

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 15, 2012
1:05 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Lance Pruitt
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 30(2d JUD)

"An Act providing for the release of certain property in the custody of a law enforcement agency to a crime victim under certain conditions and relating to requests for that release by the office of victims' rights."

- MOVED CSSB 30(2d JUD) 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."

- MOVED CSHB 296(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 55

"An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law."

- MOVED CSHB 55(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 262

"An Act relating to the offense of interference with access to public buildings or transportation facilities, when a person conditions access to a public building or transportation

facility on consent to certain physical contact or to an electronic process that produces a picture of the private exposure of the person."

- HEARD & HELD

HOUSE BILL NO. 293

"An Act relating to the rights of crime victims; relating to the duties of prosecuting attorneys; and amending Rule 45, Alaska Rules of Criminal Procedure."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(S): SENATOR(S) DYSON

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	STA, JUD
02/03/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/03/11	(S)	Heard & Held
02/03/11	(S)	MINUTE(STA)
02/17/11	(S)	STA AT 9:00 AM BUTROVICH 205
02/17/11	(S)	Moved CSSB 30(STA) Out of Committee
02/17/11	(S)	MINUTE(STA)
02/21/11	(S)	STA RPT CS 4DP 1NR NEW TITLE
02/21/11	(S)	DP: KOOKESH, PASKVAN, MEYER, GIESSEL
02/21/11	(S)	NR: WIELECHOWSKI
02/28/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/28/11	(S)	Heard & Held
02/28/11	(S)	MINUTE(JUD)
03/18/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/11	(S)	Heard & Held
03/18/11	(S)	MINUTE(JUD)
03/21/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/11	(S)	Moved CSSB 30(JUD) Out of Committee
03/21/11	(S)	MINUTE(JUD)
03/22/11	(S)	JUD RPT CS 2DP 2NR NEW TITLE
03/22/11	(S)	DP: FRENCH, COGHILL
03/22/11	(S)	NR: WIELECHOWSKI, PASKVAN
03/22/11	(S)	FIN REFERRAL ADDED AFTER JUD
03/25/11	(S)	RETURNED TO JUD COMMITTEE
04/04/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/04/11	(S)	Heard & Held

04/04/11 (S) MINUTE(JUD)
 04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/06/11 (S) Moved CSSB 30(2d JUD) Out of Committee
 04/06/11 (S) MINUTE(JUD)
 04/07/11 (S) JUD RPT CS (2d JUD) 3DP 1NR NEW TITLE
 04/07/11 (S) DP: FRENCH, PASKVAN, MCGUIRE
 04/07/11 (S) NR: WIELECHOWSKI
 01/20/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
 01/20/12 (S) Heard & Held
 01/20/12 (S) MINUTE(FIN)
 01/27/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
 01/27/12 (S) Moved CSSB 30(2d JUD) Out of Committee
 01/27/12 (S) MINUTE(FIN)
 01/27/12 (S) FIN RPT CS (2d JUD) 6DP
 01/27/12 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,
 OLSON, ELLIS
 02/01/12 (S) TRANSMITTED TO (H)
 02/01/12 (S) VERSION: CSSB 30(2d JUD)
 02/03/12 (H) READ THE FIRST TIME - REFERRALS
 02/03/12 (H) JUD, FIN
 02/13/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/13/12 (H) Heard & Held
 02/13/12 (H) MINUTE(JUD)
 02/15/12 (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
 02/01/12 (H) Heard & Held
 02/01/12 (H) MINUTE(JUD)
 02/10/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/10/12 (H) Heard & Held
 02/10/12 (H) MINUTE(JUD)
 02/13/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/13/12 (H) Scheduled But Not Heard
 02/15/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 55

SHORT TITLE: DEFINITIONS: GRAVITY KNIFE & SWITCHBLADE
 SPONSOR(S): NEUMAN, LYNN

01/18/11 (H) PREFILE RELEASED 1/7/11
 01/18/11 (H) READ THE FIRST TIME - REFERRALS

01/18/11 (H) JUD
02/15/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 262

SHORT TITLE: PASSENGER SECURITY: TRANSPORT. FACILITY
SPONSOR(S): CISSNA

01/17/12 (H) PREFILE RELEASED 1/13/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) JUD, FIN
02/15/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 293

SHORT TITLE: RIGHTS OF CRIME VICTIMS/CONTINUANCES
SPONSOR(S): TUCK

01/25/12 (H) READ THE FIRST TIME - REFERRALS
01/25/12 (H) JUD, FIN
02/15/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 30, provided a comment on behalf of the sponsor, Senator Dyson.

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

POSITION STATEMENT: During discussion of HB 296, provided a comment regarding proposed Amendment 3.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 55 as one of its joint prime sponsors.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 55.

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

POSITION STATEMENT: Responded to questions during discussion of HB 55.

TODD RATHNER
Director
Legislative Affairs
Knife Rights, Inc.
Gilbert, Arizona

POSITION STATEMENT: Provided comments during discussion of HB 55.

REX SHATTUCK, Staff
Representative Mark Neuman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 55 on behalf of Representative Neuman, one of the joint prime sponsors.

RAY THIBAUT, Owner
Northern Knives
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 55.

MILESANNA WHITE, Staff
Representative Sharon Cissna
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 262 on behalf of the sponsor, Representative Cissna.

MARK SABEL, Staff
Representative Sharon Cissna
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 262 on behalf of the sponsor, Representative Cissna.

REPRESENTATIVE SHARON CISSNA

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 262.

PATRICIA ANDERSON, Co-director

Alaskans' Freedom to Travel USA

Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 262.

THOMAS BROWN, Co-director

Alaskans' Freedom to Travel USA

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 262.

REPRESENTATIVE CHRIS TUCK

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 262.

DIANE SCHENKER, Co-director

Alaskans' Freedom to Travel USA

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 262.

REPRESENTATIVE CHRIS TUCK

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 293.

ACTION NARRATIVE

[1:05:12 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Gatto, Lynn, Keller, and Thompson were present at the call to order. Representatives Holmes and Gruenberg arrived as the meeting was in progress. Representative Pruitt was excused.

SB 30 - RETURN OF SEIZED PROPERTY

[1:05:45 PM](#)

CHAIR GATTO announced that the first order of business would be CS FOR SENATE BILL NO. 30(2d JUD), "An Act providing for the release of certain property in the custody of a law enforcement agency to a crime victim under certain conditions and relating to requests for that release by the office of victims' rights."

[1:06:12 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, on behalf of Senator Dyson, the sponsor of SB 30, in response to a question, indicated that there weren't any proposed amendments for SB 30.

[1:06:42 PM](#)

REPRESENTATIVE THOMPSON moved to report CSSB 30(2d JUD) out of committee with individual recommendations and the [accompanying] fiscal notes. There being no objection, CSSB 30(2d JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:07 p.m. to 1:09 p.m.

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

[1:09:57 PM](#)

CHAIR GATTO announced that the next 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." [Amendment 1 was adopted on 2/1/12; left pending from the hearing on 2/10/12 was the motion to adopt Amendment 2, which was not taken up again.]

[1:10:25 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, labeled 27-LS1199\D.5, Gardner, 2/14/12, which read:

Page 1, line 2:

Delete "relating to the definition of 'correctional facility'"

Page 2, lines 13 - 18:

Delete all material and insert:

"(1) has construction fixtures or security features that are designed to restrict the ability of a person under official detention from leaving the facility without lawful authority; or

(2) has correctional officers or other persons authorized by the commissioner of corrections to prevent a person under official detention from leaving without lawful authority."

Page 2, lines 19 - 23:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 2, following "Act,":

Insert "and"

Page 3, lines 3 - 4:

Delete "and the definition of "correctional facility" in AS 11.81.900(b)(9), as amended by sec. 4 of this Act,"

CHAIR GATTO objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 3 - carefully crafted to address the concerns of all parties - would rewrite Section 3's proposed new AS 11.56.310(c)(1)-(2), which would define the term, "secure correctional facility" as that term is used in AS 11.56.310; would delete Section 4, which would alter existing AS 11.81.900(b)(9)'s definition of what constitutes a "correctional facility"; and would make conforming changes to the title.

[1:13:02 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), confirmed that Amendment 3 addresses the concerns the administration had with HB 296.

CHAIR GATTO removed his objection, and, after ascertaining that there were no further objections, announced that Amendment 3 was adopted.

REPRESENTATIVE KELLER, in response to a question, confirmed that he's been assured that HB 296 won't impact the statutes

pertaining to Medicaid funding, and thus the concern he had with the bill has been alleviated.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 296.

[1:15:08 PM](#)

REPRESENTATIVE THOMPSON moved to report HB 296 [as amended] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 296(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:15 p.m. to 1:17 p.m.

HB 55 - DEFINITIONS: GRAVITY KNIFE & SWITCHBLADE

[1:17:24 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 55, "An Act adding definitions of 'gravity knife' and 'switchblade' to the criminal law."

[1:17:34 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, speaking as one of the joint prime sponsors, indicated that HB 55 would clarify that [knives with a spring, detent, or other mechanism designed to create a bias toward closure, such as those on] hunting, fishing, and utility knives, do not qualify as [either gravity knives or switchblades, which are prohibited under state law,] and can therefore be owned legally. Rulings by the Alaska Supreme Court indicate that Alaska's criminal statutes warrant clarification with regard to what constitutes a gravity knife and a switchblade for purposes of prosecution, and so the goal with HB 55 is to provide that clarification by defining those terms in AS 11.81.900(b). He then indicated that a proposed amendment [later referred to as Amendment 1] in members' packets would insert a reference to knives in AS 29.10.200 and AS 29.35.145, thereby stipulating that the authority to regulate knives is reserved to the state, thus ensuring that the laws pertaining to knives are uniform throughout Alaska.

[1:20:32 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), in response to questions, relayed that [the DPS] considers knives to be weapons for purposes of requiring that the possession of a weapon be disclosed to law enforcement officers; that no type of knife is exempt from that requirement; and that how a particular knife is defined in statute will not impact law enforcement officers in terms of apprehending a person.

1:22:42 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to questions, explained that in AS 11.61.210 - the [existing] class A misdemeanor crime of misconduct involving weapons in the fourth degree - subsection (a)(5) prohibits the manufacture, sale, or transfer of a switchblade or a gravity knife; and that in AS 11.61.220 - the [existing] class B misdemeanor crime of misconduct involving weapons in the fifth degree - subsection (a)(5) prohibits the possession or transportation of a switchblade or a gravity knife. By adding definitions [into AS 11.81.900(b) via proposed new paragraphs (65) and (66),] HB 55 would clarify which types of knives do and do not qualify as a gravity knife or as a switchblade for purposes of applying those criminal statutes.

1:26:05 PM

TODD RATHNER, Director, Legislative Affairs, Knife Rights, Inc., offering his belief that around the country, some people are being wrongfully arrested and prosecuted for carrying a so-called illegal knife simply because of inadequate statutory/regulatory definitions, said that if the Alaska legislature isn't ready to repeal the state's ban on certain types of knives altogether, his organization strongly urges the committee to adopt HB 55's proposed definitions for a gravity knife and a switchblade. He also indicated favor with the aforementioned forthcoming amendment's proposal to stipulate that the authority to regulate knives is reserved to the state, surmising that it will make it easier for the public and law enforcement to comply with and enforce, respectively, the state's existing prohibition on gravity knives and switchblades. In response to a question, he offered his belief that knives carried in a sheath and knives that must be pried open do not fall under the [bill's proposed] definitions of gravity knife and switchblade.

CHAIR GATTO noted that written testimony from Mr. Rathner is included in members' packets.

MS. CARPENETI, in response to questions, indicated that she would research whether - and, if so, under what circumstances - switchblade manufacturers located outside of Alaska might be subject to Alaska law; and explained that in Alaska, the culpable mental state whenever it's not specified in the pertinent criminal statute is that of "knowing".

CHAIR GATTO noted that a memorandum from Legislative Legal and Research Services dated December 17, 2010, refers to "butterfly knives" and "balisong knives".

[1:36:15 PM](#)

REX SHATTUCK, Staff, Representative Mark Neuman, Alaska State Legislature, on behalf of Representative Neuman, one of HB 55's joint prime sponsors, indicated that both types of knives have a fixed center shaft and two outside pieces [that pivot to either become the handle or to act as a sheath for the blade by completely encompassing it].

MS. CARPENETI, in response to a question, said she suspects that butterfly/balisong knives would continue to be legal in Alaska because the court - in State v. Strange, 785 P.2d 563 (Alaska Ct. App. 1990) - has ruled that they are not gravity knives or switchblades, and the definitions proposed by HB 55 are limiting in nature.

MR. SHATTUCK, in response to a request, showed the committee two different knives and demonstrated how each opened and closed, adding that the point of the bill is to ensure that such knives aren't considered to be switchblades, which, he ventured, can be distinguished from other types of knives by the fact that they both open and close automatically with the press of a button.

[1:42:44 PM](#)

RAY THIBAUT, Owner, Northern Knives, characterized HB 55's proposed definitions as excellent, and posited that they would help clarify things. He then expressed favor with the aforementioned forthcoming amendment's proposal to stipulate that the authority to regulate knives is reserved to the state, offering his belief that its adoption would ensure that the laws pertaining to knives are uniform throughout Alaska.

1:44:33 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 27-LS0298\A.1, Gardner, 2/2/12, which read:

Page 1, line 1, following "law":

Insert "**; and relating to reserving the authority to regulate knives to the state with limited exceptions for municipalities to regulate knives.**"

Page 1, following line 15:

Insert new bill sections to read:

*** Sec. 2.** AS 29.10.200(40) is amended to read:

(40) AS 29.35.145 (regulation of firearms **and knives**);

*** Sec. 3.** AS 29.35.145(a) is amended to read:

(a) The authority to regulate firearms **and knives** is reserved to the state, and, except as specifically provided by statute, a municipality may not enact or enforce an ordinance regulating the possession, ownership, sale, transfer, use, carrying, transportation, licensing, taxation, or registration of firearms **or knives**.

*** Sec. 4.** AS 29.35.145(b) is amended to read:

(b) Municipalities may enact and enforce ordinances

(1) that are identical to state law and that have the same penalty as provided for by state law;

(2) restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that people, domestic animals, or property will be jeopardized; ordinances enacted or enforced under this paragraph may not abridge the right of the individual guaranteed by art. I, sec. 19, Constitution of the State of Alaska, to bear arms in defense of self or others;

(3) restricting the areas in their respective jurisdictions in which firearms **or knives** may be sold; a business selling firearms **or knives** may not be treated more restrictively than other businesses located within the same zone; and

(4) prohibiting the possession of firearms **or knives** in the restricted access area of municipal government buildings; the municipal assembly shall post notice of the prohibition against possession of

firearms or knives at each entrance to the restricted access area."

CHAIR GATTO objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG - noting that AS 29.35.145 states that municipalities may enact and enforce ordinances that are identical to state law and provide for the same penalties - asked whether municipalities would have the authority to enact a local ordinance addressing the class A misdemeanor crime of manufacturing, selling, or transferring a switchblade or a gravity knife.

CHAIR GATTO questioned the value of enacting a local ordinance that merely copies state law.

REPRESENTATIVE NEUMAN said the goal with Amendment 1 is to provide clarification.

MR. SHATTUCK added that the drafter recommended altering the existing statutes pertaining to municipal firearms as the best approach to ensuring Alaska's knife laws are uniform throughout the state.

CHAIR GATTO removed his objection, ascertained that there were no further objections, and announced that Amendment 1 was adopted.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 55.

[1:54:07 PM](#)

REPRESENTATIVE THOMPSON moved to report HB 55, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 55(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:54 p.m. to 1:58 p.m.

HB 262 - PASSENGER SECURITY: TRANSPORT. FACILITY

[1:58:16 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 262, "An Act relating to the offense of

interference with access to public buildings or transportation facilities, when a person conditions access to a public building or transportation facility on consent to certain physical contact or to an electronic process that produces a picture of the private exposure of the person."

[1:59:40 PM](#)

MILESANNA WHITE, Staff, Representative Sharon Cissna, Alaska State Legislature, on behalf of the sponsor, Representative Cissna, explained that HB 262 relates to air-travel screening procedures currently taking place in Alaska, and, after providing a brief history of such procedures, proffered that passage of HB 262 would protect Alaskans from inappropriately-invasive searches. Specifically, HB 262 would make it a class A misdemeanor for a person to require another person - as a condition for access to a public building or transportation facility - to submit to a physical or electronic search of his/her body.

[2:01:16 PM](#)

MARK SABEL, Staff, Representative Sharon Cissna, Alaska State Legislature, on behalf of Representative Cissna, the sponsor of HB 262, provided a PowerPoint presentation. Referring to page 2 of that presentation, he said that the Transportation Security Administration (TSA) conducts security screenings at 450 airports in the United States, screening both baggage and passengers. In response to two incidences that occurred after [the terrorist attacks of September 11, 2001], the TSA has been using body scanners and invasive physical inspections at an accelerated rate; those two incidents occurred on airplanes originating outside of the U.S, one involving explosive compounds hidden in the sole of a shoe, and the other involving explosive compounds sown into an undergarment. He offered his belief that as a result of [the terrorist attacks of September 11, 2001], passengers are now more likely to put a stop to a hijacker's efforts themselves; furthermore, no fatal bombing has occurred on an American airliner in over 50 years.

MR. SABEL, in response to a question, offered his understanding that TSA employees don't carry weapons. Referring to page 3 of his PowerPoint presentation, he said that TSA employees - referred to as transportation security officers - have no police powers and must instead obtain assistance from actual law enforcement officers. He relayed that the TSA's budget is now

at \$8.1 billion, and includes funding for air marshals and for other duties the TSA performs.

CHAIR GATTO observed that a statistic on that page indicates that there are over 58,000 people employed by the TSA.

MR. SABEL, referring to page 4 of his PowerPoint presentation, said that Alaskans travel by air eight times more often than residents of other states do; that many Alaskans have sustained physical injury and/or emotional trauma; that in most of Alaska, traveling by air is the only option, particularly [in winter]; that many Alaskans must travel by air in order to obtain advanced medical care; and that per capita, Alaska has the highest number of military veterans and the fastest growing senior population. Furthermore, Alaska leads the nation in severe arctic weather, and in distances between communities, and so air travel is critical to Alaskans.

2:07:40 PM

REPRESENTATIVE SHARON CISSNA, Alaska State Legislature, sponsor - noting that she, herself, was involved in an incident with the TSA in Seattle, Washington, during which she was subjected to what she characterized as a very invasive physical examination - proffered that HB 262 addresses a constitutional issue, from the standpoint of both the U.S. Constitution and the Alaska State Constitution, specifically that of the right of the people to be secure against unreasonable searches and seizures. House Bill 262 would ensure that Alaskans have the ability to travel unhindered within Alaska, free from the fear that their persons will be violated, and would restore their constitutional rights. Currently, any difference in a person's physique detected via an electronic search engenders an additional, but this time physical, search by TSA personnel. Victims of domestic violence (DV), sexual assault, and sexual abuse of a minor crimes should not be subject to the inappropriate touching involved in a physical search, and, in fact, HB 262's proposed AS 11.76.118(a)(1) and (2) use the same descriptive language as the statutes addressing those crimes.

REPRESENTATIVE CISSNA offered her understanding that Texas introduced legislation similar to HB 262, and mentioned that HB 262 might be preempted because of the U.S. Constitution's Supremacy Clause. She also mentioned that during a meeting of the Health Caucus, the Department of Law (DOL) provided information about the TSA, including a supposition that the issues of concern that have arisen as a result of the TSA's

procedures haven't been resolved yet simply because they haven't been addressed by the court of proper jurisdiction. She further noted that as currently drafted, HB 262 doesn't specifically speak to the new TSA screening procedures recently instituted in Alaska's airports; indicated that thus far the federal government hasn't responded to any requests for assistance with the TSA; suggested that HB 262 be amended to adequately address the perceived problems; predicted that only through litigation would a solution really be found; and emphasized that legislation such as HB 262 is needed because of the high number of Alaskans who've suffered trauma but still find themselves needing to travel by air.

REPRESENTATIVE CISSNA, in response to a question, proffered that Alaskans traveling by air need better security than the TSA is capable of providing; mentioned that other legislation has been introduced addressing opting out of having the TSA manage security at Alaska's airports; and offered her belief that the TSA's budget is as high as it is because of its use of full-body scanners.

[2:25:34 PM](#)

CHAIR GATTO offered his understanding that some such scanners produce a detailed image of the individual, whereas other such scanners produce only a generic image.

REPRESENTATIVE THOMPSON offered his understanding that because HB 262 provides an exemption for activities occurring in federal buildings, HB 262 wouldn't apply to TSA activities.

REPRESENTATIVE CISSNA said that according to the Department of Transportation & Public Facilities (DOT&PF), all [commercial] airports in Alaska are owned by either the state or by the local community, and that according to one airport manager, airports merely attempt to provide the TSA with adequate space to conduct its screenings, but those spaces are not then "owned" by the federal government.

REPRESENTATIVE KELLER offered his belief that the federal government has "stepped over the line," and expressed appreciation for the sponsor's efforts.

[2:32:18 PM](#)

PATRICIA ANDERSON, Co-director, Alaskans' Freedom to Travel USA, said she would be speaking in favor of HB 262, and recounted an

incident in which she underwent a physical search at the Seattle airport, sharing her belief that a search of the severity that she was subjected to was unnecessary because the clothing she was wearing at the time couldn't conceal anything. Mentioning that she is a breast cancer survivor, she also shared her belief that full-body scanners aren't safe in terms of exposing people to high levels of radiation, and can't detect dangerous compounds anyway. Noting that she has been physically searched on several occasions, she pointed out that none of the searches were conducted in a consistent manner, though all were invasive. If the TSA is not going to comply with the Fourth Amendment, she opined, then the State of Alaska should exercise its Tenth-Amendment right in order to protect its citizens.

MS. ANDERSON then offered other examples of instances where the TSA, in conducting its searches, behaved inappropriately towards people - including children - who were innocent of any wrongdoing, and characterized the establishment of various "trusted traveler" programs as divisive, allowing for unequal treatment of certain passengers. In conclusion, Ms. Anderson urged the committee to move HB 262 forward, venturing that there must be constitutional options available for ensuring the security of those traveling by air, options such as using dogs or explosives-trace detection technologies to scan travelers for explosives - in other words, options that don't involve touching people or taking pictures of their bodies, particularly given that radiation buildup in the human body is cumulative.

CHAIR GATTO concurred, noting that others in the room are also cancer survivors.

[2:44:11 PM](#)

THOMAS BROWN, Co-director, Alaskans' Freedom to Travel USA, remarking that the federal government is violating Fourth Amendment rights, predicted that the TSA, under its current procedures, would continue to target the most vulnerable of air travelers such as those with physical anomalies resulting from age, amputation, other surgeries, or other traumas. Referring to the TSA as a national and international embarrassment, he offered his understanding that even the State of Israel - which deals with terrorism far more than the United States - refuses to install the type of machinery that the TSA is using, and refuses to pat down its citizens the way the TSA is doing. Over the years, he relayed, he's lived in several different countries overseas and been in the vicinity when bombing attacks have occurred. Terrorism exists and should be dealt with, he opined,

but said he expects his federal government to better allocate his tax dollars, adding, "I really don't see the usefulness, necessity, (indisc.), in putting body scanners in Ketchikan or Bethel - I don't see hoards of ... [mujahideen] coming through Kivalina trying to kill us." Instead, he relayed, he views the TSA as a bloated bureaucracy - nothing more than a job-creation program - that has not succeeded in arresting any actual terrorists.

MR. BROWN said he is not necessarily suggesting replacement of the TSA, but rather that its mission must be refined, particularly given that its current screening procedures are, without doubt, excessive and useless. In fact, he recounted, Israel's defense minister has called full-body scanners a laughable waste of money, and the type of physical searches the TSA is currently conducting would not have revealed either the terrorist with explosive compounds in his shoes, or the terrorist with explosive compounds in his undergarment. Simply having open borders is not the solution, but people do need to consider how the federal government is using tax-payer dollars. Again, countries that actually live with terrorism don't do the things that the TSA is doing, and America has become the brunt of many jokes and underhanded digs because of TSA screening procedures; "It's embarrassing to think that the greatest, freest country in the history of the planet is going to treat octogenarians and six-month-old children this way," he concluded.

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CHAIR GATTO, speaking as a cancer survivor who grew up in what he referred to as a rough neighborhood in New York City, pointed out that profiling potentially-dangerous people was the only way for a person to survive such an upbringing; for example, if a person saw three men swinging chains walking towards him/her, the person crossed the street, and if the men then followed, the person ran for his/her life. The TSA, however, subjects everyone - whether it's an 80-year-old grandmother or a [college] student from Saudi Arabia - to the same treatment. This seems like a waste of money, time, and energy, he opined, particularly given how successful judicious profiling has been elsewhere - such profiling in the context of pinpointing potentially dangerous people is a survival mechanism, and to not engage in it while addressing a potentially-dangerous situation makes no sense.

REPRESENTATIVE LYNN declared a potential conflict of interest in that because of past surgery, metal detectors sound an alarm when he goes through them. He added that he is uncomfortable equating TSA procedures with domestic violence (DV), as he's heard some do, considering such equating to be inappropriate given the issue before the committee.

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REPRESENTATIVE CHRIS TUCK, Alaska State Legislature, recounted that prior to 1996, one could purchase a plane ticket and fly without showing identification (ID), and that that changed when Trans World Airlines (TWA) Flight 800 exploded due to a mechanical failure. Originally thought to be the result of terrorist activities, the destruction of that plane resulted in the federal government taking steps to provide the public with a sense of security while flying, and instituting a requirement that people show ID before being allowed to board a plane was one of those steps. Consider, now, how many rights and freedoms people have given up in the 16 years since then just to be able to travel - and supposedly with their sense of dignity still intact. Current TSA screening procedures provide nothing more than "security theatre," he opined, doing nothing to keep travelers safe in reality. And such procedures, while they might have been useful right after [the terrorist attacks of September 11, 2001], aren't currently addressing an existing threat. Security at airports used to be handled with "good old fashioned police work," he remarked, and that shouldn't have been replaced with the activities the TSA currently engages in. In conclusion, he said he can't help but wonder what impact restricting travel, as the TSA is currently doing, is having on Alaska's economy, and surmised that there must be better measures to put in place, particularly given that whole-body scanners can't detect explosive compounds anyway.

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DIANE SCHENKER, Co-director, Alaskans' Freedom to Travel USA, offered her understanding that members' packets include, or will soon include, a letter from her organization that contains stories from other Alaskans about their treatment by the TSA; these stories detail how people are being touched during TSA screenings, with some of that touching fitting Alaska's statutory definition of sexual assault. The argument offered to justify such touching is that passengers have consented to it; however, consent given while under coercion isn't truly consent, and Alaskans who must travel by air for work or medical reasons

are being coerced because they have no choice. There must be a way to prevent harm from coming to air travelers without violating their constitutional rights, she opined; for example, although there might be a crime problem in Alaska, the solution hasn't been to institute curfews or establish search checkpoints or forcibly take blood samples or break in to people's homes every night to search them. Under current TSA procedures, if Alaskans wish to travel by air, they must first, essentially, consent to being sexually assaulted.

REPRESENTATIVE LYNN, in response to a question, said he objects to moving HB 262 from committee, adding that although current TSA screening procedures can be an inconvenience, he wants to feel that he's safe from terrorists when he flies.

CHAIR GATTO expressed interest in hearing possible solutions to the problem of ensuring that airplanes are made safe from terrorists in a constitutional manner. Children, he pointed out, are being left in tears after TSA personnel physically search them because they've been taught by their parents that its wrong for anyone to touch them in that manner.

CHAIR GATTO then relayed that HB 262 would be held over.

HB 293 - RIGHTS OF CRIME VICTIMS/CONTINUANCES

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CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 293, "An Act relating to the rights of crime victims; relating to the duties of prosecuting attorneys; and amending Rule 45, Alaska Rules of Criminal Procedure."

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REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 293, Version 27-LS1238\M, Gardner, 2/13/12, as the working document.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

REPRESENTATIVE THOMPSON referred to Section 2's proposed AS 12.61.015(a)(5)(B), which would define a substantial delay in the prosecution of a felony as being a delay of two months or longer, and questioned whether that provision would create a loophole by which a defendant could repeatedly delay prosecution.

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REPRESENTATIVE CHRIS TUCK, Alaska State Legislature, sponsor, explained that to address a concern about HB 293's use of the term, "substantially delay" in Section 2's proposed AS 12.61.015(a)(5) - which pertains to providing notice to the victim of a pending motion that may substantially delay prosecution - language defining what would constitute a substantial delay is now included in paragraph (5)'s subparagraphs (A)-(C). He then went on to explain that Section 3 - providing for a direct court rule amendment to Rule 45(d)(2) of the Alaska Rules of Criminal Procedure - now specifies that the court, when granting a continuance, shall have also considered the interests of the victim if they are known. Section 4 - proposing to add a new subsection (h) to Rule 45 of the Alaska Rules of Criminal Procedure - now also specifies that the court, before ruling on a motion for continuance, shall consider the victim's position if known. These changes to Sections 3 and 4 were recommended by the Department of Law (DOL), he said in conclusion.

REPRESENTATIVE GRUENBERG removed his objection.

[No further objections were stated, and Version M was treated as being before the committee.]

CHAIR GATTO relayed that HB 293 [Version M] 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 3:06 p.m.