

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 13, 2012

9:33 a.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 343(JUD) AM

"An Act relating to disclosure of records of the Department of Health and Social Services pertaining to children in certain circumstances; and providing for an effective date."

- MOVED CSHB 343(JUD) AM OUT OF COMMITTEE

SENATE BILL NO. 198

"An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

- MOVED CSSB 198(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 234

"An Act relating to picketing or protests at a funeral."

- MOVED SCS HB 234(STA) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 255(JUD)

"An Act relating to screen devices in motor vehicles; prohibiting the driver of a motor vehicle from reading or typing

a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle; and providing for an effective date."

- MOVED CSHB 255(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 50(JUD)

"An Act relating to the purchase of alcoholic beverages at a club and to access by certain persons under 21 years of age to a club's licensed premises when alcoholic beverages are present."

- MOVED CSHB 50(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 296(JUD)

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

- MOVED CSHB 296(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 343

SHORT TITLE: DISCLOSURE OF CHILDREN'S RECORDS

SPONSOR(S): REPRESENTATIVE(S) MUNOZ

02/22/12	(H)	READ THE FIRST TIME - REFERRALS
02/22/12	(H)	HSS, JUD
03/15/12	(H)	HSS AT 3:00 PM CAPITOL 106
03/15/12	(H)	Moved CSHB 343(HSS) Out of Committee
03/15/12	(H)	MINUTE(HSS)
03/16/12	(H)	HSS RPT CS(HSS) 3DP 3NR
03/16/12	(H)	DP: SEATON, MILLER, KERTTULA
03/16/12	(H)	NR: MILLETT, HERRON, KELLER
03/26/12	(H)	JUD AT 1:00 PM CAPITOL 120
03/26/12	(H)	Heard & Held
03/26/12	(H)	MINUTE(JUD)
03/28/12	(H)	JUD AT 1:00 PM CAPITOL 120
03/28/12	(H)	Moved CSHB 343(JUD) Out of Committee
03/28/12	(H)	MINUTE(JUD)
03/30/12	(H)	JUD RPT CS(JUD) 4DP 1NR 1AM
03/30/12	(H)	DP: GRUENBERG, KELLER, PRUITT, THOMPSON
03/30/12	(H)	NR: LYNN
03/30/12	(H)	AM: HOLMES

04/06/12 (H) TRANSMITTED TO (S)
04/06/12 (H) VERSION: CSHB 343(JUD) AM
04/07/12 (S) READ THE FIRST TIME - REFERRALS
04/07/12 (S) JUD
04/11/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/11/12 (S) Heard & Held
04/11/12 (S) MINUTE(JUD)
04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

BILL: SB 198

SHORT TITLE: POLICE OFFICER PROTECTIONS/CERTIFICATION
SPONSOR(s): STATE AFFAIRS

02/17/12 (S) READ THE FIRST TIME - REFERRALS
02/17/12 (S) STA, JUD
03/01/12 (S) STA AT 9:00 AM BUTROVICH 205
03/01/12 (S) Heard & Held
03/01/12 (S) MINUTE(STA)
03/06/12 (S) STA AT 9:00 AM BUTROVICH 205
03/06/12 (S) Moved CSSB 198(STA) Out of Committee
03/06/12 (S) MINUTE(STA)
03/07/12 (S) STA RPT CS 1DP 2NR 1AM NEW TITLE
03/07/12 (S) DP: WIELECHOWSKI
03/07/12 (S) NR: MEYER, GIESSEL
03/07/12 (S) AM: PASKVAN
03/19/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/19/12 (S) Heard & Held
03/19/12 (S) MINUTE(JUD)
03/21/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/21/12 (S) Heard & Held
03/21/12 (S) MINUTE(JUD)
03/26/12 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)
03/26/12 (S) Heard & Held
03/26/12 (S) MINUTE(JUD)
03/28/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/28/12 (S) Scheduled But Not Heard
03/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/30/12 (S) Scheduled But Not Heard
04/02/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/02/12 (S) Scheduled But Not Heard
04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

BILL: HB 234

SHORT TITLE: PICKETING AND PROTESTS AT FUNERALS
SPONSOR(s): THOMAS

04/09/11 (H) READ THE FIRST TIME - REFERRALS

04/09/11 (H) MLV, JUD
 02/09/12 (H) MLV AT 1:00 PM CAPITOL 120
 02/09/12 (H) Moved Out of Committee
 02/09/12 (H) MINUTE(MLV)
 02/10/12 (H) MLV RPT 4DP 1NR 2AM
 02/10/12 (H) DP: GATTO, LYNN, THOMPSON, SADDLER
 02/10/12 (H) NR: AUSTERMAN
 02/10/12 (H) AM: MILLER, CISSNA
 02/20/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/20/12 (H) Moved Out of Committee
 02/20/12 (H) MINUTE(JUD)
 02/22/12 (H) JUD RPT 5DP 2NR
 02/22/12 (H) DP: LYNN, KELLER, THOMPSON, PRUITT,
 GATTO
 02/22/12 (H) NR: GRUENBERG, HOLMES
 03/06/12 (H) TRANSMITTED TO (S)
 03/06/12 (H) VERSION: HB 234
 03/12/12 (S) READ THE FIRST TIME - REFERRALS
 03/12/12 (S) STA, JUD
 04/05/12 (S) STA AT 9:00 AM BUTROVICH 205
 04/05/12 (S) Heard & Held
 04/05/12 (S) MINUTE(STA)
 04/10/12 (S) STA AT 9:00 AM BUTROVICH 205
 04/10/12 (S) Scheduled But Not Heard
 04/11/12 (S) STA RPT SCS 4DP 1NR NEW TITLE
 04/11/12 (S) DP: WIELECHOWSKI, KOOKESH, GIESSEL,
 MEYER
 04/11/12 (S) NR: PASKVAN
 04/11/12 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)
 04/11/12 (S) Moved SCS CSHB 234(STA) Out of
 Committee
 04/11/12 (S) MINUTE(STA)
 04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

BILL: HB 255

SHORT TITLE: READING OR TYPING MESSAGE WHILE DRIVING
 SPONSOR(S): GARA, THOMAS, GATTO, P.WILSON, GRUENBERG, TUCK

01/17/12 (H) PREFILE RELEASED 1/6/12
 01/17/12 (H) READ THE FIRST TIME - REFERRALS
 01/17/12 (H) TRA, JUD, FIN
 01/26/12 (H) TRA AT 1:00 PM CAPITOL 17
 01/26/12 (H) Moved Out of Committee
 01/26/12 (H) MINUTE(TRA)
 01/27/12 (H) TRA RPT 5DP
 01/27/12 (H) DP: FEIGE, PRUITT, PETERSEN, GRUENBERG,
 P.WILSON

02/08/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/08/12 (H) Heard & Held
 02/08/12 (H) MINUTE(JUD)
 02/10/12 (H) JUD AT 1:00 PM CAPITOL 120
 02/10/12 (H) Moved CSHB 255(JUD) Out of Committee
 02/10/12 (H) MINUTE(JUD)
 02/13/12 (H) JUD RPT CS(JUD) NT 4DP 1DNP 1NR
 02/13/12 (H) DP: GRUENBERG, HOLMES, PRUITT, GATTO
 02/13/12 (H) DNP: KELLER
 02/13/12 (H) NR: LYNN
 04/04/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/04/12 (H) Moved CSHB 255(JUD) Out of Committee
 04/04/12 (H) MINUTE(FIN)
 04/05/12 (H) FIN RPT CS(JUD) NT 6DP 2NR
 04/05/12 (H) DP: FAIRCLOUGH, GARA, DOOGAN, EDGMON,
 COSTELLO, THOMAS
 04/05/12 (H) NR: T.WILSON, STOLTZE
 04/10/12 (H) TRANSMITTED TO (S)
 04/10/12 (H) VERSION: CSHB 255(JUD)
 04/11/12 (S) READ THE FIRST TIME - REFERRALS
 04/11/12 (S) JUD
 04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

BILL: HB 50

SHORT TITLE: ACCESS TO LICENSED PREMISES

SPONSOR(S): SADDLER

01/18/11 (H) PREFILE RELEASED 1/7/11
 01/18/11 (H) READ THE FIRST TIME - REFERRALS
 01/18/11 (H) L&C, JUD
 04/04/11 (H) L&C AT 3:15 PM BARNES 124
 04/04/11 (H) Moved Out of Committee
 04/04/11 (H) MINUTE(L&C)
 04/05/11 (H) L&C RPT 5DP 2NR
 04/05/11 (H) DP: CHENAULT, THOMPSON, SADDLER,
 JOHNSON, OLSON
 04/05/11 (H) NR: HOLMES, MILLER
 03/14/12 (H) JUD AT 1:00 PM CAPITOL 120
 03/14/12 (H) Heard & Held
 03/14/12 (H) MINUTE(JUD)
 03/16/12 (H) JUD AT 1:00 PM CAPITOL 120
 03/16/12 (H) Moved CSHB 50(JUD) Out of Committee
 03/16/12 (H) MINUTE(JUD)
 03/21/12 (H) JUD RPT CS(JUD) 6DP
 03/21/12 (H) DP: LYNN, GRUENBERG, KELLER, PRUITT,
 THOMPSON, GATTO
 04/05/12 (H) TRANSMITTED TO (S)

04/05/12 (H) VERSION: CSHB 50(JUD)
04/06/12 (S) READ THE FIRST TIME - REFERRALS
04/06/12 (S) L&C, JUD
04/10/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/10/12 (S) Moved HB 50 Out of Committee
04/10/12 (S) MINUTE(L&C)
04/11/12 (S) L&C RPT 4DP 1NR
04/11/12 (S) DP: EGAN, GIESSEL, PASKVAN, MENARD
04/11/12 (S) NR: DAVIS
04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

BILL: HB 296

SHORT TITLE: ESCAPE/SERVICE ON PRISONERS/MONITORING

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
02/15/12 (H) Moved CSHB 296(JUD) Out of Committee
02/15/12 (H) MINUTE(JUD)
02/17/12 (H) JUD RPT CS(JUD) NT 4DP 1NR
02/17/12 (H) DP: LYNN, GRUENBERG, THOMPSON, GATTO
02/17/12 (H) NR: KELLER
03/21/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/21/12 (H) Scheduled But Not Heard
03/30/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/30/12 (H) Heard & Held
03/30/12 (H) MINUTE(FIN)
04/03/12 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/03/12 (H) Moved CSHB 296(JUD) Out of Committee
04/03/12 (H) MINUTE(FIN)
04/04/12 (H) FIN RPT CS(JUD) NT 4DP 5NR
04/04/12 (H) DP: FAIRCLOUGH, GARA, GUTTENBERG,
DOOGAN
04/04/12 (H) NR: T.WILSON, NEUMAN, COSTELLO, EDGMON,
STOLTZE
04/10/12 (H) TRANSMITTED TO (S)
04/10/12 (H) VERSION: CSHB 296(JUD)
04/11/12 (S) READ THE FIRST TIME - REFERRALS

04/11/12 (S) JUD
04/13/12 (S) JUD AT 8:00 AM BELTZ 105 (TSBldg)

WITNESS REGISTER

THOMAS PRESLEY, Intern
Senator Bill Wielechowski
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained the CS for SB 198 on behalf of the sponsor.

KACI SHROEDER, Staff
Representative Bill Thomas Jr.
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced HB 234 on behalf of the sponsor.

JEFFREY MITTMAN, Director
ACLU of Alaska
Anchorage, AK

POSITION STATEMENT: Raised constitutional issues with HB 234.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law (DOL)

POSITION STATEMENT: Introduced HB 296 on behalf of the sponsor, the House Judiciary Committee.

CARMEN GUTIERREZ, Deputy Commissioner
Department of Corrections (DOC)
Anchorage, AK

POSITION STATEMENT: Answered questions related to HB 296.

DOUGLAS MOODY, Attorney
Public Defender Agency
Department of Administration (DOA)
Anchorage, AK

POSITION STATEMENT: Testified that HB 296 aligns the statutes with the decision in Bridge v. State.

ACTION NARRATIVE

9:33:05 AM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 9:33 a.m. Present at the call to

order were Senators Coghill, Paskvan, Wielechowski, and Chair French.

HB 343-DISCLOSURE OF CHILDREN'S RECORDS

[9:33:28 AM](#)

CHAIR FRENCH announced the consideration of HB 343, "An Act relating to disclosure of records of the Department of Health and Social Services pertaining to children in certain circumstances; and providing for an effective date." The bill was heard previously and public testimony was taken. Finding no further questions or discussion, he asked for a motion.

[9:33:48 AM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 343, version I.A, from committee with individual recommendations and attached fiscal note(s).

[9:34:04 AM](#)

CHAIR FRENCH announced that without objection CSHB 343(JUD)am moved from the Senate Judiciary Standing Committee.

SB 198-POLICE OFFICER PROTECTIONS/CERTIFICATION

[9:34:15 AM](#)

CHAIR FRENCH announced the consideration of SB 198, "An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date." He asked for a motion to adopt the proposed committee substitute (CS).

[9:34:20 AM](#)

SENATOR WIELECHOWSKI moved to adopt CS for SB 198, labeled 27-LS1306\U, as the working document.

CHAIR FRENCH announced that without objection, version U was before the committee.

[9:34:56 AM](#)

THOMAS PRESLEY, intern to Senator Wielechowski, explained that the CS removed Section 2 relating to clear and convincing evidence.

CHAIR FRENCH reviewed a letter from the ACLU that expressed three concerns. The primary concern was addressed by removing Section 2. Another concern related to the confidentiality provision in what is now Section 5. As currently drafted, confidentiality is so tight a police officer who is a bad actor would be insulated from accountability for his or her actions. For example, a woman who was assaulted by an unknown police officer would be unable to even look at a photo array of the officers on duty when she was assaulted.

He directed attention to page 3, lines 18 and 20. Both paragraph (1) and (2) say a police officer's information is confidential unless the officer has been lawfully arrested. He suggested removing the terms "lawfully arrested" in both instances and replace it with the terms "under investigation."

SENATOR WIELECHOWSKI agreed that was reasonable.

[9:36:50 AM](#)

CHAIR FRENCH moved Amendment 1.

AMENDMENT 1

Page 3, line 18:
Delete "lawfully arrested"
Insert "under investigation"

Page 3, line 20:
Delete "lawfully arrested"
Insert "under investigation"

CHAIR FRENCH found objection and announced Amendment 1 is adopted.

He noted that the ACLU also expressed concern about the weight given to prior findings of fact, but his view was that it was a nuanced issue about which reasonable minds could differ.

SENATOR WIELECHOWSKI explained that the intent was to give substantial weight to the finding when the arbitrators and the courts find that a disciplinary action was not warranted.

SENATOR COGHILL expressed reservations and asked the sponsor to remind him why it was the right thing to do to give an officer the ability to refuse to take a lie detector test.

SENATOR WIELECHOWSKI explained that the basis for the exclusion is that several court cases questioned the validity of polygraph tests.

MR. PRESLEY added that at one point the Supreme Court decided to allow individual jurisdictions to use their discretion on how to use polygraph information. This gave credence to the idea that the tests were not necessarily unreliable, but certainly quasi-scientific.

SENATOR COGHILL said he continued to have reservations, but realized that a refusal could actually be incriminating.

CHAIR FRENCH found no further questions or discussion and asked for a motion.

[9:40:58 AM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 198, version U [as amended], from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 198(JUD) moved from the Senate Judiciary Standing Committee.

[9:41:15 AM](#)

At ease

HB 234-PICKETING AND PROTESTS AT FUNERALS

[9:42:55 AM](#)

CHAIR FRENCH announced the consideration of HB 234, "An Act relating to picketing or protests at a funeral." He asked for a motion to bring the bill before the committee.

SENATOR WIELECHOWSKI motioned to bring HB 234 before the committee.

[9:43:24 AM](#)

KACI SHROEDER, staff to Representative Bill Thomas Jr., sponsor of HB 234, introduced HB 234 on behalf of the sponsor. She stated that in the last several years it has become popular to use funerals as a means of expressing political speech. The sponsor believes it is necessary to balance that right with the

right of a family to grieve without disruption. This will bring Alaska in line with forty six states that have adopted similar legislation by establishing a 150-foot buffer zone around a funeral service.

A person commits the crime of disorderly conduct if they knowingly picket with reckless disregard that it occurs inside a cemetery, church or other facility or within 150 feet of the outer boundary of that facility. In addition, the picketing cannot occur an hour before, during, or after the funeral. Picketing means an act that actually disrupts or disturbs the funeral.

[9:44:43 AM](#)

JEFFREY MITTMAN, Director, ACLU of Alaska, said he was testifying on HB 234 to highlight its constitutional issues. He noted that he submitted written testimony. He said the first concern is that the current draft targets speech that is "directed towards a funeral," which is not content neutral. He suggested revising the phrase to say "conduct that interferes with a funeral." This would cover noise that is so loud it disrupts the occasion and conduct that is so close by that it interferes with ingress and egress. He suggested crafting the bill more narrowly to outlaw the worst conduct.

[9:46:39 AM](#)

CHAIR FRENCH asked if under his proposal, mourners would be able to hear the voices of the protesters.

MR. MITTMAN replied they would potentially be exposed to fleeting noise that was not excessively loud when entering and leaving. That would probably be permissible as the courts give more leeway to protecting speech in the public sphere.

[9:47:58 AM](#)

CHAIR FRENCH asked if mourners at a graveside would be able to hear the voices of the protesters while the funeral service was being conducted.

MR. MITTMAN said disrupting a graveside service would be covered because the conduct - the level of noise - was interfering. That would be a reasonable time, place, and manner restriction.

[9:48:51 AM](#)

CHAIR FRENCH closed public testimony and delivered a short speech on the First Amendment. He said despite the black and white language in the constitution, most people realize they

have to make some accommodation in the world. Holding someone responsible for yelling "fire" in a crowded theatre is an example of such an accommodation; most people recognize that as wrong. He opined that HB 234 makes a very fair accommodation in the world.

SENATOR COGHILL asked if the 150-foot buffer was defensible.

MS. SCHROEDER said it falls within the boundary of what has been held constitutional in other states, and would allow the picketers to deliver their message.

CHAIR FRENCH reviewed the March 10, 2011 memo from Legislative Legal that points out that Chief Justice Roberts of the U.S. Supreme Court has, where a law was content neutral, allowed time, place, and manner restrictions and regulation of public speech. The memo also points out that a state court rejected a 300-foot buffer zone for picketing and approved a 36-foot buffer zone.

[9:52:55 AM](#)

SENATOR COGHILL noted that the bill amends the disorderly conduct statute, and asked if the action was the content.

CHAIR FRENCH replied the bill says picketing is content neutral.

SENATOR COGHILL asked if it wouldn't fall out to the disorderly part of the conduct rather than the picketing specifically.

CHAIR FRENCH opined that the best parallel in this statute is paragraph (5) on page 2, lines 22-23. It's very close to the fighting words doctrine, which is saying hateful words to someone's face and provoking a fight.

[9:54:25 AM](#)

SENATOR WIELECHOWSKI moved to report the Senate CS for HB 234, version T, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection SCS HB 234(STA) moved from the Senate Judiciary Standing Committee.

At ease from 9:54 a.m. to 9:55 a.m.

HB 255-READING OR TYPING MESSAGE WHILE DRIVING

[9:55:37 AM](#)

CHAIR FRENCH announced the consideration of HB 255, "An Act relating to screen devices in motor vehicles; prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle; and providing for an effective date." He asked for a motion to bring the bill before the committee.

SENATOR WIELECHOWSKI motioned to bring HB 255 before the committee.

9:56:05 AM

REPRESENTATIVE LES GARA, sponsor of HB 255, stated that in 2008 the Legislature passed a bill that was thought to prohibit texting while driving. However, in the last year several judges have said the bill wasn't written with enough specificity to include texting. HB 255 fixes the problem by reinstating the ban on texting, and extending it to include other nonvoice communication devices that may come along as technology evolves.

The six co-sponsors believe it is important to have a texting law on the books because texting while driving is more dangerous than any other type of cellphone conduct. Information in the packet shows that a driver who texts a 4.6 second message will travel the length of a football field without paying attention to the road. A car and driver study indicates that texting while driving is more dangerous than drunk driving. According to the National Conference of State Legislatures, a driver who is texting is 20 times more likely to cause a crash or near collision compared to times when that driver is not texting. The AAA Foundation on Traffic Safety found that while one-third of people text while they drive, ninety-four percent of the respondents said they recognize that texting is dangerous. The public recognizes this behavior is dangerous and supports regulation, he said. He described two texting-related accidents; one was in Fairbanks and the other in Anchorage.

A person who violates this law is guilty of a class A misdemeanor, although drivers with a clean record have generally been sentenced to community service or a fine rather than jail time. However, a driver who was texting and driving drunk was sentenced to the mandatory three days in jail for drunk driving. Another person failed to appear in court two times and was sentenced to one day in jail. The original bill provided that a person who violates this law and causes injury to another person is guilty of the next level of crime. The reasoning was that it is close to premeditated for a driver to enter a car knowing he

or she will engage in dangerous behavior. HB 255 maintains that sentencing scheme.

The original bill made an accommodation for personnel in emergency vehicles to use display devices that are attached to the dashboard. To accommodate the prevalence of wireless devices, that provision was amended to clarify that police, fire, or emergency medical personnel may use a screen device that is attached or not "if the user reasonably believes the information on the device is necessary to respond to a health, safety, or criminal matter."

REPRESENTATIVE GARA said the only criticism he's heard is that there are other behaviors that distract drivers like eating, drinking coffee or yelling at the kids. He said he didn't know how to write a law to say when it is and is not okay to do those things, but he did know how to write a law that says you can't text while driving. He noted that the founder of Mothers Against Drunk Driving (MADD) has taken on texting and cellphones as her new issue. He said it's not possible to address cellphone use this session due to diverging opinions among legislators, but it is possible to address texting because people can agree that it is dangerous.

REPRESENTATIVE GARA said he's been asked why this isn't prosecuted under the negligent driving or distracted driving statutes, and the answer relates to the statistic that shows that one-third of drivers text while driving. Those people will be on the jury, which would make it very difficult to get the unanimity needed for a conviction. If the jury instruction says, "Was the person texting while driving?" the jury will have to answer yes and the defendant will be convicted. He concluded that a texting law is needed and most states already have one.

[10:05:43 AM](#)

SENATOR WIELECHOWSKI reviewed the language in Section 2, page 1, line 14 through page 2, line 2, and observed that the new language appears to include not only texting but also communicating while a screen device is operating.

REPRESENTATIVE GARA clarified that was the name of the crime, not the elements. The elements of the crime are on page 2, lines 3-11. Paragraph (1) is the existing statute and paragraph (2) contains the new language. He noted that the word "computer" was inserted because the Chair reported an incident of someone typing on a laptop while driving.

CHAIR FRENCH recounted the incident and said, "I flipped my lid."

REPRESENTATIVE GARA read the new language in paragraph (2).

(2) the person is reading or typing a text message or other nonvoice message or communication on a cellular telephone, personal data assistant, computer, or any other similar means capable of providing a visual display that is in the view of the driver in a normal driving position while the vehicle is in motion and while the person is driving.

SENATOR WIELECHOWSKI asked if surfing the Internet while driving would be a crime under this language.

REPRESENTATIVE GARA said yes; to surf the Internet a person has to push the keys and that is typing.

SENATOR WIELECHOWSKI continued to question whether the new language would cover surfing the Internet.

REPRESENTATIVE GARA responded that the person is reading.

SENATOR WIELECHOWSKI asked if reading applies to text messaging only.

REPRESENTATIVE GARA said reading applies to anything on the computer or personal data device. "We don't want you reading while you're driving," he said.

SENATOR WIELECHOWSKI said he wasn't disagreeing, but he didn't necessarily interpret the language that way. "It'll be good to get some language on the record about what we're outlawing here," he said.

REPRESENTATIVE GARA said reading is probably well covered in the first section, which is current law, but it's also intended to be covered in the new section. "It's just reading a text or other nonvoice message or communication and that's what you're doing when you're surfing the net."

[10:09:19 AM](#)

SENATOR WIELECHOWSKI posed a hypothetical situation of a driver getting lost and typing an address into map quest.

REPRESENTATIVE GARA said that would be fine, and added that the original bill included a list of exceptions.

SENATOR WIELECHOWSKI again asked about typing in an address.

REPRESENTATIVE GARA said it does not apply to equipment that displays navigational or global positioning or maps. It would be okay to type in an address on an iPhone.

SENATOR WIELECHOWSKI asked about looking up a name on a cellphone.

REPRESENTATIVE GARA said that's fine and even unlocking a cellphone is acceptable. He directed attention to page 2, line 18. "It is not a crime if you're using your portable cellular telephones or personal data assistants being used for voice communication..." He opined that typing in the code and phone number is for a voice communication, and all forms of cellphone talking is exempt with the understanding that other bills address that issue.

CHAIR FRENCH noted that Lieutenant Dial with the Department of Public Safety and Doug Moody with the Public Defender Agency were available to answer questions.

SENATOR PASKVAN warned that it may not be a crime to drive 60 miles an hour and look at a navigational or global positioning device, but a person will be held responsible if he or she does that and hurts someone. There's a clear distinction between it not being a crime and the responsibility for reasonable and acceptable conduct while driving, he stated.

REPRESENTATIVE GARA agreed that a person would still fall under the negligent and reckless driving statutes for reckless use of those exceptions.

CHAIR FRENCH confirmed that reckless driving is still a crime in Alaska and noted that he was reviewing the elements of that crime.

SENATOR PASKVAN observed that those were criminal statutes and he was referring to civil liability. He emphasized that a person will be held responsible if he or she kills someone while driving. Taking your eyes off the road to look at map quest because you're lost will not be an excuse. Some people think it's acceptable to drive 60 miles an hour and hit someone, but they're wrong. They will be held responsible.

REPRESENTATIVE GARA responded that the sponsors have that same understanding. The bill does not exempt civil liability for negligent conduct. If a person is negligent and hurts somebody, the rule is "You broke it, you fix it."

[10:13:30 AM](#)

SENATOR COGHILL asked if the purpose of the phrase "any other similar means" on page 2, line 9, is to accommodate future technology.

REPRESENTATIVE GARA said yes; today an iPhone is a personal data assistant but the iPhone 5 may be called something different. The intent is that if it's got a screen and a person can type on it and read it, then it's a similar means.

SENATOR COGHILL observed that it's a visual distraction, and the bill is trying to say that visual distractions, excluding the exceptions, will generally be a primary crime.

REPRESENTATIVE GARA said yes.

[10:14:35 AM](#)

SENATOR WIELECHOWSKI asked if using Siri (Speech Interpretation and Recognition Interface) would be a violation.

REPRESENTATIVE GARA replied it is not a crime to voice text, and the Department of Law has given assurance that it will not prosecute those cases where it isn't possible to tell whether the voice text application was open, because that's not a crime beyond a reasonable doubt. This will change as technology advances, but that capability isn't available today.

SENATOR WIELECHOWSKI asked if a "normal driving position" included turning to look at an iPhone that's located on the passenger seat. "I would think that we would want that covered, but it's just clarifying for the record," he said.

[10:16:51 AM](#)

REPRESENTATIVE GARA explained that the terminology in paragraph (2) prohibits texting or using other nonvoice messaging while driving. It is intended to disallow the argument that the driver had one eye on the road. Normal driving position means the driver is driving and his or her full attention is on the road.

CHAIR FRENCH closed public testimony. Finding no further committee discussion, he asked the will of the committee.

[10:18:32 AM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 255, version T, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSHB 255(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 10:18 a.m. to 10:20 a.m.

HB 50-ACCESS TO LICENSED PREMISES

[10:20:10 AM](#)

CHAIR FRENCH announced the consideration of HB 50, "An Act relating to the purchase of alcoholic beverages at a club and to access by certain persons under 21 years of age to a club's licensed premises when alcoholic beverages are present."

[10:20:21 AM](#)

REPRESENTATIVE DAN SADDLER, sponsor of HB 50, said the bill is about access to patriotic clubs that may be licensed premises, but is not intended to allow minors to consume alcohol in these establishments. HB 50 has two basic elements. Section 1 would make it easier for service members and their spouses who are over age 21 to visit licensed premises such as an American Legion or VFW hall at the club's invitation.

Section 2 would allow service members and their spouses who are under age 21, and have appropriate identification, to enter licensed premises of patriotic clubs if they are members or guests of a member. He noted that if the host leaves the premises, the minors must also leave. He explained that patriotic clubs are often used for off-base meetings of military units and to exclude those who are under age 21 can negatively affect unit cohesion and morale.

REPRESENTATIVE SADDLER reiterated that HB 50 does not permit underage drinking. It simply clarifies that military personnel and their spouses who are over age 21 do not have to wait for a special occasion to visit a patriot club, and that military personnel and their spouses who are under age 21 can visit, but not consume alcohol, as long as they are members or guests. He noted that the packet contained documentations of support.

[10:22:28 AM](#)

CHAIR FRENCH asked if the bill had any opposition.

REPRESENTATIVE SADDLER said no.

CHAIR FRENCH observed that the bill addresses only the narrow category of patriotic clubs, not licensed premises in general.

REPRESENTATIVE SADDLER [nodded.]

[10:23:04 AM](#)

CHAIR FRENCH closed public testimony and reviewed the supporting documentation in the packet. Finding no further committee discussion, he asked the will of the committee.

[10:23:39 AM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 55 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSHB 55(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 10:23 a.m. to 10:24 a.m.

HB 296-ESCAPE/SERVICE ON PRISONERS/MONITORING

[10:24:07 AM](#)

CHAIR FRENCH announced the consideration of HB 296, "An Act relating to service of process on prisoners; relating to the crime of escape; 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; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date." He asked for a motion to bring the bill before the committee.

SENATOR WIELECHOWSKI motioned to bring CS for HB 296(JUD) before the committee.

[10:25:13 AM](#)

ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), introduced HB 296 on behalf of the sponsor, the House Judiciary Committee. She explained that the bill addresses an issue that arose in the court case Bridge v. State. Mr. Bridge walked away from the unsecured halfway house, Northstar Center, while awaiting trial on a class B misdemeanor charge. The Alaska Court of Appeals held that Northstar Center did not qualify as a correctional center and that the class B felony offense of escape in the

second degree should not apply in that circumstance. HB 296 reflects that decision and provides that a person charged with a misdemeanor who walks away from a non-secure facility be subject to prosecution of a misdemeanor offense.

She said the bill defines "secure correctional facility" only for purposes of the escape law. She noted two other changes. Section 1 cross references the definition of correctional facility in Title 33 and clarifies that the superintendent can deliver process to a person who is incarcerated. Section 4 deletes the repeal of a provision relating to electronic monitoring of gang members under certain circumstances.

[10:29:17 AM](#)

CHAIR FRENCH asked what the bill does to tie the definition of "correctional facility" under AS 09.05.050 to the definition under AS 33.30.901.

MS. CARPENETTI replied it's strictly for civil process; it clarifies that a superintendent of a jail can accept service and deliver it to an inmate.

CHAIR FRENCH asked if prisoners in Alaska are housed in facilities other than prisons, jails, halfway houses, and by electronic monitoring.

MS. CARPENETTI deferred to Ms. Gutierrez.

[10:31:17 AM](#)

CARMEN GUTIERREZ, Deputy Commissioner, Department of Corrections (DOC), confirmed that those were the forms of detention and that the bill addresses prisons and jails.

CHAIR FRENCH observed that the bill clarifies that it's a class B felony to escape from a prison or jail while under official detention for a misdemeanor.

MS. GUTIERREZ confirmed that under this provision a misdemeanant escaping from a secure correctional facility would be prosecuted for a class B felony offense. A felon residing in a community residential center who walks away will be prosecuted for a class C felony offense. She explained that the bill intends to align the statutory language with Bridge v. State; a misdemeanant offender who walks away from a community residential center will be prosecuted as a class A misdemeanor.

[10:33:36 AM](#)

CHAIR FRENCH asked Ms. Carpeneti to repeat the explanation of repealing the repealer in Section 4.

MS. CARPENETTI explained that legislation was enacted in 2007 to allow electronic monitoring of gang members under certain circumstances. That bill had a self-enforcing repealer section dated 12/31/2012. The assumption is that the repealer is being repealed because that method of control has been helpful.

[10:35:07 AM](#)

SENATOR WIELECHOWSKI reported that that was his bill and the repealer was added to provide an opportunity to test the method. He said he was pleased that it was being put back in.

CHAIR FRENCH asked what the Department of Correction's experience has been with electronic monitoring of gang members.

MS. GUTIERREZ replied it has been a beneficial tool.

CHAIR FRENCH asked if the committee should be aware of any particular instance of a gang member on electronic monitoring.

MS. GUTIERREZ said no; DOC uses electronic monitoring as an added control method of monitoring gang members who have been released on probation after having served their sentence.

[10:36:18 AM](#)

DOUGLAS MOODY, Attorney, Public Defender Agency, Department of Administration (DOA), offered to answer questions.

CHAIR FRENCH asked if HB 296 fixes the problems that arose in Bridge v. State.

MR. MOODY said yes; it aligns the current statutory scheme with the decision.

[10:37:16 AM](#)

CHAIR FRENCH closed public testimony and asked the will of the committee.

[10:37:20 AM](#)

SENATOR WIELECHOWSKI moved to report CS for HB 296 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSHB 296(JUD) moved from the Senate Judiciary Standing Committee.

10:37:30 AM

There being no further business to come before the committee,
Chair French adjourned the meeting at 10:37 p.m.