ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 15, 2010
1:32 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

SENATE BILL NO. 194
"An Act relating to civil damages for certain alcohol violations."
- HEARD AND HELD

SENATE BILL NO. 222
"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."
- HEARD AND HELD

SENATE BILL NO. 252
"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."
- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 194
SHORT TITLE: CIVIL DAMAGES FOR ALCOHOL VIOLATIONS
SPONSOR(s): SENATOR(s) MEYER

04/17/09	(S)	READ THE FIRST TIME - REFERRALS
04/17/09	(S)	STA, JUD
01/28/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)
01/28/10	(S)	Moved CSSB 194(STA) Out of Committee
01/28/10	(S)	MINUTE(STA)
01/29/10	(S)	STA RPT CS 5DP NEW TITLE
01/29/10	(S)	DP: MENARD, FRENCH, MEYER, PASKVAN, KOOKESH
02/10/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/10/10	(S)	Heard & Held
02/10/10	(S)	MINUTE(JUD)

BILL: SB 222
SHORT TITLE: SEX OFFENSES; OFFENDER REGIS.; SENTENCING
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	JUD, FIN
01/25/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/25/10	(S)	Heard & Held
01/25/10	(S)	MINUTE(JUD)

WITNESS REGISTER

O.C. MADDEN, Director of Operations
Brown Jug, Inc.
Anchorage, AK
POSITION STATEMENT: Provided supporting testimony on SB 194.

SILVIA VILLAMIDES, Director
Anchorage CHAAR
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 194.

ED O'NEILL, President
Anchorage Responsible Beverage Retailers Association (ARBRA)
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 194.

JERRY MCCUTCHEON, representing himself

POSITION STATEMENT: Testified that SB 194 was special interest legislation.

SENATOR KEVIN MEYER
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Sponsor of SB 194.

CHRISTINE MARASIGAN, Staff
to Senator Kevin Meyer
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Testified that the CS for SB 194 corrects cross references in statute.

RICK SVOBODNY, Deputy Attorney General
Alaska Department of Law
Juneau, AK
POSITION STATEMENT: Provided a sectional analysis to SB 222.

KATHRYN MONFREDA, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Anchorage, AK
POSITION STATEMENT: Answered questions about the sex offender registry as it relates to SB 222.

QUINLAN STEINER, Public Defender
Public Defender Agency
Alaska Department of Administration
Anchorage, AK
POSITION STATEMENT: Highlighted areas of concern in SB 222.

JEFFERY MITTMAN, Executive Director
ACLU of Alaska, said he believes that
POSITION STATEMENT: Testified that the committee questions addressed many of the issues that the ACLU is concerned about in SB 222.

ACTION NARRATIVE

1:32:10 PM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Senators Egan, Coghill, and French were present at the call to order. Senator Wielechowski arrived soon thereafter.

SB 194-CIVIL DAMAGES FOR ALCOHOL VIOLATIONS

1:32:25 PM
CHAIR FRENCH announced the consideration of SB 194 and asked for a motion to adopt the new committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt CS for SB 194, labeled 26-LS0895\S, as the working document. There being no objection, version S was before the committee.

O.C. MADDEN, Director of Operations, Brown Jug, Inc., introduced himself.

CHAIR FRENCH asked Mr. Madden how his business applies the statutes pertaining to civil penalties for alcohol violations and the affect they've had.

MR. MADDEN reported that the Brown Jug has been using the civil penalty laws since 1998 to prevent underage drinking; they've proven to be very effective. In 1998 the Municipality of Anchorage enacted the laws and in 2001 they were enacted on the state level. He explained that when an underage person is caught trying to purchase alcohol he sends the minor a letter demanding payment. When he hears back, he offers some alternatives. The first option is to simply pay the $1,000 civil fine. The second option is to reduce the penalty to $300 if the minor agrees to complete a two-day alcohol education class and presentations by Mothers Against Drunk Driving (MAAD) and Standing Together Against Rape (STAR). Mr. Madden said that he uses the $300 as a bonus payment to the employee who caught the minor. This process rewards employees and gets the minors and their families in education and treatment programs, he said.

1:35:26 PM
CHAIR FRENCH asked if Brown Jug's vigilant approach might be driving some underage buying to other stores.

MR. MADDEN replied he doesn't speak for other retailers, but it does seem to be common knowledge among kids that if you're underage, Brown Jug is the last place you want to try to buy alcohol.

SILVIA VILLAMIDES, Director, Anchorage CHAAR, stated that the civil penalty process has been important to CHAAR members. She said that when kids under age 18 are caught trying to buy alcohol their parents get involved, but it's more difficult to

engage the kids over age 18. They ignore the demand letters and they move around leaving no forwarding address. She claimed that the law unfairly punishes licensees when minors enter the premises. She believes it should be the minor who is penalized. We do our best to go through training and licensing. "We don't want to serve young kids," she emphasized.

1:38:27 PM
SENATOR COGHILL asked what reasonable costs might be assessed in addition to the civil penalty.

MS. VILLAMIDES deferred to Mr. Madden.

MR. MADDEN said he doesn't know if all attorney costs are reimbursed, but he does know that it's very time consuming to deal with the minors, their families, and the agencies that coordinate treatment. Since 1998 Brown Jug has dealt with about 2,100 kids. Most of the time that's spent on these cases is up front, before there's a suit or a judgment so there's no reimbursement for those costs. That's part of the reason that increasing the penalty to $1,500 is a good idea.

SENATOR COGHILL thanked him for clarifying that increasing the civil penalty to $1,500 helps cover the cost of getting to a settlement.

ED O'NEILL, President, Anchorage Responsible Beverage Retailers Association (ARBRA), said he's also with Brown Jug and he reiterates Mr. Madden's testimony. He asked the committee to keep in mind that kids today have a lot of money in their pockets so it's easy for them to skirt the $1,000 penalty without telling their parents. ARBRA is trying to inform licensees statewide so that they can take advantage of this provision, he said.

1:42:52 PM
SENATOR COGHILL asked how many cases go to court and how many are settled out of court.

MR. O'NEILL replied Anchorage CHAAR has negotiated 42 cases and has 15 court cases pending. He noted that Mr. Madden has been the most successful; he could teach other retailers to be similarly effective.

CHAIR FRENCH asked how many enforcement actions are settled and how many go through a court proceeding to finality.

MR. MADDEN said Brown Jug has been very successful at negotiating with minors and their parents. Reducing the penalty to $300 if the minor agrees to the educational component has proven effective and it doesn't bog down the courts. He noted that he has given classes on how to do this to licensees in Fairbanks, Nome, and Juneau. He would be happy to continue doing that in the future.

SENATOR COGHILL said since most of these cases are negotiated rather than going to court, his concern is that increasing the limit could impose a barrier for people to defend themselves in court should they feel that need.

MR. MADDEN clarified that the only minors they deal with are those that have been caught and identified on the licensed premises. Under the law this is both a criminal and a civil violation. The process after they identify the minor is to send a letter demanding payment under Alaska civil law. That step is necessary in order to move ahead with a civil action in court. They have discussions with the minor and make a determination about whether or not to drop the case or to move forward. When a case ends up in a small claims action, the first thing the court does is to assign a mediator to come up with a solution. That's why Brown Jug starts working on options once the minor responds to the demand letter.

1:47:30 PM
SENATOR COGHILL asked if they call the troopers or police when they identify someone who is using a fraudulent ID.

MR. MADDEN said yes; it's very well established. Some cases don't warrant moving forward, but sometimes they've caught minors more than once. "That's where having a $1,500 civil penalty would be an effective tool," he said.

SENATOR WIELECHOWSKI asked what he thinks about the idea to expand this provision to include a penalty for people who are prohibited from purchasing alcohol.

MR. MADDEN replied that's already on the books. He added that Representative Crawford has a bill to increase the civil penalty from $1,000 to $2,000 for persons with alcohol restricted IDs.

SENATOR WIELECHOWSKI asked if he would support that in this bill.

MR. MADDEN replied he supports the idea.

1:50:00 PM
JERRY MCCUTCHEON, representing himself, described SB 194 as toothless legislation and a ruse for legislators to say that they acted to protect the public. He claimed that this is special legislation for Brown Jug because smaller retailers have neither the time nor the resources to take advantage of the law.

CHAIR FRENCH closed public testimony and asked the sponsor to describe what the new Sections 5 and 6 do.

SENATOR KEVIN MEYER, sponsor of SB 194, said his staff would explain the changes. Responding to the previous testimony, he explained that CHAAR undertakes the process for small businesses that don't have the time or resources to do so. He wouldn't object if the committee wants to include in this bill the increased penalty for persons trying to buy alcohol when they have an alcohol-restricted ID.

1:53:41 PM
CHRISTINE MARASIGAN, Staff to Senator Kevin Meyer, told the committee that the changes in the CS were recommended by Legislative Legal Services to correct cross references in statute.

CHAIR FRENCH asked the committee what it wanted to do about adding the provisions of Representative Crawford's bill to this one.

SENATOR WIELECHOWSKI offered to bring the appropriate language.

1:55:25 PM
CHAIR FRENCH held SB 194 in committee awaiting an amendment.

SB 222-SEX OFFENSES; OFFENDER REGIS.; SENTENCING

1:55:47 PM
CHAIR FRENCH announced the consideration of SB 222. He asked Mr. Svobodny to continue the sectional analysis he started at the previous hearing, beginning with Section 8. He noted that bookstores have contacted him to explain how this provision would work.

RICK SVOBODNY, Deputy Attorney General, Alaska Department of Law, said Section 8 expands a present provision that prohibits electronic distribution of indecent material to minors to prohibit any distribution of indecent material to minors. It's

more than just through the Internet. With respect to the concerns articulated about determining a person's age, he said that the state has to prove two elements - that the person knowingly distributed and that they were reckless as to the age of the victim. It's obvious if a person is 12 if they're standing at the counter versus mailing something to an address, he said.

1:58:43 PM
CHAIR FRENCH asked if he thinks that the prohibited material described on page 4, lines 18-25 would be pictures or words.

MR. SVOBODNY replied the items that are listed come from the statute prohibiting child exploitation. AS 11.41.455 requires somebody to create a picture or a live sex show for somebody under age 16. He noted that the Criminal Code Revision Commission recommended including these things under the child exploitation statute and it's been the law since 1980.

CHAIR FRENCH clarified that it is pictures or movies or live shows, not words written in a book.

MR. SVOBODNY agreed.

CHAIR FRENCH noted that the statute has the word "depicts" and asked if it would be clearer if it were limited to the sorts of things just discussed with respect to unlawful exploitation of a minor.

MR. SVOBODNY replied that was the initial intent and he believes it would be clearer.

CHAIR FRENCH said they'd take the language and make it as clear as possible. It may not eliminate First Amendment and bookseller concerns, but it's a good start.

2:01:45 PM
MR. SVOBODNY said he doesn't believe that since 1980 there's been a prosecution in this state for distributing written material under the provisions in Title 11.41 or 11.61.

SENATOR FRENCH asked his reaction to the suggestion to put the Miller test language into the bill.

MR. SVOBODNY replied his concern is that it could be very difficult to meet the additional elements that are added to the offense.

SENATOR WIELECHOWSKI commented that prosecutorial discretion could account for the fact that nobody has been prosecuted under this statute since 1980. He shares the concerns about protecting First Amendment rights and prefers to err on the side of being more explicit, not less.

CHAIR FRENCH said the committee would look at it once the more descriptive language is inserted.

SENATOR COGHILL asked if the Miller language is in the packet.

CHAIR FRENCH relayed that the language says, "that the material lacks serious literary, artistic, political, or scientific value and that depicts the following actual or simulated conduct."

SENATOR COGHILL opined that removing the word "electronic" from Section 8 made it clearer and inserting the Miller language would make it less so. "Every time you add a word to statute … that's one more word you get to argue over what the meaning is."

CHAIR FRENCH agreed.

MR. SVOBODNY clarified that since 1980 when that list was enacted there hasn't been a prosecution of a book distributor. He further explained that the section is intended to deal with the situation of a person who is grooming a child by showing them sexually explicit material in person as opposed to it over the Internet.

2:06:46 PM
SENATOR COGHILL said he understands that but removing the word "electronic" broadens the question.

CHAIR FRENCH agreed it's far broader.

SENATOR WIELECHOWSKI asked if a bookseller "knowingly distributes" if they put a picture book on the shelf that they believe has value under the Miller test and they know that kids go there.

MR. SVOBODNY said the culpable state is to knowingly distribute, which is to move from one person to another. A different catch-all statute says there's an additional culpable mental state regarding a child's age and that's reckless. The bookseller would have to be reckless in that the person that they're distributing to is under 16 years of age. He added that

recklessly is "a gross deviation from the standard of conduct that a reasonable person would use under the circumstance."

SENATOR WIELECHOWSKI asked if bookstores will have to start carding customers that buy certain books to make sure they're over a certain age.

MR. SVOBODNY replied it's up to a jury to determine whether the conduct is a gross deviation from the standard of conduct. He can't say what juries would decide is reasonable for somebody who is distributing pictures of people under age 18 who are engaged in sexual activity or any of the other things in the list. It's not simply a list of children that are unclothed; it's specific acts, he said.

CHAIR FRENCH reported that the House judiciary committee added the Miller language.

2:09:38 PM
MR. SVOBODNY said Sections 9 and 10 are conforming amendments to strike the word "electronic." Section 11 adds the crimes of human trafficking, distribution or possession of child pornography, and distribution of indecent material to minors to the group of offenses for which a person may not receive a suspended imposition sentence. This is when a court makes a determination to hold off on imposing a sentence on the condition that the person does certain things. At the end of the suspended imposition the person may apply to the court for a certificate of discharge saying they have completed the suspended imposition of sentence.

CHAIR FRENCH noted that the new statutory references are AS 11.41.360 - 11.41.370 and AS 11.61.125 - 11.61.128.

2:12:00 PM
MR. SVOBODNY said that Section 12 describes the conditions of probation that a court may impose. DOL believes that the court already has the authority, but this specifically gives the court discretion to order a person to give their Internet address to his or her probation officer, to prohibit a person from establishing Internet sites that are directed toward children, and to restrict a person from having contact with children under age 18.

CHAIR FRENCH observed that many of these conditions are already scattered throughout the statutes. He asked if there's anything new or if this simply puts the court powers in one place.

MR. SVOBODNY replied he believes the court already has this authority when there's a nexus between the offender's conduct and the condition that the court has imposed, but it's spelled out - as is the condition about communicating with children under age [16]. This section also adds information about a probation officer obtaining email addresses and requiring the PO to give the information to the Alaska State Troopers.

MR. SVOBODNY said Section 13 amends the aggravating factor at sentencing to allow the court to increase a sentence above the sentencing range if the jury finds that the victim was particularly vulnerable. Being under the influence of alcohol or drugs are added factors that might make a person particularly vulnerable. He noted that Dr. Andre Rosay with the UAA Justice Center reported to this committee the staggering amount of sexual abuse of a minor cases when the child was under the influence of alcohol. That was the genesis of this aggravating factor, he said.

2:17:04 PM
Section 14 adds two new aggravating factors in crimes against a person in AS 11.41. The first allows the court to increase a sentence above the sentencing range if the defendant was dating or had engaged in a sexual relationship with the victim. This goes to the vulnerability of the victims to those crimes. The second allows the court to increase the sentence for sexual abuse of a minor in the second degree when the defendant is age 18 or older. He noted that DOL recommended that the House amend its bill to a 10-year age difference. The notion is that someone who is 13 is more likely to be taken advantage of by somebody who is 25 than by somebody who is 17.

CHAIR FRENCH asked what ages are specified in AS 11.41.436(a)(2) making it a crime for somebody to have sex with another.

MR. SVOBODNY replied a person 16 years of age or older commits sexual abuse of a minor if they engage in sexual contact with a person who is under 13 years of age.

MR. SVOBODNY continued to say that Section 15 adds a new provision to Alaska's sex offender registration law. A person who is required to register in another state or jurisdiction would have to register if they came to this state even if Alaska does not have a matching sex-based crime.

He elaborated that Alaska has a tiered system under which a person is required to register for either 15 years or for life depending on the type of offense and if they are a repeat offender. Other states have chosen to use a risk-based assessment under which a person could be required to register even though they had not been convicted of a sex-based crime. In Minnesota, for example, a person who entered a home with the intent to rape somebody may be convicted of burglary, but they would still go through the assessment for a determination on how long they had to register as a sex offender. If that person were to move to Alaska, they would not currently be required to register because they had been convicted of burglary, not a sex offense. Likewise, making bodily contact with a minor with the intention of arousing one's sexual desires is a crime of lewd and lascivious acts on a minor in many states, but not Alaska.

MR. SVOBODNY highlighted that according to testimony in another committee, the Alaska State Troopers receive between 300 and 500 calls per month from sex offenders in other states asking about sex offender registration in this state. Approximately 150 of those calls are from people asking if they would be required to register if they were to move to Alaska. This new provision is a way of saying they would need to register.

2:23:40 PM
SENATOR WIELECHOWSKI asked if there are equal protection issues with a law like this because a certain act that's a crime in another state might not be a crime at all in this state.

MR. SVOBODNY replied he doesn't know of any because it's a regulatory rather than criminal matter when someone comes to Alaska after having been convicted in another state. He added that he recognizes that the U.S. Supreme Court and the Alaska Supreme Court differed when they talked about the expos facto nature of this law. The U.S. Supreme Court found that the Alaska law was regulatory while the Alaska Supreme Court said it's a punishment. He opined that when you're talking about people coming to this state it seems that it's regulatory. A person who commits a felony crime in another state would be unable to come to Alaska and possess a handgun because they would be a felon in possession of a handgun, even though Alaska might not have an analogous felony crime.

CHAIR FRENCH cited an example from an ACLU memo. Someone who was convicted in another state of having sex with a 17-year-old would be required to register if they came to Alaska even though the age of consent in this state is 16. Under this provision if

that person comes to Alaska they would be required to register as a sex offender for 15 years for an act that Alaska doesn't recognize as a crime.

MR. SVOBODNY agreed. He added that the age of consent in California, which may or may not be a risk assessment state, is 17 so someone who is required to register there wouldn't escape that requirement by moving to Alaska.

2:26:53 PM
CHAIR FRENCH said the risk assessment is intriguing because it implies that someone in law enforcement has probed into a person's background to come up with a reason to make them register. Presumably it's a good reason that's designed to protect the public. He asked if there's more to being a tiered state than that a person is classified by their conviction on certain crimes.

MR. SVOBODNY replied tiered states are more general as to the conduct that would require a person to register as a sex offender than risk-assessment states. Generally a risk assessment hearing comes before an administrative law judge. The state argues why it thinks the person's conduct warrants the requirement to register as a sex offender for a certain period of time. The offender makes the opposite argument and then an administrative decision is made. He noted the federal government is trying to drive all states to have a similar system. He understands that the risk-assessment system was considered when the Sex Offender Registration Act first passed but given Alaska's geography, the decision was to go to a tiered system.

CHAIR FRENCH stated that before the next hearing he wants to look at which states have the risk-assessment system and learn how it works. Certainly we don't want people to move here just because they wouldn't be required to register, but it's troubling to think that someone could be put in jail for not registering for an act that isn't a crime in this state, he said.

2:30:10 PM
SENATOR WIELECHOWSKI asked how the current system works.

MR. SVOBODNY explained that if the out of state person has committed an offense that has similar elements to an Alaska offense, an administrative determination is made by the Department of Public Safety as to whether the person is Tier 1 and has to register for 15 years or Tier 2 and has to register

of life. There is the ability for an administrative appeal of that decision to appear in superior court and argue that the administrative decision was wrong. The problem is when it's a clear sex offense in other states, but the elements are not analogous to any law in this state. For example, in the military a person who commits a rape may be court-martialed for conduct unbecoming the military. The person committed a rape but they wouldn't be captured under current law as somebody who should be required to register a sex offender.

2:32:07 PM
CHAIR FRENCH called a point of order to ask if a court-martial for rape would require the person to register as a sex offender in that state. He further asked if there is a federal sex offender registry.

MR. SVOBODNY said yes and he believes that Title 18 includes other jurisdictions - territories and the federal government so if there's a military conviction on Elmendorf, for example, the person may evade the Alaska sex offender registration requirements.

CHAIR FRENCH observed that the committee needs more information on that.

SENATOR WIELECHOWSKI asked if there is a list of the major sex offenses that people commit in other states for which they aren't required to register when they come to Alaska. I don't object to increasing the registry but I don't want to punish people for doing things that we've made a conscious policy to say are okay, he said.

2:34:13 PM
CHAIR FRENCH asked Ms. Monfreda what issue comes up most frequently when people from other states call to ask about Alaska's sex offender registration requirements.

KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), said her duties include managing the sex offender registry. She confirmed that her office receives about 150 calls per month from offenders, mostly inquiring about whether or not they must register. Some of the calls come from juveniles because unlike Alaska, several states require juveniles to register. She agreed with Mr. Svobodny that it's challenging to make a determination about registering when someone has been convicted of a military crime. Other questions relate to whether

someone must register if the crime for which they were convicted isn't listed as a sex offense in Alaska. Electronic distribution and online enticement are examples of convictions in other states that haven't required registration here, she said.

CHAIR FRENCH reviewed the new subparagraph (D) in Section 15 and observed that this would make her life easier.

MS. MONFREDA said it's not that simple because her office would still need to make determinations about the length of registration; about whether someone had been exempted from registering because of risk assessments, which Alaska doesn't have; and about whether other states have a provision to lengthen registration time for noncompliance. Another issue relates to tracking compliance if a person is convicted of a crime in one state and later moves to another state before moving to Alaska. This information can be difficult to gather because some state registries aren't interested in tracking an offender after they move from the state.

2:38:48 PM
MR. SVOBODNY pointed out that a problem with the proposed change is that it doesn't talk about tiers. DOL has some language to address that omission, he said.

CHAIR FRENCH said the committee looks forward to receiving the amendment.

MR. SVOBODNY continued to say that the new provision in Section 16 is part of the federal law, which requires that child pornography that has been collected must remain in the custody of the law enforcement agency and the prosecuting attorney. Discovery will not be limited but the material may not be copied by the defense or anybody else. The idea is to make it less likely that the material would be distributed or that it would get back into the hands of the offender, both of which would revictimize the child.

CHAIR FRENCH mentioned a memo that cites a Washington State child pornography conviction that was overturned because the defense was not able to view the evidence except at a state facility. He hasn't read the case.

MR. SVOBODNY said he hasn't read the case either but he was troubled that the court was reported to have said that [viewing the evidence] could have been accomplished with better firewalls

because that sounds like the material would go out over the Internet again.

CHAIR FRENCH said he's flagging that as a concern, but he recalls that Mr. Steiner wasn't particularly worried about the provision. He did highlight a concern about the expense of moving experts to and from the location where the material is held.

QUINLAN STEINER, Public Defender, Public Defender Agency, Alaska Department of Administration, agreed that the expense of moving experts would definitely be a concern. The way that the statute is interpreted and the way that access to the evidence is granted could also raise constitutional concerns, he said. It would definitely raise a concern if someone from public safety is required to be in the room when the defense council, the experts, and the defendant are discussing the material. The statute doesn't speak to that specifically.

CHAIR FRENCH asked if his concern centers on the extent to which custody and control is taken.

MR. STEINER said yes because this rule change could be interpreted in a wide variety of ways.

2:44:24 PM
JEFFERY MITTMAN, Executive Director, ACLU of Alaska, said he believes that the committee questions addressed many of the issues that the ACLU is concerned about. He noted that the ACLU does support including a Miller test to avoid potential First Amendment issues. The other issue relates to the potential constitutional problems with the right to a defense. Clearly having the material in the control and custody of the state and the prosecution is a significant impediment to defense issues, he said. He cited the Murtagh case and noted that the state supreme court ultimately ruled in favor of the defendant's rights to a full defense. He urged the committee to look carefully at the language to more appropriately balance the issues.

2:46:24 PM
CHAIR FRENCH closed public testimony and announced he would hold SB 222 in committee.

2:46:49 PM

There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee meeting at 2:46 p.m.