

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

February 1, 2012

1:04 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 291

"An Act relating to the posting of notices at United States post offices; and providing for an effective date."

- MOVED HB 291 OUT OF COMMITTEE

HOUSE BILL NO. 296

"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 291

SHORT TITLE: PUBLIC NOTICES POSTED AT POST OFFICES

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/20/12	(H)	READ THE FIRST TIME - REFERRALS
01/20/12	(H)	JUD
02/01/12	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 296

SHORT TITLE: CRIME OF ESCAPE/DEF. OF CORRECT. FACILITY

SPONSOR(S): JUDICIARY

01/25/12 (H) READ THE FIRST TIME - REFERRALS  
01/25/12 (H) JUD, FIN  
02/01/12 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

PAMELA FINLEY, Revisor of Statutes  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As the revisor of statutes, presented HB 291 on behalf of the House Rules Standing Committee, sponsor by request of Legislative Council.

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

**POSITION STATEMENT:** Expressed concerns and responded to questions during discussion of HB 269.

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

**POSITION STATEMENT:** During discussion of HB 296, expressed concerns with Section 4.

LESLIE HOUSTON, Director  
Central Office  
Division of Administrative Services  
Department of Corrections (DOC)  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of HB 269.

**ACTION NARRATIVE**

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**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Gatto, Keller,

Pruitt, and Thompson were present at the call to order. Representatives Lynn, Gruenberg, and Holmes arrived as the meeting was in progress.

**HB 291 - PUBLIC NOTICES POSTED AT POST OFFICES**

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CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 291, "An Act relating to the posting of notices at United States post offices; and providing for an effective date."

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PAMELA FINLEY, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), explained that HB 291 would delete four statutory references to posting certain notices at post offices - thereby addressing the fact that since 2007, the federal government hasn't allowed the posting of such notices at post offices - but would not delete the statutory requirement to post those notices altogether. The four specific statutes HB 291 is proposing to alter are AS 03.35.030, which pertains to petitions concerning controlled livestock districts; AS 34.35.175(d), which pertains to personal property lien sales; AS 34.45.050(b), which pertains to consignee and bailee lien sales; and AS 43.20.270(d)(2), which pertains to tax lien sales. These proposed changes - mirroring one made in 2010 to AS 09.35.140, which pertains to sales on execution - aren't being included in a revisor's bill in case the committee wishes to address the issue in some other fashion.

MS. FINLEY, in response to questions and comments, offered her belief that HB 291 wouldn't have any negative effects, but would help people who currently can't comply with the aforementioned state laws simply because those laws conflict with a federal restriction; mentioned that members' packets include a copy of that federal restriction; surmised that because the proposed changes aren't being included in a revisor's bill, HB 291 would probably be subject to the legislature's "single subject" rule; and relayed that she knows of no other issues that could also be addressed via HB 291. In response to a further question, she said she didn't know why the federal government changed its policy regarding posting notices at post offices.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 291.

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REPRESENTATIVE THOMPSON moved to report HB 291 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 291 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:14 p.m. to 1:16 p.m.

**HB 296 - CRIME OF ESCAPE/DEF. OF CORRECT. FACILITY**

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CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 296, "An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."

REPRESENTATIVE GRUENBERG, to introduce HB 296, which was sponsored by the House Judiciary Standing Committee, explained that HB 296 was introduced in order to address issues that arose in two court cases: Hertz v. Carothers, 225 P.3d 571 (Alaska 2010); and Bridge v. State, 258 P.3d 923 (Alaska App. 2011). In Hertz, the Alaska Supreme Court held that prison officials were not considered peace officers for purposes of [serving legal summons and complaints on incarcerated prisoners, and so Section 1 of HB 296 - by adding a new subsection (c) to AS 09.05.050 specifying that the term "correctional facility" as used in AS 09.05.050 has the meaning given in AS 33.30.310] - would allow prison officials to be designated by the facility superintendent to serve legal summons and complaints on incarcerated prisoners. In Bridge, the Alaska Court of Appeals held that under AS 11.56.310(a)(1)(A), a person may not be convicted of escape in the second degree if he/she escapes from a facility that isn't secure, and so [Sections 2, 3, and 4 - by clarifying what constitutes the crime of escape in the second degree under AS 11.56.310(a)(1)(A), what constitutes a "secure correctional facility" under a proposed new subsection (c) to AS 11.56.310, and what constitutes a "correctional facility" under AS 11.81.900(b)(9), respectively] - would codify the court's ruling. [Section 5 would specify in uncodified law that AS 09.05.050, including Section 1's proposed change to it,]

constitutes an indirect court rule change to Rule 4 of the Alaska Rules of Civil Procedure.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), referred to an amendment labeled 27-LS1199\D.2, Gardner, 1/28/12, [which later became known as Amendment 1 and] which read:

Page 1, line 2, following "'correctional facility';"  
Insert **"deleting the repeal of a provision relating to electronic monitoring as a special condition of probation and parole for offenders whose offense was related to a criminal street gang;"**

Page 2, following line 23:

Insert a new bill section to read:  
**"\* Sec. 5.** Section 3, ch. 27, SLA 2007, is repealed."

Re-number the following bill sections accordingly.

REPRESENTATIVE GRUENBERG explained that Amendment 1 would repeal the sunset on a law allowing a judge, as a condition of [probation/parole], to require a gang member to wear an electronic monitoring device. In response to a question, he indicated that the sunset was added to that law simply to satisfy a concern of the then-committee chair.

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QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), referring to Section 4 of HB 296, cautioned that attempting to codify the court's ruling in Bridge could result in the very unintended consequences that the court warned about, that of broadening the definition of what constitutes a correctional facility to the point where it could potentially impact a lot of other criminal statutes. For example, currently the statutes [prohibiting] contraband in [correctional facilities] don't address behavior occurring in camps, halfway houses, group homes, and other placements, but under Section 4's proposed definition of what constitutes a correctional facility, those contraband statutes might be applied, possibly resulting in criminal prosecutions for things like bringing tobacco into a group home. And there might also be other impacts to the criminal code, he concluded.

REPRESENTATIVE GRUENBERG, remarking that that isn't the sponsor's intent, indicated that if Section 4 is retained at all, it would be narrowed so that its proposed definition wouldn't apply to the entire criminal code, thereby addressing Mr. Steiner's concern. Furthermore, consideration is being given to possibly including a "purposes" section in the bill, or providing a letter of intent, in order to clarify that the bill's intended purpose is to codify the Bridge decision.

MS. CARPENETI said HB 296 does clarify the Bridge case, and mentioned that the DOL agrees that providing a letter of intent specifying that point would be a good idea. However, the DOL shares Mr. Steiner's concern with Section 4's proposal to change the definition of "correctional facility" as that term is used in Title 11, to something similar to the broader definition of that term as it's used in Title 33. "We really need to make sure that there aren't consequences that ... we don't like or we're not expecting ...," she opined, adding that a search of the term, "correctional facilities" in Alaska's statutes resulted in four pages worth of references to that term, and that each of those references should be scrutinized. Furthermore, Section 3's proposed definition of the term, "secure correctional facility" should also be scrutinized and perhaps amended, she opined, because although it reflects what the court said in Bridge, as currently written it might be construed to mean that simply having a lock on the front door would suffice to render a correctional facility secure.

REPRESENTATIVE GRUENBERG expressed a preference for adding a "purposes" section to HB 296, rather than merely providing a letter of intent, which might never be seen.

MS. CARPENETI, in response to questions, said the DOL doesn't have a problem with Amendment 1, and relayed that the DOL would like some time to research how [the Bridge decision and the bill's proposed definition changes] might impact the statutes pertaining to "good time" credit.

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LESLIE HOUSTON, Director, Central Office, Division of Administrative Services, Department of Corrections (DOC), in response to questions, indicated that the DOC is supportive of HB 296; characterized the use of community residential centers as a fairly critical component of the reentry process; and said the DOC doesn't have a problem with Amendment 1.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1 [text provided previously]. There being no objection, Amendment 1 was adopted.

CHAIR GATTO relayed that HB 296 [as amended] would be held over.

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**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:45 p.m.