

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 22, 2012
1:05 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 Hawker (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 221

"An Act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure."

- 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."

- MOVED CSHB 293(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

PREVIOUS COMMITTEE ACTION

BILL: HB 221

SHORT TITLE: PUBLIC DEFENDER APPOINTMENT PROCEDURES

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/01/11 (H) READ THE FIRST TIME - REFERRALS
04/01/11 (H) JUD, FIN
02/22/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 293

SHORT TITLE: RIGHTS OF CRIME VICTIMS/CONTINUANCES

SPONSOR(S): REPRESENTATIVE(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
02/15/12 (H) Heard & Held
02/15/12 (H) MINUTE(JUD)
02/20/12 (H) JUD AT 1:00 PM CAPITOL 120
02/20/12 (H) Scheduled But Not Heard
02/22/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 262

SHORT TITLE: PASSENGER SECURITY: TRANSPORT. FACILITY

SPONSOR(S): REPRESENTATIVE(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
02/15/12 (H) Heard & Held
02/15/12 (H) MINUTE(JUD)
02/20/12 (H) JUD AT 1:00 PM CAPITOL 120
02/20/12 (H) Scheduled But Not Heard
02/22/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 221.

SHARALYN WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature

POSITION STATEMENT: On behalf of the sponsor, Representative Chenault, assisted with the presentation of HB 221.

DOUGLAS GARDNER, Director
Legal Services
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 221.

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

POSITION STATEMENT: During discussion of HB 221, provided comments and responded to questions.

RICHARD ALLEN, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 221.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 221, provided comments and responded to questions.

REPRESENTATIVE CHRIS TUCK
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 293.

KAREN FOSTER
(No address provided)

POSITION STATEMENT: As the mother of a murder victim, provided comments during discussion of HB 293.

SUSAN SULLIVAN, Executive Director
Victims for Justice (VFJ)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 293.

D. VICTOR KESTER, Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 293.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 293.

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

POSITION STATEMENT: During discussion of HB 262, responded to questions on behalf of the sponsor, Representative Cissna.

REPRESENTATIVE CHRIS TUCK
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions and 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.

ACTION NARRATIVE

[1:05:00 PM](#)

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

HB 221 - PUBLIC DEFENDER APPOINTMENT PROCEDURES

[1:05:38 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 221, "An Act relating to the appointment of counsel for persons accused of crimes; and amending Rule 39.1, Alaska Rules of Criminal Procedure."

[1:06:54 PM](#)

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, sponsor, explained that HB 221 addresses the issue of court-appointed legal representation for those who cannot afford an attorney, and noted that it's the Office of Public Advocacy (OPA) and the Public Defender Agency (PDA) that provide such representation and bear the cost. He offered his understanding that some who've claimed to be eligible for such representation and subsequently received it did not truly qualify, and so HB 221 is intended to reduce the cost of such fraud to the state.

[1:09:01 PM](#)

SHARALYN WRIGHT, Staff, Representative Mike Chenault, on behalf of the sponsor, Representative Chenault, noting that members' packets contain a sectional analysis of HB 221, offered her understanding that the bill would allow the court, when determining whether to provide a defendant with a court-appointed attorney, to also consider the defendant's financial resources, and would require the defendant to complete a signed sworn financial statement subject to the penalties for perjury. These proposed changes, she posited, would allow the court to ensure that funds expended for court-appointed counsel are being spent in a responsible manner. In conclusion, she indicated that a fiscal note from the Alaska Court System (ACS) would be forthcoming, and that it would address estimated additional-personnel costs.

MS. WRIGHT, in response to comments and questions, indicated that the sponsor is not interested in having HB 221 amend the Alaska Rules of Civil Procedure; offered her belief that any fiscal impacts associated with the bill would be dependent on the management and resource-allocation skills of the departments involved; and reiterated that the ACS has not yet submitted a fiscal note for HB 221.

REPRESENTATIVE CHENAULT offered his belief that by ensuring that court-appointed legal representation is only provided to those who truly cannot otherwise afford it, HB 221 would reduce costs to the state.

CHAIR GATTO, in response to comments and a question, observed that the bill specifies that the defendant shall be under oath and subject to the penalties for perjury.

[1:16:14 PM](#)

DOUGLAS GARDNER, Director, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), also in response, confirmed that knowingly testifying under oath to a false statement constitutes the crime of perjury.

[1:16:58 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), after mentioning that HB 221 would directly impact appointments to the PDA, said the bill's proposed changes are consistent with some of the recommendations the PDA has made in previous years with regard to requiring a signed sworn financial statement in all cases so as to ease the audit process that ensures only those who truly qualify are appointed an attorney. In response to questions, he characterized the bill's proposed changes as important; offered his understanding that interpreters are provided by the court to clients not fluent in English; acknowledged that the term "financial statement" as used in existing Rule 39.1(e) of the Alaska Rules of Criminal Procedure is a very broad term, but surmised that such broadness facilitates compliance with statute, court rule, and administrative rule; explained that Alaska's court rules do provide guidelines regarding financial resources and estimated legal-representation costs for purposes of determining a person's inability to pay; noted that currently, the client's pertinent information is sometimes provided in writing and sometimes it's just entered into the record verbally; and posited that HB 221's proposed changes would bring some consistency to the appointment process which could, in turn, result in fewer appointments.

MR. STEINER, in response to further questions, said he assumes that the court already has a process in place for assisting illiterate clients, and acknowledged that the bill could potentially, but not necessarily, slow down the appointment process undertaken by the court. However, if the bill slowed that process down significantly, then that could be of concern.

[1:23:50 PM](#)

RICHARD ALLEN, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), [with regard to the aforementioned court-rule guidelines pertaining to estimated legal-representation costs,] pointed out that the amount varies depending upon the type of case; for example, the estimated legal-representation cost for a misdemeanor is a lot less than it is for a class A or unclassified felony.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 221.

[1:25:37 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said that the ACS has some concerns with HB 221, but would be working with the sponsor to address those concerns. As the bill is currently written, implementation could be problematic for the ACS because at some initial appearances, there can be between 30 and 60 different parties coming before the court, with a great majority of those parties qualifying for court-appointed representation, and with much of the information used in making those determinations being provided verbally. Currently there are three instances in which a person can presumptively qualify for court-appointed legal representation without any further investigation by the court into the person's inability to pay: if the person is already receiving state or federal public assistance benefits; if the person's gross annual income is below federal poverty-level amounts; or if the person had applied for and received court-appointed representation within the previous [12 months]. Presumptively qualifying for court-appointed legal representation under one of those criteria happens in a great majority of cases, with, again, the necessary information having been provided verbally.

MS. MEADE relayed that if those people who currently only needed to provide the necessary information verbally had instead had to provide it in writing - and the existing financial statement form provided by the ACS is four pages long - the ACS estimates that it would have taken each person an additional 20 minutes, or longer, to fill out the form, and he/she might have also required assistance from ACS personnel. Although changes to the bill could change its fiscal impact on the ACS, under the bill as currently written, the ACS would require additional personnel to help people fill out the necessary forms, since currently only the courts in Anchorage and Fairbanks have the personnel to

assist such people. The ACS understands the problem the bill is meant to address, she relayed, and so will be working with the sponsor and the PDA to come up with [legislation] that assists the audit process, thereby increasing accountability - the ACS doesn't want to be appointing legal representation to those who don't deserve it.

MS. MEADE mentioned that the bill's proposed changes could result in additional expenses and additional delays associated with providing translator services and assistance to illiterate clients. In response to a question, she clarified that the ACS is not opposed to the concept of having the required information be submitted in writing, and is instead merely concerned with the bill's potential fiscal impact on the ACS; again, the ACS would need to hire additional personnel in order to accommodate the needs of those who would be required to submit information in writing, and to verify the accuracy of that written information. Such accommodation and verification is going to take time, and the ACS would be bearing the cost of any resultant delays in the process, and thus a fiscal note from the ACS regarding HB 221 would be forthcoming.

[1:35:07 PM](#)

MS. MEADE, in response to a question, explained that the PDA has a statutory responsibility, with which it does comply, to report to the ACS when it's been appointed to represent someone whom it later learns should not have been provided with a PDA attorney.

MR. STEINER concurred, and, in response to further comments and questions, provided information about the process the PDA currently undertakes in such situations.

MS. MEADE added that the ACS does notify those seeking court-appointed counsel that if they provide false information, it would be considered perjury and they would then be subject to the penalties for that crime. She acknowledged, though, that she isn't sure how that crime would then be prosecuted. In response to a question, she clarified that the ACS would not be impacted by Section 1's proposal to add the words, "**financial resources and**" to AS 18.85.120(b), because the ACS already considers such information when determining whether to appoint counsel. The bill's anticipated fiscal impact on the ACS would result from Section 2's proposed direct court rule change to Rule 39.1(e) of the Alaska Rules of Criminal Procedure, specifically that of requiring all those seeking court-appointed counsel to complete a signed sworn financial statement subject

to the penalties for perjury. Again, currently, when a person is found to be presumptively eligible for court-appointed legal representation, there is no further investigation by the court into the person's inability to pay. She, too, noted that for purposes of determining a person's inability to pay for his/her legal representation, Alaska's court rules provide guidelines regarding financial resources and estimated legal-representation costs.

REPRESENTATIVE KELLER, having characterized HB 221 as a really good bill, indicated that the need for it has been clarified for him by Ms. Meade's remarks.

[1:46:08 PM](#)

MS. MEADE, in response to comments, reiterated that a fiscal note from the ACS would be forthcoming shortly, and mentioned that the ACS is hopeful that the bill could be changed at some point so that something other than the aforementioned four-page document could be used.

REPRESENTATIVE GRUENBERG said he supports the concept of the bill, and expressed interest in receiving a report from the ACS [if/when] the bill's proposed changes are implemented.

CHAIR GATTO relayed that HB 221 would be held over.

The committee took an at-ease from 1:51 p.m. to 1:56 p.m.

HB 293 - RIGHTS OF CRIME VICTIMS/CONTINUANCES

[1:56:21 PM](#)

CHAIR GATTO announced that the next 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." [Before the committee was the proposed committee substitute (CS) for HB 293, Version 27-LS1238\M, Gardner, 2/13/12, which had been adopted as the work draft on 2/15/12.]

[1:57:06 PM](#)

REPRESENTATIVE CHRIS TUCK, Alaska State Legislature, sponsor, explained that under Version M, Section 1 of HB 293 would alter existing AS 12.61.010(a)(2) - which pertains to the right of crime victims to be notified of court proceedings involving the

perpetrator - such that it would then in part read, "the right to be notified by the appropriate law enforcement agency or the prosecuting attorney of any request for a continuance that may substantially delay the prosecution". Section 2 would add a new paragraph (5) to AS 12.61.015(a) - which pertains to the duties of a prosecuting attorney - stipulating that he/she shall inform the victim of a pending motion that may substantially delay prosecution and inform the court of the victim's position on the motion, with proposed paragraph (5)'s subparagraphs (A)-(C) defining what would constitute a substantial delay for misdemeanors, felonies, and appeals, respectively. 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. The inclusion of the words, "if known," in Sections 3 and 4 is intended to address instances in which the victim cannot be contacted or doesn't wish to participate.

REPRESENTATIVE TUCK noted that in 1994, Section 24 was added to Article I of the Alaska State Constitution, thereby establishing the rights of crime victims, with one of those rights being that of the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process, and another of those rights being that of the right to timely disposition of the case following the arrest of the accused. House Bill 293 would codify those two constitutional rights in statute, thereby providing a means by which to uphold them. Repeated delays in the disposition of a case can prevent a crime victim from reaching emotional, physical, and financial closure; can impact the availability of witnesses, and their ability to recall important details of the crime; and can create other impediments to a successful trial. Passage of HB 293 would ensure that victims are notified of any request for a continuance that might substantially delay prosecution; would provide victims with an opportunity to voice their positions on such motions; and would ensure that judges consider those positions and how the victims could be affected before ruling on such motions.

REPRESENTATIVE TUCK, in conclusion, proffered that HB 293 addresses the constitutional right of victims to be treated with dignity, respect, and fairness during all phases of the criminal

and juvenile justice process, while also ensuring the timely disposition of their cases.

CHAIR GATTO noted that members' packets contain a letter from Karen Foster, whose daughter - Bonnie Craig - was murdered [in 1994]. He then disclosed that he is acquainted with Ms. Foster and her husband, and that he has told Ms. Foster that her comments while advocating for victims' rights made good sense.

REPRESENTATIVE TUCK mentioned that Victims for Justice (VFJ), the Office of Victims' Rights (OVR), Standing Together Against Rape (STAR), and the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) have expressed support for HB 221.

2:06:46 PM

KAREN FOSTER said she doesn't want any other Alaskan family to suffer as her family did after the murder of her daughter, characterizing what they had to endure, while the State of Alaska delayed convicting the perpetrator for five years, as a hell beyond comprehension. She then recounted details of how the case proceeded, and opined that as victims, her family's constitutional rights - to be treated with dignity, respect, and fairness during all phases of the criminal justice process, and to timely disposition of the case - were violated again and again during that five years. Many victims suffer unbearable pain, just as her family did, when those rights are tossed aside. She offered her belief that each delay in prosecution weakens and threatens a case, and that delays are used to tactical advantage by defense attorneys to accommodate themselves, rarely to accommodate those they defend, and allow ineffectual defense attorneys to waste time. Refusing to uphold the victim's right to timely disposition of the case is a refusal to address inefficiencies in the justice system, thereby allowing that system to re-victimize victims. Please support HB 293, she asked of the committee, in order to honor Alaska's victims' constitutional right to timely disposition of their case - show them the respect they deserve and stop the re-victimization.

2:17:03 PM

SUSAN SULLIVAN, Executive Director, Victims for Justice (VFJ), said the VFJ supports HB 293, which, she opined, would improve the standards regarding notification to crime victims about requests for continuances, and would reinforce the constitutional rights of crime victims. By requiring the court

to consider, at a minimum, the victim's position, HB 293 creates a mechanism by which those constitutional rights can more-consistently be realized. She noted that her organization sees continuances being granted time and time again for reasons that seem insufficient and sometimes disingenuous, without there being any consideration given to the challenges then faced by the victims. In some cases, so many continuances were granted that it delayed trial for over a decade. Such delays unjustly work to the advantage of defendants because when witnesses die or leave the state or can no longer be found, when memories fade, when evidence is lost, or when prosecutors change as a result, it can become difficult, if not impossible, to win a conviction, and thus cases end up being "plead out." Such delays unjustly work to the serious disadvantage of victims, who only want to see justice done, and to society.

MS. SULLIVAN said victims have been known to travel hundreds, and even thousands, of miles, incur great expense, and be greatly inconvenienced, only to have the proceeding delayed without advance notice and with no consideration given to how that delay impacts them; again, sometimes this occurs multiple times in a single case. For many victims, the end of the trial marks the beginning of an important part of the recovery process, and unnecessary continuances painfully delay that process. The VFJ understands that courts, appropriately, want to extend the benefit of the doubt to defendants - who, after all, are the ones whose liberty is at stake - but feel that the courts are often failing to consider the constitutional rights of the victims. House Bill 293 would put victims "in the picture," and, very importantly, would support judges who give consideration to the victims when deciding whether to grant continuances. Paraphrasing some of the rights established in Article I, Section 24, of the Alaska State Constitution, she opined that HB 293 would improve the possibility that those rights will be upheld, and would bring balance to Alaska's justice system. In conclusion, she said that the VFR's board of directors strongly supports HB 293.

REPRESENTATIVE GRUENBERG questioned whether it would be constitutional for the court to order a defendant to pay costs incurred by the victim due to a continuance having been granted.

MS. SULLIVAN, declining to address the issue of constitutionality, said it seems as if it would be appropriate for the court to order a defendant who's been found guilty to make such restitution, particularly in instances where the Violent Crimes Compensation Board (VCCB) has compensated the

victim for those costs. She noted that victims also incur unnecessary expenses associated with continuances that result simply from defendants refusing transportation to court proceedings.

[2:24:26 PM](#)

D. VICTOR KESTER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, indicated that he strongly supports HB 293, which, he opined, would strengthen Alaska's statutory victim-notification standards with regard to requests for continuances that delay prosecution in criminal trials, and would fortify the rights of crime victims, as outlined in the Alaska Rules of Criminal Procedure, to address the court, and the court's ability to consider the victim's perspective before granting a continuance. The bill's proposed changes advance and protect the vital interests of crime victims; are in alignment with their constitutional rights to be treated with dignity, respect, and fairness, and to timely disposition of their case; and would amplify their voice before the court with regard to delays in the criminal justice process. The administration of justice in Alaska is improved when crime victims' positions are given consideration by the court, he opined, and thus he believes that HB 293 would help crime victims, providing a mechanism by which their constitutional rights could be upheld; the bill stands to eliminate the unnecessary, unwarranted, or inappropriate delays in the criminal justice process that often result in undue hardship on, and emotional and psychological injury to, crime victims as they attempt to cope with the lengthy prosecution of their case. In conclusion, he reiterated his support of HB 293.

CHAIR GATTO, after ascertaining that no one else wished to speak, closed public testimony on HB 293.

CHAIR GATTO offered his belief that passing HB 293 would be the right thing to do for Alaska's crime victims.

[2:29:34 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), in response to a request, explained that the ACS has no position on HB 293, and that she doesn't anticipate the bill causing any problems.

[2:30:04 PM](#)

REPRESENTATIVE KELLER made a motion to adopt Amendment 1, labeled 27-LS1238\M.1, Gardner, 2/15/12, which read:

Page 5, line 4, following "shall":

Insert "determine if the victim has been informed of the pending motion, as provided in AS 12.61.015(a), and"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE KELLER explained that if Amendment 1 is adopted, the language of Section 4's proposed subsection (h) to Rule 45 of the Alaska Rules of Criminal Procedure would then in part read, "the court shall determine if the victim has been informed of the pending motion, as provided in AS 12.61.015(a), and consider the victim's position ...". He then characterized Amendment 1's proposed change as putting teeth in the bill - specifying that the court shall determine whether the victim-notification statutes have been complied with.

MS. MEADE, in response to a comment, said that the ACS has no objections to Amendment 1.

REPRESENTATIVE HOLMES removed her objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

[2:32:36 PM](#)

REPRESENTATIVE THOMPSON made a motion to adopt Amendment 2, labeled 27-LS1238\M.2, Gardner, 2/15/12, which read:

Page 4, line 13, following "misdemeanor, a":

Insert "cumulative"

Page 4, line 14, following "felony, a":

Insert "cumulative"

Page 4, line 15, following "a":

Insert "cumulative"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE THOMPSON ventured that Amendment 2 would address any potential loophole in Section 2's proposed definitions of

what would constitute a substantial delay for a misdemeanor, for a felony, or for an appeal, by specifying that such substantial delays could be arrived at cumulatively.

MS. MEADE relayed that the ACS doesn't have an objection to Amendment 2, and acknowledged that it could be helpful.

REPRESENTATIVE HOLMES removed her objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 2 was adopted.

[2:34:40 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed committee substitute (CS) for HB 293, Version 27-LS1238\M, Gardner, 2/13/12, as amended, out of committee with individual recommendations and the accompanying indeterminate fiscal notes. There being no objection, CSHB 293(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:35 p.m. to 2:39 p.m.

HB 262 - PASSENGER SECURITY: TRANSPORT. FACILITY

[2:39:58 PM](#)

CHAIR GATTO announced that the final 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."

[2:40:10 PM](#)

REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 262, Version 27-LS1016\I, Gardner, 2/17/12, as the working document.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[2:40:30 PM](#)

MARK SABEL, Staff, Representative Sharon Cissna, Alaska State Legislature, on behalf of the sponsor of HB 262, Representative

Cissna, in response to a request, indicated that Version I of HB 262 addresses airports, and offered his understanding that an amendment to Version I in members' packets could not be offered at this time because the legislation it mirrors is not yet properly before the House Judiciary Standing Committee; that amendment, labeled 27-LS1016\I.1, Gardner, 2/18/12, read:

Page 1, line 4, following "person":

Insert "; requiring certain airports in the state to apply for the federal security screening opt-out program; providing reimbursement to a municipality that applies for the federal security screening opt-out program; and providing for an effective date"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICATION FOR FEDERAL SECURITY SCREENING OPT-OUT PROGRAM. (a) The Department of Transportation and Public Facilities shall, by December 31, 2013, apply for the federal security screening opt-out program under 49 U.S.C. 44920 for those airports under the control of the Department of Transportation and Public Facilities that are subject to federal security screening requirements.

(b) A municipality that operates an airport in the state that is subject to federal security screening requirements shall, by December 31, 2013, apply for the federal security screening opt-out program under 49 U.S.C. 44920.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REIMBURSEMENT. Subject to appropriation, the Department of Transportation and Public Facilities shall reimburse a municipality that is required to submit an application under sec. 2(b) of this Act for the reasonable costs, as determined by the Department of Transportation and Public Facilities, of applying for the federal security screening opt-out program under 49 U.S.C. 44920. If appropriations are not sufficient fully to fund reimbursements under this section, the amount available shall be distributed pro rata among eligible municipalities.

* **Sec. 4.** Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c)."

CHAIR GATTO observed that under Version I, the references to public buildings have been removed, and thus HB 262 no longer addresses behavior occurring in public buildings, but rather only behavior occurring in transportation facilities.

REPRESENTATIVE GRUENBERG [removed his] objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Version I was before the committee.

REPRESENTATIVE GRUENBERG opined that the bill should define the term, "transportation facilities". He then noted that Version I's proposed AS 11.76.118(a)(2) no longer contains the phrase, "the genitals, anus, or female breast or otherwise creates an electronic image of", and asked why that language was removed.

[2:47:37 PM](#)

REPRESENTATIVE CHRIS TUCK, Alaska State Legislature, offered his understanding that that language was removed as being redundant, and acknowledged that the term, "transportation facilities", still needs to be defined in the bill.

CHAIR GATTO observed that a violation under Version I would still be a class A misdemeanor.

MR. SABEL, in response to comments, proffered that a possible solution to the problem of inappropriately-invasive searches by Transportation Security Administration (TSA) personnel lies within the aforementioned amendment, which, he reiterated, could not be offered at this time.

[Chair Gatto turned the gavel over to Vice Chair Thompson.]

REPRESENTATIVE PRUITT pointed out, though, that the aforementioned amendment would not provide a solution to the problem because the same security screening techniques would still have to be employed, just not by TSA employees.

VICE CHAIR THOMPSON concurred.

REPRESENTATIVE GRUENBERG offered his understanding that when Texas attempted to institute legislation similar to HB 262, the federal government threatened to close down the airport in Dallas, and said he didn't want something similar to occur in Alaska.

VICE CHAIR THOMPSON said he, too, had heard about Texas's experience.

REPRESENTATIVE PRUITT expressed concern that if legislation such as HB 262 passes, the unintended consequence could be that planes originating in Alaska would not be allowed to land at other U.S. airports.

[2:55:26 PM](#)

REPRESENTATIVE TUCK relayed that his research regarding what other countries are doing indicates that using dogs and interviewing travelers has proven to be the most effective way of securing everyone's safety at airports. Characterizing the TSA's current screening procedures as questionable with regard to actually securing the safety of air travelers, he ventured that the goal with HB 262 is to come up with a more effective but less invasive way of screening such travelers. In conclusion, he pointed out that air travelers flying into the United States from other countries are not subjected to current TSA screening procedures - only air travelers boarding a plane in the U.S. are.

[Vice Chair Thompson returned the gavel to Chair Gatto.]

REPRESENTATIVE GRUENBERG suggested that perhaps a task force could be formed to research the issues raised as a result of current TSA screening procedures.

REPRESENTATIVE PRUITT agreed, venturing that perhaps any such task force could work with other states to address those issues at the federal level.

[3:01:23 PM](#)

DIANE SCHENKER, Co-director, Alaskans' Freedom to Travel USA, offered her understanding that HB 262 is more limited than the aforementioned Texas legislation - and thus might not elicit the same type of response - and that there are plenty of alternative ways to screen air travelers without resorting to touching their genitals or relying on untested whole-body scanners, as the TSA currently does. Current TSA security-screening procedures fit the definition of sexual assault under Alaskan's statutes, she noted, and are causing Alaskans great fear. In conclusion, she opined that prohibiting TSA personnel from touching air

travelers' genitals - as HB 262 is proposing - shouldn't preclude the TSA from conducting reasonable searches.

REPRESENTATIVE GRUENBERG again suggested that a task force be formed.

MR. SABEL mentioned that the sponsor is pursuing that approach; has formed a group called, "United States for Travel Freedom"; and feels that passage of HB 262 would be a good step towards fulfilling Alaska's constitutional responsibility [to protect its citizens]. Remarking on the non-responsiveness of the federal government thus far to pleas for help, he opined that more needs to be done to correct the problem, particularly in Alaska because, according to statistics, Alaskans travel by air, and suffer trauma and abuse, more often than the residents of other states.

CHAIR GATTO expressed interest in coming up with an alternative to current TSA security-screening procedures that could work for everyone, surmising that [so-called] "trusted traveler" programs don't constitute such an alternative.

CHAIR GATTO relayed that HB 262 [Version I] would therefore be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee was adjourned at 3:08 p.m.