The COURT SHALL ISSUE THE ORDER IF] the person's or minor's DNA was included in the system under

(1)(b)(1) or (2) of this section, and the court **order establishes** [DETERMINES] that

(A) the conviction or adjudication that subjected the person to having a sample taken under this section **was** [IS] reversed; and

(B) the person

(i) **was** [IS] not retried, readjudicated, or convicted or adjudicated for another crime that requires having a sample taken under this section; or

(ii) after retrial, **was** [IS] acquitted of the crime or after readjudication for the crime**,** **was** [IS] not found to be a delinquent, and ***was*** [IS] not convicted or adjudicated for another crime that requires a sample under this section;

(2)(b)(6) of this section**,** and the court **order establishes** [DETERMINES] that

(A) the person arrested was released without being charged; [OR]

(B) the criminal complaint, indictment, presentment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, presentment, or information for an offense requiring submission of a DNA sample **was** [IS] not refiled**; or**

(C) the person was found by the trier of fact to be not guilty of the offense for which the person was arrested and was not convicted of another offense requiring submission of a DNA sample under (b)(1) or (2) of this section.

*** Sec. 4.** AS 44.41.035 is amended by adding a new subsection to read:

(r) A DNA sample collected or placed in the DNA identification registration system, that was taken or retained in good faith, may be used as provided by law

in a criminal investigation. Evidence obtained from a match from a data collection system may be used in a criminal prosecution if the DNA sample was taken or retained in good faith, even if the DNA sample is later removed from the DNA identification registration system.

Renumber the following bill sections accordingly.

MS. CARPENETI explained that when the legislature changed the law regarding DNA collection, it provided a method for a person charged or convicted of a crime to get their DNA out of the databank if the charge or conviction is overturned. What it did not include is a procedure for a person to get their DNA out of the databank if they are later acquitted of the offense for which they were arrested and charged. The FBI requires that procedure under CODIS (Combined DNA Index System), which is the national repository for DNA profiles. Accordingly, this amendment provides the procedure for a person who is acquitted to ask for their DNA to be removed from the databank.

The amendment also contains a good-faith provision which provides that DNA that has not been removed from the databank can be used if there is a valid hit on it.

CHAIR FRENCH observed that "It's not a get-out-of-jail-free card on a hit that is validly derived while the information is in the databank."

2:25:07 PM
CHAIR FRENCH, responding to a question, clarified that Ms. Carpeneti is explaining subsection (r) on the third page of Amendment 1. He asked if this adds to the language covering the individuals who can get their DNA removed from the databank.

MS. CARPENETI replied this is in addition to the statute addressing the DNA databank. This suggestion came from the crime lab and CODIS has made a similar suggestion.

2:26:40 PM
MICHELLE COLLINS, DNA Unit Supervisor, Statewide Crime Laboratory, Department of Public Safety, said she is the state representative to the FBI on matters of CODIS and the DNA database. She described the amendment as essential. When the DNA law was changed there was some talk about getting an AG opinion to address removal of DNA from the database when there is an acquittal, but that did not happen. When the lab began putting

arrestee DNA samples in the national database, the FBI said it would be a violation of federal law to proceed without an established procedure for handling arrestees who are acquitted. In order to submit samples to CODIS, the lab revised its procedures until it could seek an amendment to address that issue.

The laboratory hasn't needed to use the good-faith clause but it could important, Ms. Collins said. It addresses circumstances where there is a hit to a sample that should not be, but is, in the database. For example, if DNA evidence from a serial rapist produces a hit and matches the sample from a person who should not be in the database, the good-faith clause allows the lab to proceed.

2:30:02 PM
CHAIR FRENCH removed his objection and seeing no further objection, announced that Amendment 1 is adopted.

SENATOR MCGUIRE moved Amendment 2.

CHAIR FRENCH objected for discussion purposes.

AMENDMENT 2

[Original punctuation provided.]

OFFERED IN THE SENATE
TO: CSSB 110 LS0560\E

On page 3 at line 19, delete the language in (h) and replace with

A person may not bring a civil action for damages against the state or political subdivision of the state, their officers, agents, or employees, or a law enforcement agency, its officers, or employees for any failure to comply with the provisions of this section.

MS. CARPENETI explained that the amendment addresses civil liability for police departments throughout the state that may not comply with the law with respect to retention of evidence. Police departments will do their best to comply with the law, but it would be very hard on a small village police department to suffer civil liability for a mistake they made. This language was suggested because it is already in current law for putting in and taking out of the database domestic violence restraining orders. It's a bit broader than the language that's in the bill.

2:32:12 PM
SENATOR THERRIAULT asked how it squares with subsection (g) that says the court may order remedies if it finds that evidence was destroyed.

MS. CARPENETI replied they address different things. Subsection (g) represents what happens in a criminal prosecution or post conviction relief that is pursued by an individual if evidence is lost. Subsection (h) addresses civil liability – money damages to the police department if they make a mistake. This is a new requirement for police departments to abide by and DOL doesn't think they should be held for money damages if a mistake is made.

CHAIR FRENCH observed that the criminal defendant may enjoy some benefit from an intentional destruction of evidence in their case, but that criminal defendant can't sue the police officer for money because of the event.

2:34:17 PM
MS. CARPENETI said yes and depending on the situation, the court could dismiss the subsequent prosecution, but this amendment addresses money damages for violation of the Act by the police officer or his or her employer.

CHAIR FRENCH asked if it would possibly include the lawyers as well.

MS. CARPENETI answered yes.

2:35:08 PM
CHAIR FRENCH noted that Ms. Carpeneti said there are similar provisions in other places of the law; this is a blanket bar even for intentional acts.

MS. CARPENETI said yes; AS 18.66 is the limitation of liability for police with respect to putting domestic violence restraining orders in and out of the DV registry. Responding to a question, she said the Department of Law supports the amendment.

CHAIR FRENCH withdrew his objection and seeing no further objection, announced that Amendment 2 is adopted.

2:35:53 PM
SENATOR MCGUIRE moved Amendment 3.

CHAIR FRENCH objected for discussion purposes.

AMENDMENT 3

[Original punctuation provided.]

OFFERED IN THE SENATE
TO: CSSB 110 LS0560\E

At page 4, line 18, insert:
(8) a representative of the State Crime Lab.

MS. CARPENETI related that the bill adopts a task force to address evidence retention issues and the State Crime Lab suggested they might make helpful contributions to the task force. They do hold the evidence.

CHAIR FRENCH asked Mr. Dym if he supports Amendment 3.

ORIN DYM, Forensic Laboratory Manager, Statewide Crime Lab, Department of Public Safety, said he does support it.

CHAIR FRENCH removed his objection and seeing no further objection, announced that Amendment 3 is adopted.

2:37:17 PM
JEFFERY MITTMAN, Executive Director, ACLU of Alaska, said the ACLU generally supports SB 110 but has some concerns with Amendment 2 relating to the database and good-faith exception. The ACLU would prefer an automatic exclusion of evidence for someone who has been acquitted and would like the good-faith provision limited. "But generally we appreciate the work of the committee in addressing this important issue," he stated.

BILL OBERLY, Alaska Innocence Project, said his only problem with the amendments to SB 110 relate to Amendment 2 to the extent that it deals with intentional conduct. I don't think that's appropriately a part of that and would counsel the committee to use caution in allowing intentional conduct to go forward, he said.

MR. OBERLY suggested that if the bill doesn't get signed this year the committee might want to breakout the section on the task force and pass it now and allow that task force time to develop suggestions before the Senate deals with the bill next session. That would be the best use of everyone's time, he said.

2:39:57 PM

CHAIR FRENCH said it's unlikely that the bill will be signed into law this year, but the effect of that suggestion would be to jettison all portions of the bill except the task force and let it move forward on its own. Perhaps we should talk further about that before coming to a final decision, he said.

With respect to the point on Amendment 2, Senator French said he shares some of that concern. An intentional act to destroy evidence is something the committee should be very cautious about indemnifying anyone for. He said he can appreciate Ms. Carpeneti's perspective on the domestic violence writs, but what's playing out now on a large scale is the withholding of evidence and the horrible implications that can have on a trial.

CHAIR FRENCH directed attention to Amendment 2 and asked Ms. Carpeneti if inserting the word "intentional" before "failure to comply" would preserve all immunity for negligent or knowing failures.

MS. CARPENETI said she believes so.

SENATOR THERRIAULT questioned whether "unintentional" isn't the word he's looking for. This section protects the employees and the idea is to protect them from an unintentional act.

CHAIR FRENCH said he doesn't want employees to be sued if they forget to save the evidence or even if they think about it and then don't remember to do it.

SENATOR THERRIAULT returned that's unintentional.

MS. CARPENETI said she agrees it would achieve the purpose. The way the amendment reads is that a person may not bring an action for unintentional failure to comply.

2:43:08 PM
CHAIR FRENCH moved Amendment 4.

AMENDMENT 4

> Insert: "unintentional" before the phrase "failure to comply" in the third line of the previously adopted Amendment 2.

Finding no objection he announced that Amendment 4 is adopted.

SENATOR MCGUIRE directed attention to Amendment 2 and asked if it makes a material difference and if the phrase "with provisions of this section" refers to the entire bill.

MS. CARPENETI said she believes that's correct.

SENATOR MCGUIRE mused that there's no material difference other than adding the specific reference to officers, agents, or employees.

MS. CARPENETI offered that with the adoption of Amendment 2 more parties are covered and DOL sees that as an important difference.

2:45:07 PM
SENATOR THERRIAULT referenced paragraph (2) in Section 1 of the bill and asked if the family of a prisoner who died while in prison could make a motion to have the deceased prisoner's DNA sample removed from the database.

MS. CARPENETI replied that is not her understanding. "While the person remains a prisoner in the custody of the Department of Corrections" is language that came from Legislative Legal. It means that the person is in jail but it does not mean that the family of a person could make a motion to have the person's DNA removed from the database. "I think any right dies with the prisoner."

2:46:36 PM
SENATOR THERRIAULT mentioned an article he read about a family that cleared a man who had died in prison and commented that it doesn't seem as though that set of circumstances would be a remedy for the family.

CHAIR FRENCH offered that it would no longer be an obligation of the state to preserve evidence so that the family would have access to it. "At some point the effort ends."

MS. CARPENETI said that is correct. At a certain point police departments have to clear evidence from their inventory. "Keeping evidence after the defendant has died seems unnecessary to us."

SENATOR THERRIAULT questioned whether police departments could get rid of evidence under the language in the bill.

CHAIR FRENCH returned that as long as the person is no longer a prisoner a police department could get rid of the evidence.

MS. CARPENETI stated agreement.

SENATOR THERRIAULT noted the references to the crimes that this law would apply to and asked if there was a particular reason that sex trafficking and child kidnapping aren't included.

MS. CARPENETI explained that the idea was to start with the most serious offenses that would typically have DNA evidence that would be relevant. While sexual abuse and sexual assault typically do have DNA evidence, sex trafficking isn't the type of case where DNA would typically be relevant.

2:48:45 PM
CHAIR FRENCH said his sense was that this bill would be difficult to get through the process because it's a major change in the way evidence is handled in this state. Focusing on homicide, rape in the first degree, and sexual assault of a minor in the first degree is a measurable change. If the bill gains momentum and people want to add other crimes we can discuss that, he said.

MS. CARPENETI added that the bill does provide that these obligations for police departments apply if a person is indicted for sexual assault in the first degree or sexual abuse in the first degree and is subsequently convicted of lesser included offenses.

2:49:47 PM
CHAIR FRENCH solicited a motion to move the bill.

SENATOR MCGUIRE moved to report CS for SB 110, as amended today, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 110(JUD) moved from the Senate Judiciary Standing Committee.

SB 176-COMPACT: EDUCATION OF MILITARY CHILDREN

2:50:29 PM
CHAIR FRENCH announced the consideration of SB 176.

JOSH TEMPLE, Staff to Senator Huggins, said the purpose of SB 176 is to remove barriers facing children of military families as they move between school systems. On average a student from a military family will move between six and nine times during

their K-12 years. While the military has done a lot to ease these transitions, more can be done at the state and local level to ensure that these children are afforded the same opportunity for educational success as other children.

12,106 active duty children between the ages of 5 and 18 plus the children of active members of the Guard and the Reserve will benefit from this compact. In 2008 11 states adopted this compact and 22 others have pending legislation to join. This legislation will provide these children with timely enrollment as they move from one school district to another, which will help to remove some of the associated stress of moving. The bill enjoys widespread support; it supports our troops and our kids, he said.

2:53:27 PM
RICK MASTERS, Special Council, Interstate Compacts, Council of State Governments, said he has been working on and writing about interstate compacts for the last 20 years. The mission of the Council of State Governments has for 75 years been to promote the role of states in solving problems that affect more than one state but that still should be under the control of and has historically been governed by the states. This compact is no exception; it will level the playing field for children of military members when they transfer from state to state during grades K-12. Research indicates that transferring students frequently encounter problems with enrollment, eligibility, placement, and graduation. The compact attempts to address the difficulties in these four areas.

2:57:13 PM
Enrollment can be delayed when students move into a new school district if the receiving school won't accept a photo copy of the student's school transcript. The compact would require a school district in a member state to recognize a legitimate photocopy of a record awaiting arrival of the original record. The sending school district would furnish the record within a ten-day period.

Eligibility relates to things like extracurricular activities. When students miss the required induction protocol for clubs or activities, the compact would ask the state to allow the student to participate if they are otherwise qualified. There would not be a requirement to create a position, but the compact seeks to prevent situations where a student is penalized simply because their move wasn't timely.

With respect to placement, the compact seeks to have the receiving state make a reasonable accommodation to place a transferring student in comparable courses and levels to the state from which they came. It does not prevent the receiving state from doing subsequent testing and replacement. The goal of the compact is to avoid delay in placement.

The fourth area addresses timely graduation. The compact asks receiving states to reasonably accommodation students who transfer in their junior or senior year by waiving certain course requirements. For example, state history from a transferring state could fulfill the state history requirement for the receiving school. The compact also asks the receiving state to consider waiving exit exams, but if this isn't possible it asks the receiving state to work cooperatively to secure a diploma from the sending state.

MR. MASTERS highlighted the numerous stakeholders who are interested in this legislation.

3:03:25 PM
THOMAS HINTEN, Senior State Liaison, Office of the Undersecretary of Defense, Department of Defense (DOD), Washington D.C. said this is part of an ongoing effort to work with states on issues that impact military families. Transition challenges for students is the issue they hear about most frequently from military families. During times of deployment Guard members are even more dramatically impacted. DOD considers this a readiness issue because parents reflect on and make decisions about staying in the military when they're sitting around the kitchen table talking about the welfare of their children relative to education. Folks who are on the battlefield need to be concentrating on their mission rather than being distracted by whether or not their children are being accommodated properly at school.

Alaska has done a tremendous job helping and supporting the military so this issue comes up not so much about what one state would do, but more about how states can work together to make the transition process work more smoothly. If each state were to follow uniform practices, students would know they would be accommodated properly. Just last week the governor of Virginia signed similar legislation. That state has the highest number of school-age military children in the nation. He appreciates that Alaska is seriously considering this as well.

3:07:03 PM

CAROL COMEAU, Superintendant, Anchorage School District, conveyed that the school board passed unanimously a resolution supporting the military compact in the belief that this is good business for students of military families in Anchorage and around the state. Anchorage schools already practice most of the strategies Mr. Masters outlined and have been able to work through most situations. The board does strongly feel that if this bill passes and becomes part of the Alaska culture, it sends a strong message of support for Alaska's military families. Military parents would be better able to focus on their mission knowing that their kids are being taken care of in the school districts statewide. Superintendants in Kodiak, Fairbanks, Sitka, and MatSu have voiced support for this initiative, she said.

CHAIR FRENCH closed public testimony.

3:08:53 PM
SENATOR THERRIAULT asked where the House bill is in the process.

MR. TEMPLE replied it is in House Finance.

CHAIR FRENCH announced he would hold SB 176 for further consideration.

3:09:33 PM
There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee meeting at 3:09 pm.