

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 14, 2011

1:06 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

Commission on Judicial Conduct

Amy L. Demboski - Chugiak

- CONFIRMATION(S) ADVANCED

Alaska Judicial Council

Donald J. Haase - Valdez

- HEARD AND HELD [Addressed again on 3/16/11]

Violent Crimes Compensation Board

Nora G. Barlow - Anchorage

- CONFIRMATION(S) ADVANCED

Board of Governors of the Alaska Bar

William A. Granger - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 175

"An Act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 175

SHORT TITLE: COURT APPEARANCES; ARSON; INFRACTIONS

SPONSOR(S): JUDICIARY BY REQUEST

02/28/11	(H)	READ THE FIRST TIME - REFERRALS
02/28/11	(H)	JUD, FIN
03/09/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/09/11	(H)	Heard & Held
03/09/11	(H)	MINUTE(JUD)
03/14/11	(H)	PRIME SPONSOR CHANGED: JUDICIARY BY REQUEST
03/14/11	(H)	BILL REPRINTED 3/14/11
03/14/11	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

AMY L. DEMBOSKI, Appointee
Commission on Judicial Conduct (CJC)
Chugiak, Alaska

POSITION STATEMENT: Testified as appointee to the Commission on Judicial Conduct (CJC).

DAVID HAEG
Soldotna, Alaska

POSITION STATEMENT: Provided comments during the confirmation hearing of Amy L. Demboski as appointee to the Commission on Judicial Conduct.

DONALD J. HAASE, Appointee
Alaska Judicial Council (AJC)
Valdez, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Judicial Council (AJC).

NORA G. BARLOW, Appointee
Violent Crimes Compensation Board (VCCB)
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board (VCCB).

WILLIAM A. GRANGER, Appointee
Board of Governors of the Alaska Bar
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Board of Governors of the Alaska Bar.

THERESA OBERMEYER
Anchorage, Alaska

POSITION STATEMENT: Provided a few comments during the confirmation hearing of William A. Granger as appointee to the Board of Governors of the Alaska Bar.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Presented HB 175 on behalf of the House Judiciary Standing Committee, the sponsor by request.

JEFFREY A. MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns about HB 175.

ACTION NARRATIVE

[1:06:31 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Thompson, Keller, Pruitt, and Holmes were present at the call to order. Representatives Lynn and Gruenberg arrived as the meeting was in progress. Representative Gatto was excused.

Confirmation Hearing(s):

Commission on Judicial Conduct

[1:08:15 PM](#)

VICE CHAIR THOMPSON announced that the committee would first consider the appointment of Amy L. Demboski to the Commission on Judicial Conduct (CJC).

VICE CHAIR THOMPSON reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

[1:08:44 PM](#)

AMY L. DEMBOSKI, Appointee, Commission on Judicial Conduct (CJC), relayed that she has become interested in serving the State of Alaska, has been building and managing dental practices, has obtained both a bachelor's degree in justice and a history degree, and is in the process of obtaining an M.B.A. in finance, adding that she feels that with her education and work experience in the private sector, she would be an asset. She said she loves the study of law and economic development, and so when she saw an opportunity to become involved with the CJC, she applied and was thrilled to have been appointed.

MS. DEMBOSKI, in response to questions, indicated that she has used her legal expertise in the course of her employment; that she specifically applied for a position on CJC because she felt that with her educational and legal experience she could provide the CJC with a citizen's common-sense perspective; and that she attended the last meeting of the CJC and discussed the details of what its duties entail with members and staff, has gone over the statutes, [court rules, and codes of conduct] pertaining to the CJC, and anticipates becoming completely familiar with them before the CJC's next meeting.

REPRESENTATIVE HOLMES thanked Ms. Demboski for her willingness to serve.

MS. DEMBOSKI, in response to other questions, offered her belief that there is no reason legislators ought to be hesitant to confirm her appointment; relayed that she generally considers Alaska's judges to be upstanding citizens, adding that in the past she has dealt with issues similar to those faced by the CJC; opined that when a judge acts inappropriately, it's important for the CJC to hold him/her to a high standard, offering her understanding that such is already the case; and assured the committee that she would be keeping an open mind while fulfilling her duties on the CJC so as to be able to

accurately assess a given situation, that she is willing to stand up for what she believes is right, and that she is up to the task of learning all that's necessary in order for her to fulfill her duties as a member of the CJC.

REPRESENTATIVE KELLER and REPRESENTATIVE PRUITT thanked Ms. Demboski for her willingness to serve.

MS. DEMBOSKI, in response to further questions, reiterated some of her earlier comments, and relayed that the concept of serving on the CJC was something she'd come up with on her own as being an enjoyable way of giving back to the community; that aside from having served on a jury in the past and having obtained her bachelor's degree in justice, she's not had any interaction with the judicial system; and that she's always had an interest in public service.

[1:29:19 PM](#)

DAVID HAEG, noting that he'd filed a complaint against a judge in 2006 and offering his belief that improprieties occurred during the subsequent investigation, expressed interest in hearing the committee discuss such issues with Ms. Demboski further.

The committee took an at-ease from 1:32 p.m. to 1:33 p.m.

[1:33:37 PM](#)

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Amy L. Demboski to the Commission on Judicial Conduct. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Alaska Judicial Council

[1:34:01 PM](#)

VICE CHAIR THOMPSON announced that the committee would next consider the appointment of Donald J. Haase to the Alaska Judicial Council (AJC).

[1:34:19 PM](#)

DONALD J. HAASE, Appointee, Alaska Judicial Council (AJC), recounted some of his employment history and that he has a bachelor's degree in political science, and indicated that this

year, he, himself, specifically chose to apply for a position on the AJC because of his interest in the law and in "seeing that justice is done in Alaska," that he wants to ensure that Alaska's judges are not biased and are cognizant of the people who come before them, and that he would be taking judicial candidates' interpersonal skills into account when deciding whether to forward a particular name, because he wants judges who make people feel at ease and who are going to ensure that all the parties feel that they're being heard regardless of the trial outcome. In response to further questions, he acknowledged that when he ran for a seat on the Alaska State Legislature in 2010, he'd responded affirmatively to the following question on a questionnaire distributed by [Alaska Family Action, the lobbying arm of the Alaska Family Council]:

Would you support a state constitutional amendment that would allow the Governor the same leeway for appointing state judges as the U.S. President has for appointing federal judges, i.e., the Governor could nominate any candidate of his or her choosing for a judicial vacancy, and such nominee would have to be confirmed by the Alaska Senate?

MR. HAASE clarified that although he still believes such a process would be a good way to appoint judges and that he could support such a change, in responding "yes" to that question he wasn't saying that it would necessarily be better than the current process.

REPRESENTATIVE GRUENBERG characterized such a change as essentially doing away with that function of the AJC.

MR. HAASE, in response to other questions, assured the committee that his applying for a position on the AJC was not motivated by a desire to change the current process, surmising that he would not be able to effect such a change from within the AJC anyway even if that were his motivation.

VICE CHAIR THOMPSON, in response to comments and a request, indicated that the committee would set aside consideration of the appointment of Donald J. Haase to the Alaska Judicial Council (AJC) in order to allow members more time to compile further questions for Mr. Haase.

[The House Judiciary Standing Committee considered the appointment of Donald J. Haase to the Alaska Judicial Council (AJC) again on 3/16/11.]

Violent Crimes Compensation Board

[1:44:50 PM](#)

VICE CHAIR THOMPSON announced that the committee would next consider the reappointment of Nora G. Barlow to the Violent Crimes Compensation Board (VCCB).

[1:45:03 PM](#)

NORA G. BARLOW, Appointee, Violent Crimes Compensation Board (VCCB), relayed that she's been serving as the attorney member of the VCCB for a year, having been appointed to finish a retiring member's term; that as a lawyer, she's had experience with sexual assault prosecutions, and with working with abused and neglected children; that serving on the VCCB has allowed her to do something proactive and helpful to the State of Alaska; that she's enjoyed working with the other members of the VCCB; and that she would like to continue with that work and so is seeking to be reappointed.

REPRESENTATIVE GRUENBERG disclosed that Ms. Barlow and her husband are personal friends of his, and indicated that he is happy to support her reappointment.

REPRESENTATIVE HOLMES disclosed that she is a neighbor of Ms. Barlow's and has spoken with her in the past about her reasons for wanting to serve on the VCCB, and relayed that she is therefore happy to support Ms. Barlow's reappointment.

MS. BARLOW, in response to a question, relayed that the VCCB has discussed with the legislature the possibility of the VCCB becoming involved with the sexual assault response team/sexual assault nurse examiner (SART/SANE) exams and possibly providing some additional funding, and is awaiting more information from those currently researching that issue.

REPRESENTATIVE GRUENBERG expressed interest in receiving any suggestions the VCCB might have regarding possible future statutory changes.

[1:50:07 PM](#)

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Nora G. Barlow to the Violent Crimes

Compensation Board. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

Board of Governors of the Alaska Bar

[1:50:49 PM](#)

VICE CHAIR THOMPSON announced that the committee would next consider the appointment of William A. Granger to the Board of Governors of the Alaska Bar.

[1:51:25 PM](#)

WILLIAM A. GRANGER, Appointee, Board of Governors of the Alaska Bar, after providing some personal information, relayed that he became active in Alaska's legal community through his work as a banker, became interested in its workings as a result of his participation with the Alaska Bar Foundation - which distributes Interest on Lawyer Trust Accounts (IOLTA) funds to various charitable and judicial enhancement endeavors - and was then appointed to the Board of Governors of the Alaska Bar. Expressing a continued interest in serving on the Board of Governors [as a public member again], he characterized it as an important position requiring someone with a keen understanding of how the legal community operates.

MR. GRANGER, in response to questions, offered his belief that some of the important and rewarding duties and accomplishments of the Board of Governors pertain to having developed a free, online, legal research program, a valuable service for smaller practitioners in particular; to addressing problems brought before it by members of the bar; to attempting to streamline interactions between the bar at large and the judiciary; and to the Alaska Bar Association's financial aspects and budgetary processes. In response to comments and further questions, he acknowledged that some members feel the Alaska Bar Association's dues are high, but agreed that it's important, regardless, for the Alaska Bar Association to operate in a fiscally responsible manner so that it won't have to seek funding from the State of Alaska.

MR. GRANGER noted that when he'd served on the Board of Governors before, it was mindful of costs and so was able to maintain, and build up, a small surplus that would enable the Alaska Bar Association to continue functioning should an emergency or some unforeseen funding crisis arise, and relayed that he is aware that high bar dues might put a strain on small

practitioners. The establishment of the aforementioned legal research program, therefore, is an important thing for the Board of Governors to have accomplished - giving something of actual monetary benefit to the Alaska Bar Association's members. Also, the services that the Alaska Bar Association provides to the public at large - for example, reimbursing clients harmed by attorneys who can't themselves make restitution - is important work but it comes at a cost.

REPRESENTATIVE GRUENBERG concurred that it's important for the Alaska Bar Association to remain self sufficient and therefore independent, and offered his belief that Mr. Granger is very qualified [to serve on the Board of Governors of the Alaska Bar].

REPRESENTATIVE PRUITT asked Mr. Granger why there was a break in his service.

MR. GRANGER indicated that after being appointed initially, when his term then expired, he was simply reappointed by then-Governor Murkowski, but then when that [second] term expired, then-Governor Palin appointed someone else since he hadn't applied for reappointment at the time.

[2:02:16 PM](#)

THERESA OBERMEYER provided a few comments [unrelated to the confirmation hearing of William A. Granger as appointee to the Board of Governors of the Alaska Bar].

[2:04:21 PM](#)

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of William A. Granger to the Board of Governors of the Alaska Bar. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

The committee took an at-ease from 2:05 p.m. to 2:08 p.m.

HB 175 - COURT APPEARANCES; ARSON; INFRACTIONS

[2:08:24 PM](#)

VICE CHAIR THOMPSON announced that the next order of business would be HOUSE BILL NO. 175, "An Act relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor

vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

[2:09:14 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), explained that HB 175 would correct four problems in current law. Specifically, Sections 1, 2, and 6 - pertaining respectively to AS 12.25.150, rights of prisoner after arrest, AS 12.70.130, arrest without warrant of a person charged with a crime in another state, and Rule 5(a)(1) of the Alaska Rules of Criminal Procedure, proceedings before the judge or magistrate - would conform those provisions of law to reflect changes made last year via House Bill 324. That bill last year increased the timeframe - from 24 hours to 48 hours - in which a person must be brought before a judicial officer after being arrested; unfortunately, that bill neglected to also make conforming changes to AS 12.25.150 and AS 12.70.130.

MS. CARPENETI explained that Section 3 - pertaining to AS 28.15.131, license to be carried and exhibited on demand - would conform that statute to current court rules in the Alaska Rules of Administration which provide that not having one's valid driver's license in one's possession while driving is merely a correctable infraction, with bail set at \$50, rather than a class B misdemeanor. Section 4 - pertaining to AS 28.22.019, proof of insurance to be carried and exhibited on demand [and] penalty - would similarly conform that statute to current court rules in the Alaska Rules of Administration which provide that not having proof of insurance in one's possession while driving is merely a correctable infraction, with a mandatory fine of \$500, rather than a class B misdemeanor with a discretionary minimum fine of \$500.

MS. CARPENETI explained that Section 5 - pertaining to AS 41.23.220, penalty [for committing violations in the Knik River Public Use Area] - would conform that statute with AS 11.46.420, pertaining to the crime arson in the third degree. Enacted in 2006, AS 41.23.220 and associated regulations provided that burning a vehicle in the Knik River Public Use Area would be a violation, with a bail amount of \$50. In contrast, when enacted in 2008, AS 11.46.420 provided that burning a vehicle on state or municipal land would be a class C felony property crime. Under Section 5, all burning of vehicles in public areas would

be a class C felony, and this is in keeping with the latest expression of legislative intent as evidenced by the enactment of AS 11.46.420. In response to a question, she confirmed that under Section 4, not having proof of insurance in one's possession while driving would remain a correctable infraction.

REPRESENTATIVE GRUENBERG referred to a Department of Law memorandum in members' packets dated March 1, 2010, regarding other states' rules about first court appearance after arrest.

The committee took an at-ease from 2:15 p.m. to 2:16 p.m.

MS. CARPENETI, in response to questions, clarified that in County of Riverside v. McLaughlin - one of the cases cited in that memorandum - the U.S. Supreme Court approved a 48-hour time-period for holding someone without probable cause; and that no state court has interpreted the U.S. Constitution as requiring a different time period, though other states have approved a variety of different time periods in their state laws. She confirmed that Alaska's courts hadn't addressed this issue yet because existing Alaska Statute provided for a 24-hour time-period including weekends and holidays.

REPRESENTATIVE GRUENBERG expressed concern that Alaska's courts haven't yet interpreted the U.S. Constitution regarding that issue, and suggested, therefore, that a specific severability clause be added to HB 175 since its proposed change to the time limit could invite a constitutional challenge.

[2:23:34 PM](#)

JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), noting that he'd submitted written testimony regarding HB 175, pointed out that in Alaska there is already a rule allowing for an exception to the existing deadline when necessary. It's an open question, he ventured, whether the Alaska Supreme Court would find that a 48-hour time-period is reasonable. To the extent that HB 175 is intended to allow for the extended period of time only when needed, he remarked, the ACLU of Alaska suggests that it would instead be better to have a 24-hour time-period and continue to allow for additional time to be requested when necessary.

The committee took an at-ease from 2:26 p.m. to 2:29 p.m.

MS. CARPENETI, in response to comments, pointed out that the constitutional issues regarding this time period were discussed

thoroughly last year when House Bill 324 - which proposed the change from 24 hours to 48 hours - was debated, and reiterated that HB 175 would merely correct an oversight in that when that time period was changed, some of the associated statutes weren't similarly changed.

[2:30:43 PM](#)

REPRESENTATIVE GRUENBERG directed attention to the language on page 2 of Mr. Mittman's written testimony, specifically that which read [original punctuation, along with some formatting changes, provided]:

Given that the currently existing rules of criminal procedure already provide an exception for defendants arrested far from urban centers and allow the prosecution to request a delay to gather more information where necessary for a bail hearing, the state's success over the last 18 years in providing an initial appearance within 24 hours strongly suggests that a delay of more than 24 hours would represent unnecessary delay, making the statute unconstitutional.

MS. CARPENETI, in response to questions and comments, clarified that although Alaska's statutes do allow for a delay if the person is charged with a felony, that delay only applies after the person's initial appearance before the court, whereas the bill addresses the time period in which a person must initially be brought before the court after his/her arrest. Regardless of what the deadline is, the best practice, she pointed out, is to bring the person before a judicial officer as soon as possible because that's better for all concerned. However, there are situations in which it could be difficult for law enforcement to gather enough information within a 24-hour time-period to determine what the appropriate charges should be, and it would therefore be better to wait a day before arraignment. The bill would extend the deadline in those cases where it is necessary for the orderly administration of justice. Furthermore, the victim has a constitutional right to appear at that initial hearing, and sometimes he/she either can't be found or would be unable to attend within a 24-hour time-period. She assured the committee that having a 48-hour deadline doesn't mean that the DOL is automatically going to wait another day before bringing a person in for his/her initial court appearance, because the DOL is not interested in keeping someone an extra day just because the law allows it.

[2:39:16 PM](#)

REPRESENTATIVE GRUENBERG asked whether the DOL was having to release people because it wasn't meeting the 24-hour deadline.

MS. CARPENETI said not to her knowledge.

REPRESENTATIVE GRUENBERG questioned, then, why the deadline was changed.

MS. CARPENETI explained that the 24-hour deadline was problematic in that when a person was arrested in the middle of the night or was arrested in a rural area of the state, for example, it was sometimes very difficult to gather enough information within 24 hours for the DOL to make reasonable decisions. Referring to the aforementioned DOL memorandum, she noted that most other states provide for a significantly greater amount of time than 24 hours. She offered her belief that the change from 24 hours to 48 hours hasn't affected the majority of cases, and would instead be very helpful. In response to further questions, she acknowledged that because the statutes weren't changed under House Bill 324, most jurisdictions are still operating under the 24-hour deadline, though some jurisdictions have somewhat relaxed that deadline depending on the particular case.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify on HB 175, closed public testimony, and relayed that HB 175 would be held over.

[2:45:55 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:45 p.m.