

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

February 12, 2014  
1:10 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Gabrielle LeDoux  
Representative Charisse Millett  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 218

"An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee."

- HEARD & HELD

HOUSE BILL NO. 255

"An Act relating to unmanned aircraft systems; and relating to images captured by an unmanned aircraft system."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 218

SHORT TITLE: PENALTY: ASSAULT ON CORRECTIONAL EMPLOYEE

SPONSOR(s): REPRESENTATIVE(s) CHENAULT, MILLETT, HERRON, LYNN

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS

01/21/14 (H) JUD  
02/12/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 255

SHORT TITLE: UNMANNED AIRCRAFT SYSTEMS

SPONSOR(s): REPRESENTATIVE(s) HUGHES, HIGGINS, THOMPSON, PRUITT

01/21/14 (H) PREFILE RELEASED 1/17/14  
01/21/14 (H) READ THE FIRST TIME - REFERRALS  
01/21/14 (H) STA, JUD  
01/28/14 (H) STA AT 8:00 AM CAPITOL 106  
01/28/14 (H) Heard & Held  
01/28/14 (H) MINUTE(STA)  
02/04/14 (H) STA AT 8:00 AM CAPITOL 106  
02/04/14 (H) Moved CSHB 255(STA) Out of Committee  
02/04/14 (H) MINUTE(STA)  
02/05/14 (H) STA RPT CS(STA) 3DP 4NR  
02/05/14 (H) DP: ISAACSON, KREISS-TOMKINS, HUGHES  
02/05/14 (H) NR: MILLETT, GATTIS, KELLER, LYNN  
02/12/14 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE MIKE CHENAULT

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Testified as one of the joint prime sponsors of HB 218.

RICHARD SVOBODNY, Deputy Attorney General

Criminal Division

Office of the Attorney General

Department of Law

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 218.

DOUGLAS MOODY, Deputy Public Defender

Criminal Division

Public Defender Agency

Department of Administration

Anchorage, Alaska

**POSITION STATEMENT:** Advised the Public Defender Agency would like to give testimony at a later date.

RONALD TAYLOR, Deputy Commissioner

Office of the Commissioner

Alaska Department of Corrections

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 218.

TOM WRIGHT, Staff  
Representative Mike Chenault  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Spoke to research of HB 218.

REPRESENTATIVE SHELLY HUGHES  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as one of the joint prime sponsors of HB 255.

GINGER BLAISDELL, Staff  
Representative Shelley Hughes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 255, testified regarding her research of unmanned aircraft systems.

LIEUTENANT STEVE ADAMS  
Statewide Search and Rescue Coordinator  
Alaska State Troopers  
Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 255.

DEAN DAWSON, Statewide Archivist  
Statewide Archives and Museums  
Department of Education  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 255 testified regarding retention of images.

#### **ACTION NARRATIVE**

[1:10:27 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives Foster, LeDoux, Millet, Pruitt, Gruenberg and Keller were present at the call to order. Representative Lynn arrived as the meeting was in progress.

#### **HB 218-PENALTY: ASSAULT ON CORRECTIONAL EMPLOYEE**

1:11:33 PM

CHAIR KELLER announced the first order of business would be House Bill 218, "An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee." He noted an amendment offered by the Department of Law.

1:12:23 PM

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, speaking as one of the joint prime sponsors of HB 218, explained that the bill was introduced as a result of discussions with a correctional officer at the Spring Creek Correctional Center who had been assaulted. He noted that correctional officers are included in statutes setting the penalties for assault on certain uniformed officials, except in AS 12.55.155(c)(31), that covers the aggravating factor of misdemeanors. The aggravating factor in this statute allows a judge to impose a sentence above the presumptive range if the defendant has five previous for convictions class A misdemeanors. Convictions for two crimes that are part of a single criminal episode are counted as one prior conviction; however, current law provides that prior convictions for resisting arrest and/or a misdemeanor while attempting escape and/or assault on a police officer would each count as a prior conviction even though they were part of the same criminal episode. House Bill 218 extends this extra protection of counting prior for correctional officers by counting prior convictions for similar crimes committed against correctional officers. He noted his support for including the amendment included in the committee packet.

1:16:02 PM

REPRESENTATIVE MILLETT moved that the committee adopt Amendment 1, labelled 28-LS0941\A.2, Strasbaugh, 2/11/14, which read:

Page 1, line 3, following "**employee**":

**Insert "; providing that deportation is not a proper factor for referral of a case to a three-judge panel for sentencing for a felony; and providing for an effective date"**

Page 1, following line 4:

Insert a new bill section to read:

"\* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT FOR SECTIONS 3 AND 4 OF THIS ACT. It is the intent of the legislature that AS 12.55.165(d), added by sec. 3 of this Act, and AS 12.55.175(g), added by sec. 4 of this Act, overturn the decision of the Alaska Court of Appeals in State v. Silvera, 309 P.3d 1277 (Alaska Ct. App. 2013), and the Alaska Supreme Court in Dale v. State, 626 P.2d 1062 (Alaska 1980) to the extent that the decisions hold that the risk of deportation may be considered a basis for referral of a felony sentencing to a three-judge panel."

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 6, following line 4:

Insert new bill sections to read:

"\* **Sec. 3.** AS 12.55.165 is amended by adding a new subsection to read:

(d) A court may not refer a case to a three-judge panel under (a) of this section if the request for referral is based, in whole or in part, on the claim that a sentence within the presumptive range may result in the classification of the defendant as deportable under federal immigration law or that collateral consequences may or will result if the defendant is classified as deportable.

\* **Sec. 4.** AS 12.55.175 is amended by adding a new subsection to read:

(g) A defendant being sentenced under AS 12.55.125(c), (d), (e) or (i) may not establish, nor may a three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposing a sentence within the presumptive range based, in whole or in part, on the claim that the sentence may result in the classification of the defendant as deportable under federal immigration law or that collateral consequences may or will result if the defendant is classified as deportable.

\* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Section 2 of this Act applies to offenses committed on or after the effective date of this Act.

(b) Sections 3 and 4 of this Act apply to offenses committed before, on, or after the effective date of this Act if the sentence is imposed on or after the effective date of this Act.

\* **Sec. 6.** This Act takes effect July 1, 2014."

REPRESENTATIVE GRUENBERG objected for purposes of discussion.

[1:16:35 PM](#)

REPRESENTATIVE MILLETT explained that Amendment 1 includes a title change, prior to Section 1 is the insertion of a new section of legislative intent, and a new subsection of Section 3 specifying that a mitigating factor cannot be a reason to have a three-judge panel under this section of law. She requested that Mr. Svobody speak to the changes made in Sections 4 and 5.

[1:18:04 PM](#)

The committee took a brief at-ease.  
[Chair Keller passed the gavel to Representative Pruitt.]

[1:19:18 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Criminal Division Department of Law, stated that Amendment 1 also provides that a trial court could not send a case to a three-judge panel to go below the presumptive minimums on the sentence based upon the probabilities of deportation. However, if a case does go before a three-judge panel, the judges cannot make a decision based upon the probabilities of deportation. Mr. Svobodny agreed with Representative Millett that deportation could not be used as a mitigating factor for a trial court to place the case before a three-judge panel.

[1:20:47 PM](#)

REPRESENTATIVE LEDOUX remarked she had mixed feelings about this issue as she has seen families torn apart as a result of deportation. On the other hand, it does not seem fair that an individual could commit a crime, particularly a violent crime, and receive a lesser sentence because he/she does not have citizenship. She suggested that if the federal government is deporting individuals who should not be deported, then the

protest should be with the federal government and not with the Alaska's presumptive sentencing law.

[1:21:51 PM](#)

REPRESENTATIVE GRUENBERG stated he would vigorously oppose Amendment 1 for the following reasons. First, attempting to change federal immigration law is impossible. Second, it does not give defendants a break under state law as it is only non-citizens that face the additional punishment of being deported. Third, this legislation divests the three-judge panel of jurisdiction to decide the issue. Amendment 1 will result in these individuals not even receiving a hearing.

[1:23:43 PM](#)

MR. SVOBODNY, speaking to Representative LeDoux, said that the question is not between people who are non-citizens and people who gain citizenship, although they would be treated differently. The matter is regarding different sentences for people who do not have citizenship versus people who were born here, which the Department of Law deems to be fundamentally unfair. He acknowledged there are many collateral consequences to being convicted of a crime. For instance, someone three days from being vested in their retirement system goes to jail; they will not become vested in that retirement system. A felon not allowed to vote in an election where that one vote would have changed the outcome of the election is a collateral consequence. Amendment 1 attempts to treat people who likely have committed the same crime equally. Although Representative Gruenberg is correct that federal law will not be changed, the point is that those defendants with the possibility of being deported in the future get a break under current law that those born in the state do not.

[1:26:29 PM](#)

REPRESENTATIVE MILLETT pointed out that in State v. Silvera and State v. Perez the sentences were lessened due to the possibility of deportation. The option of a three-judge panel would not be offered to a U.S. citizen convicted of a crime. She opined that to allow a non-U.S. citizen the ability to obtain a lesser sentence than someone who is a U. S. citizen is discriminatory. She further opined that it does not matter whether one was born in another country, the crime was committed in the U.S. and there is the possibility that a non-U.S. citizen could be deported prior to the conviction of a felony. For

instance, non-citizens could be deported prior to the conviction of a felony. For instance, non-citizens can be deported when caught without a green card. Representative Millett conveyed her belief that Representative Gruenberg is wrong in his interpretation of Amendment 1, the intent of which is to make the judicial system fair to everyone and allow everyone the same opportunities whether they are from this country or not. Representative Millett said she supports Amendment 1 fully and believes it would make the judicial system fair and equitable for all people living in the U.S., especially those living in Alaska.

[1:29:25 PM](#)

REPRESENTATIVE PRUITT opined that the important aspect of this discussion is that deportation should not be a factor. All individuals who have committed a crime must be treated on the same level; the state cannot create two classes of people, citizens and non-citizens, he stated.

[1:30:10 PM](#)

REPRESENTATIVE LEDOUX inquired as to mitigating circumstances other than deportation that a three-judge panel might consider.

MR. SVOBODNY, before responding to Representative LeDoux, clarified that the legislature has chosen to establish written factors that would aggravate the sentencing, which are located in the first part of this bill. He further clarified that there is a list of mitigating factors listed in the statute as well. He said it is an extraordinary remedy to place a defendant before a three-judge panel, as it is not a written or aggravating or mitigating factor. In response to Representative LeDoux, he advised that a serious type of offense when an individual is coerced by another person [to commit a crime] would be a mitigating factor, which would reduce a sentence.

[1:31:51 PM](#)

REPRESENTATIVE LEDOUX asked whether there are any other circumstances in which case would be sent to a three-judge panel to consider other collateral consequences of an incarceration.

[1:32:28 PM](#)

MR. SVOBODNY presuming it was a presumptive sentence, advised that the court had the discretion to use other types of factors,

such as allowing a defendant to serve time every other week in order to support the family or serving six months instead of eight months in order to be out of jail in time for the fishing season. When a defendant is within the range, the court can consider [collateral consequences] but it must apply the factors the legislature has established. The legislature set goals for sentencing, including rehabilitation, deterring people from committing other crimes, deterring an individual in certain instances, to isolate a dangerous offender, and aiding victims in receiving restitution. However, the legislature has not specified deportation as a factor.

[1:34:09 PM](#)

REPRESENTATIVE LEDOUX queried whether there are any instances [of collateral consequences] that would mandate or allow a case to go before a three-judge panel.

[1:34:43 PM](#)

MR. SVOBODNY replied he could not think of an instance because it is the non-statutory mitigating factors that place a defendant before a three-judge panel. When a mitigating factor is set out in statute, the trial judge can reduce the sentence. Non-statutory factors are all established by case law that is based upon a specific circumstance. The Court of Appeals and three-judge panels have approved "extraordinary potential for rehabilitation" and "developmental immaturity," as mitigating factors.

[1:36:11 PM](#)

REPRESENTATIVE GRUENBERG expressed the need to hear from the immigration bar, specifically Ms. Margaret Stock, recipient of the MacArthur Genius Award, an immigration lawyer, and previous professor at West Point, as well as the defense bar. Representative Gruenberg related his understanding that if there is an aggravator or mitigator in the statutory list of factors, the trial judge has the authority to apply the factors. However, if it is not listed in statute, the trial judge only has the authority to refer the case to a three-judge panel, which is a very unusual circumstance. The law doesn't say one way or the other but leaves it was up to the three-judge court subject to review. Amendment 1, he opined, eliminates the possibility [of a three-judge panel review] entirely. Under the current law there is a right to a fair hearing. Certainly, the judges would determine when a defendant did not deserve a lesser

sentence, but Amendment 1 does not allow the defendant who deserves a lesser sentence to have a shot at the three-judge panel, he opined. Representative Gruenberg requested the committee not make up its mind today and allow both sides to be heard.

[1:40:29 PM](#)

REPRESENTATIVE CHENAULT reminded the committee that earlier Chair Keller stated it was not his intention to move the bill out of committee today, which should give people an opportunity to speak.

[1:41:33 PM](#)

REPRESENTATIVE GRUENBERG stated that he does support the unamended bill, which he hoped would make its way through the process.

[1:42:06 PM](#)

REPRESENTATIVE MILLETT suggested Representative Gruenberg should review the case law for defendants who used deportation as an aggravating and mitigating factor in order to make their case before a three-judge panel. Creating a special class of people because they are not U.S. citizens and allowing them to receive a lesser sentence based upon deportation is distinctly wrong, she opined. She further opined that is not what the justice system is for or the constitution intended.

[1:44:57 PM](#)

REPRESENTATIVE GRUENBERG described legislators as judges who hand out decisions each time a bill or amendment is voted upon. Therefore, he expressed the desire for the committee to keep an open mind.

[1:46:29 PM](#)

REPRESENTATIVE PRUITT removed his objection to Amendment 1. He then related his understanding that Chair Keller wanted to move forward with adopting the amendment as the bill will come before the committee for a larger discussion.

REPRESENTATIVE GRUENBERG objected, adding that he did not believe the committee should vote as he was not in favor of a

vote being taken on the amendment until the committee hears from as it would be unfair.

[1:47:10 PM](#)

The committee took a brief at-ease.

[1:48:59 PM](#)

REPRESENTATIVE LEDOUX disclosed she was uncertain as to her position on Amendment 1 and would prefer hearing from Ms. Stock and anyone else who wished to testify about [deportation] before considering the amendment.

[1:49:15 PM](#)

REPRESENTATIVE MILLETT stated that if Amendment 1 is adopted today or later and the committee then determined it to be unfair, she would be the first person to remove the amendment. Representative Millet opined that the bill is better with the inclusion of Amend 1 and she will vote in favor of its adoption.

[1:50:25 PM](#)

REPRESENTATIVE PRUITT advised that procedurally the current motion before the committee is regarding the adoption of Amendment 1, a motion that would have to be removed by the sponsor of the amendment.

REPRESENTATIVE GRUENBERG moved to table Amendment 1 until the next time the bill is heard, which he established is a procedural precedential motion.

REPRESENTATIVE PRUITT stated the committee could table the amendment, as well.

[1:51:08 PM](#)

The committee took a brief at-ease.

[1:51:15 PM](#)

REPRESENTATIVE GRUENBERG offered to withdraw his motion to table Amendment 1 if Representative Pruitt would make the appropriate ruling.

REPRESENTATIVE PRUITT related that he did not have a problem holding Amendment 1 until a future time when he is not the acting chair. However, if there is a desire from the committee to go forward with Amendment 1 he would not stop the vote. He then announced his support of Representative Millett's desire for Amendment 1.

REPRESENTATIVE MILLETT interjected her understanding that the committee must first dispense with Representative Gruenberg's motion to table Amendment 1 before proceeding.

REPRESENTATIVE GRUENBERG reiterated his offer to withdraw his motion to table the Amendment 1, allows the committee to discuss the subject, and then he would re-make the motion as he did not want to table the debate. He said generally when a member of the committee requests something like this, as a matter of courtesy it is honored.

REPRESENTATIVE PRUITT asked Representative Gruenberg if he was withdrawing his motion to table Amendment 1.

REPRESENTATIVE GRUENBERG withdrew his motion to table Amendment 1 for the purpose of debating the issue.

[1:53:12 PM](#)

REPRESENTATIVE FOSTER inquired as to Representative Chenault's preference with Amendment 1 and requested clarification from Representative Chenault as to whether or not he supported letting this amendment come back for debate, or preferred to move it on and thus have the debate on the amendment come up at its next stop.

REPRESENTATIVE CHENAULT stated his preference to take up Amendment 1 today and noted his support for Amendment 1.

REPRESENTATIVE GRUENBERG pointed out that this is the only committee of referral so if it is not debated today, the bill goes to the floor.

REPRESENTATIVE PRUITT reiterated that the intent is not to move the bill out of committee today. He advised the current debate is whether HB 218 will include Amendment 1, or not, for discussion at a future time.

[1:54:53 PM](#)

REPRESENTATIVE MILLETT stated a point of order that the committee has a motion to table Amendment 1 before it and must take a vote.

REPRESENTATIVE PRUITT advised that Representative Gruenberg had previously removed his motion [to table Amendment 1].

REPRESENTATIVE GRUENBERG clarified, "I've removed the motion for a few minutes for us to discuss it." He reiterated that this is the only committee of referral for HB 218. He expressed concern that adoption of Amendment 1 before both side of the issue had been heard would be premature and that it is unfair to those people who desire to take the amendment out of the bill.

[1:56:21 PM](#)

REPRESENTATIVE MILLETT acknowledged that this is the only committee of referral for HB 218 and emphasized it was not the last time the committee would hear the bill. If Amendment 1 is adopted today it would become part of the bill, and thus be part of the discussion. She noted her disagreement that adopting Amendment 1 today would shift the burden. Furthermore, she opined, if there is an amendment before the committee and there are the votes to adopt it, it should be adopted. She further opined that there will be ample time to hear both sides of this issue, and stated she would not force the bill to move before its time. Representative Millett suggested there would be a delay if the committee did not take a vote on Amendment 1 today, and therefore she requested a vote on Amendment 1.

[1:57:54 PM](#)

REPRESENTATIVE CHENAULT articulated he did not want to get into a debate on whether Amendment 1 is adopted or not. With regard to Representative Gruenberg's concern over where the burden is placed if Amendment 1 is adopted, Representative Chenault said it is no different than introducing a bill someone does not like and that person must testify in committee and participate in the process to try to get rid of that bill. This amendment, he said, is no different than a bill as once it is put into the process, the committee debates on whether it is good or bad, right or wrong, or needs to be changed.

REPRESENTATIVE PRUITT suggested that at this point the sponsor could submit a sponsor substitute, including the amendment, and the sponsor substitute would come before the committee.

REPRESENTATIVE LEDOUX related it was her preference to hear more discussion before voting on Amendment 1.

[1:59:46 PM](#)

REPRESENTATIVE GRUENBERG assessed that the committee is at a procedural juncture, which is the same place it is when the majority leader offers a committee substitute. He pointed out that it takes a majority vote to adopt the committee substitute versus the original bill. A majority vote is also required to remove a section from a committee substitute that was adopted. However, he opined that it is more important what the members do now because there is a much greater chance that every single vote could decide the issue. He highlighted that at least two members have requested the courtesy of not taking a vote on [Amendment 1] until [the next hearing]. He questioned what the rush is and why both side couldn't be heard prior [to the adoption of Amendment 1]. The aforementioned, he opined, would not cause harm, although there would be significant harm in addressing Amendment 1 prior to hearing both sides. The committee took a brief at-ease.

[2:04:14 PM](#)

REPRESENTATIVE PRUITT reminded there was a motion on the floor to table Amendment 1.

REPRESENTATIVE GRUENBERG clarified that his motion is to postpone the motion to adopt Amendment 1 until the next time the bill is heard.

[2:04:20 PM](#)

A roll call vote was taken. Representatives Gruenberg and LeDoux voted in favor of the motion to table Amendment 1. Representatives Millet, Foster, Lynn, and Pruitt voted against it. Therefore, the motion to table Amendment 1 failed by a vote of 2-4.

[2:04:54 PM](#)

REPRESENTATIVE PRUITT inquired as to whether the committee wanted to end debate at this time, continue to discuss the matter, or take the vote.

REPRESENTATIVE FOSTER stated he shared the comments conveyed by Representative LeDoux. However, if Amendment 1 was adopted

today, and the committee heard from the other side, and he changed his position on Amendment 1, he would be comfortable with a vote deleting Amendment 1. Either way, he said he could make an informed and unbiased decision at that time.

REPRESENTATIVE PRUITT voiced he felt comfortable the issue would be heard again.

[2:05:51 PM](#)

REPRESENTATIVE MILLETT moved that Amendment 1 be adopted.

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives Lynn, Millett, Foster, Pruitt voted in favor of the adoption of Amendment 1. Representatives LeDoux and Gruenberg voted against it. Therefore, Amendment 1 was adopted by a vote of 4-2.

REPRESENTATIVE GRUENBERG announced his intention to move to rescind [the committee's action in adopting Amendment 1] when HB 218 is brought up again.

[2:06:44 PM](#)

REPRESENTATIVE MILLETT, referring to State v. Silvera and State v. Perez, inquired as to why the Alaska Supreme Court denied the state's petition for hearing, which then allowed both defendants to have a three-judge panel.

MR. SVOBODNY answered that the Alaska Supreme Court did not give the state a reason, which is totally within its discretion, as most of the time the court simply states it will not hear a matter.

[2:08:21 PM](#)

DOUGLAS MOODY, Deputy Public Defender, Criminal Division, Public Defender Agency, related that he had missed the first part of the hearing because his office was unaware of this [bill] until the middle of this hearing and the attorney who actually worked on these two cases is on sick leave. Therefore, he requested that the agency be allowed to present testimony at a further date when it could present accurate and coherent information for the committee.

REPRESENTATIVE PRUITT stated that the Public Defender Agency would definitely have an opportunity to speak at a later date.

2:10:18 PM

REPRESENTATIVE MILLETT directed attention to the following passage in Deputy Attorney General Svobodny February 11, 2014, memorandum:

These combined cases involve two noncitizens convicted of violent felonies. In a drunken rage, Silvera stabbed a man in the face with a knife after Silvera's drunken girlfriend began a verbal argument with the victim. (The girlfriend was casting slurs about the victim's Native ethnicity). Perez severely beat a State's witness in Perez's then pending felony drug case when both the victim and defendant were in a State confinement facility.

REPRESENTATIVE MILLETT inquired as to why both defendants were housed in the same facility since they were clearly a threat to each other. She said she did not believe such situations are normal.

2:11:47 PM

RONALD TAYLOR, Deputy Commissioner, Office of the Commissioner, Department of Corrections (DOC), thanked the sponsor of the bill on behalf of correctional employees. In response to Representative Millett, Mr. Taylor said he would have to review the records to ascertain exactly where the victim and defendant were co-located inside the Fairbanks Correctional Center. When there is knowledge that a defendant and victim in the same case are going to be housed in the same facility, they would not be housed in the same place or be placed in areas where they would have access to each other.

2:12:39 PM

REPRESENTATIVE MILLETT asked whether [the jail] is informed who a victim and defendant is when they are incarcerated. She opined that housing [a victim and defendant] together sets the stage for conflict, and thus makes it dangerous for the correctional officers. She questioned whether a policy or a possible legislative fix is required to ensure so victims and defendants are not housed in the same facility nor do they have access to each other in the facility.

MR. TAYLOR clarified that victims and defendants do not have access to each other during the same time period when housed in the same facility. The facility, he related is large enough to segregate the victim and defendant to ensure there is not conflict between them as that places correctional employees in a difficult position. He advised that each facility receives information from the court and when the facility is aware of such a situation, every precaution is taken to be certain there is no contact between the victim and the defendant.

[2:14:09 PM](#)

REPRESENTATIVE MILLETT requested an explanation as to why Perez was in the same area and had contact with the witness.

MR. TAYLOR offered to research the issue and provide the committee with an answer.

[2:15:18 PM](#)

REPRESENTATIVE GRUENBERG questioned whether there are other provisions of law DOC believes should be expanded to include correctional officers.

MR. TAYLOR responded that DOC has not reviewed whether there are any other areas of law as that is a legal question. However, he said that DOC could review that.

REPRESENTATIVE GRUENBERG requested that DOC present the committee with any requests [provisions of law it believes should include correctional officers].

[2:17:48 PM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, pointed out that the committee packet includes a memorandum from Kathleen Strasbaugh, Legal Services, dated August 14, 2013. Ms. Strasbaugh was charged with locating statutes that cover police officers but not correctional officers. The memorandum specifies the one statute, AS 12.55.155(c) (31), she found that correctional officers are not covered the same as other uniformed officers.

[2:18:38 PM](#)

REPRESENTATIVE PRUITT announced that HB 218 would be held over.

The committee took a brief at-ease.

[2:18:52 PM](#)

**HB 255-UNMANNED AIRCRAFT SYSTEMS**

[2:26:15 PM](#)

REPRESENTATIVE PRUITT announced the next order of business would be House Bill 255, "An Act relating to unmanned aircraft systems; and relating to images captured by an unmanned aircraft system." [Before the committee is CSHB 47(STA)]

[2:26:53 PM](#)

REPRESENTATIVE SHELLY HUGHES, Alaska State Legislature, speaking as one of the joint prime sponsors of HB 255, explained that the bill is the result of recommendations by the Unmanned Aircraft Systems Legislative Task Force that met over the interim and received input from the Department of Public Safety (DPS). The bill allows the University of Alaska to establish a training program for the operation of unmanned aircraft systems and speaks to law enforcement operation requirements for use in criminal investigations, the retention of images, and provides definitions. Unmanned aircraft systems are an emerging technology and the task force believes it is important to harness it for good and at the same time attend to privacy issues. She opined that Alaska is fortunate to have explicit [privacy] provisions in its state constitution that are actually stronger than those in the U.S. Constitution. She noted the bill applies to DPS and all law enforcement agencies, including at the local level. Since unmanned aircraft is becoming more affordable and potentially something that local law enforcement agencies might decide to use, although she was unaware of any using it at this time, she opined that it is important to apply the bill across the board.

[2:30:01 PM](#)

REPRESENTATIVE LEDOUX requested the definition of an unmanned aircraft pilot and crewmember.

REPRESENTATIVE HUGHES directed Representative LeDoux to the definitions located on page 3, of the bill.

[2:30:41 PM](#)

REPRESENTATIVE LEDOUX asked whether there is someone on the ground pushing a lever that causes the unmanned aircraft to fly.

REPRESENTATIVE HUGHES noted the Federal Aviation Administration (FAA) addresses all of the safety and operations regarding use of unmanned aircraft. In response to Representative LeDoux, Representative Hughes explained there must be a certified pilot on the ground operating a computer or device and there must be an observer as well. She further explained that one of the reasons the legislature set up the task force, she opined, was that there will be manned aircraft and unmanned aircraft all in the same air space, and thus the need for qualified crews. She added there is a target date of 2015 to begin to integrate unmanned aircraft into national airspace.

[2:32:21 PM](#)

REPRESENTATIVE LEDOUX questioned if the crew would be an assistant to the pilot who is the operator.

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GINGER BLAISDELL, Staff, Representative Shelley Hughes, Alaska State Legislature, specified the definitions of a pilot and crewmember and unmanned aircraft are consistent with federal law. She explained that the pilot of an unmanned aircraft is someone who is actually trained as an airline pilot and able to speak to an FAA tower as a pilot who understands the language of operating an aircraft in national air space. Ms. Blaisdell described the crewmember as a good "gamer," someone who could work a computer console well, follow the aircraft while watching it on a screen, read responses coming through the computer, and determine how to guide the unmanned aircraft and direct it. She expressed that the combination of an individual with excellent computer skills and a pilot are the two people needed to operate an unmanned aircraft.

REPRESENTATIVE LEDOUX surmised then that it is similar to a grownup computer game except that it involves serious consequences if the individuals make a mistake.

[2:34:00 PM](#)

MS. BLAISDELL pointed out that currently the pilot and crew member are discussed as being on the ground because that is the most typical place unmanned aircraft is being used at this

point. However, Representative Hughes's office recently received an article denoting a crewmember and pilot in a Cessna following and chasing an unmanned aircraft to determine if they have "sense and avoid" technology. There is no human, she emphasized, in the unmanned aircraft.

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REPRESENTATIVE HUGHES, in response to Representative LeDoux, confirmed that there could be future unmanned aircraft with passengers and no pilot. In fact, Mrs. Ro Bailey, Special Projects Coordinator, University of Alaska Fairbanks, was in a military aircraft in which the pilot let go of the controls and a pilot controlled the aircraft on the ground.

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REPRESENTATIVE GRUENBERG indicated that unmanned aircraft are not that unusual as a missile is an unmanned aircraft and roller coasters are controlled from the ground. However, he suggested that for a large bomb, a pilot and co-pilot would seem necessary in case the pilot has a heart attack, for instance.

REPRESENTATIVE HUGHES related that the FAA will be addressing such issues. Currently, there are six test sites, including one in Alaska, that are working out issues so regulations can be defined and refined. She said she was not familiar with FAA regulations regarding manned aircraft, but suggested the size of the unmanned aircraft may be part of its decision.

REPRESENTATIVE LYNN advised that when he flew a F94C in the military, the aircraft had "data link" and could then be controlled by another pilot on the ground. In fact, the space shuttle, although manned can land itself.

[2:39:14 PM](#)

REPRESENTATIVE PRUITT addressed whether the bill limits the size of the unmanned aircraft or is the legislature was waiting on the federal government to determine the size.

[2:40:24 PM](#)

REPRESENTATIVE HUGHES explained that although there is nothing in HB 255 to restrict the size, the FAA does have very stringent restrictions that nothing can be dropped from an aircraft, in order to avoid an unmanned aircraft being used as a weapon.

REPRESENTATIVE PRUITT queried as to whether conversations are taking place regarding commercial viability as in transporting items to rural areas or were there still limitations on that at this point.

REPRESENTATIVE HUGHES advised that although the goal is to open up national air space for unmanned aircraft for commercial use, currently it was only for public entities. She recalled that DPS is considering an [unmanned aircraft with a size of] around 50 pounds. She then informed the committee of the first two incidents in which unmanned aircraft were used in the U.S. In August 2013 unmanned aircraft were used twice in Alaska by the oil industry; the unmanned aircraft had about a 9-10 foot wing span and weighed less than 50 pounds.

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REPRESENTATIVE PRUITT, referring to the proposed language in AS 18.65.902, acknowledged the task force is considering a number of hypotheticals and specific parameters, but inquired as to what the expectations are regarding law enforcement utilization for these types of aircraft.

[2:44:04 PM](#)

LIEUTENANT STEVE ADAMS, Statewide Search and Rescue Coordinator, Alaska State Troopers, Department of Public Safety, responded that the primary missions within DPS for which unmanned aircraft would be used is for the mapping of serious injury or fatal traffic collisions. The unmanned aircraft would save time, particularly in locations such as the Seward Highway or Glenn Highway where there are no other routes to reroute traffic. The unmanned aircraft could be utilized in search and rescue missions in dangerous places such as rough canyons or rivers where officers would not place anyone on the ground and it would be too dangerous for a manned aircraft. Unmanned aircraft would be used in situations such as Amber alerts, Silver alerts, hazardous material spills, natural disasters, and terrorism incidents, situations in which it would be dangerous to use a manned aircraft to look at a possible explosive, and also for situational awareness for barricaded individuals who are armed.

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REPRESENTATIVE PRUITT posed a scenario in which DPS flies the unmanned aircraft system over a home with a barricaded

individual in an attempt to understand the situation and obtain feedback and during the fly over captures a crime taking place two houses away. He asked whether DPS could utilize those images and the information obtained to arrest individuals committing a crime separate from the original intent for the unmanned aircraft.

LIEUTENANT ADAMS characterized the situation as a complicated legal question and that he believes is for the courts to decide. Currently, DPS faces has the same types of situations without unmanned aircraft and those are often addressed in evidentiary hearings, he related.

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REPRESENTATIVE HUGHES pointed out that this legislation is trying to be neutral on technology since it is a tool that is not good or bad itself. As Lieutenant Adams mentioned, DPS uses cameras on a pole, buildings, and vehicles to receive the same type of images and the legislation tries not to single out the unmanned aircraft in a manner that penalizes it.

[2:48:21 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that the only change embodied in CSHB 255 (STA) is the deletion of the language on page 2, lines 24-26, of the original bill.

[2:49:12 PM](#)

REPRESENTATIVE HUGHES confirmed that was the only change and was unnecessary as all of the important pieces of the International Association of Chiefs of Police, Recommended Guidelines for the Use of Unmanned Aircraft is included in the legislation. In further response to Representative Gruenberg, Representative Hughes advised the operation requirements specifies law enforcement can use an unmanned aircraft outside of a criminal investigation. Furthermore, the operations requirements ensure that individual Alaskans' privacy protections are upheld, she opined.

[2:52:03 PM](#)

DEAN DAWSON, Statewide Archivist, Statewide Archives and Museums, Department of Education and Early Development (EED), advised that state records law, AS 40.21, does require state agencies to retain their records in accordance with a schedule.

Mr. Dawson contended that according to state law, the Department of Public Safety would have to retain images under law and under records retention schedules as the images do constitute state records material. For example, murder cases filed under the Department of Law's retention schedules are retained for 50 years and all other felonies are retained for 10 years. If these images were used as evidence the images would need to be retained for a certain length of time and, therefore, Mr. Dawson expressed concerned that using the "negative" in proposed AS 18.65.903 might not be in compliance with state records laws.

[2:53:43 PM](#)

REPRESENTATIVE LEDOUX asked if the language on believed page 3, lines 7-10, would cover Mr. Dawson's concerns.

MR. DAWSON responded that it would cover his concerns, but it was "kind of flip flopped" in that if it is a public record it "shall" be retained according to a specific retention timeframe. He felt it somewhat connoted that these images are not records when in fact they are records and even though the images may be ephemeral or transitory they are still record material. He acknowledged privacy concerns with personal information, but believed the public had an interest in knowing the state is retaining records as per its policies.

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REPRESENTATIVE GRUENBERG suggested that Mr. Dawson, the bill sponsor, and legal counsel could review whether language changes are necessary.

REPRESENTATIVE PRUITT related his preference for the bill's language as he did not want the images retained unless there is a specific reason. He further related his preference for as little as possible is retained. He characterized it as privacy and cost issue.

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REPRESENTATIVE LYNN pointed out that images are being captured everywhere. For instance, the Boston Marathon bombing culprits were arrested and incarcerated due to images captured by video cameras on the street. He noted those images could well have been captured by an unmanned vehicle, if available.

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REPRESENTATIVE GRUENBERG surmised from Mr. Dawson's remarks that the language on page 3 of the bill may be superseded by law already on the books that require images to be retained. Therefore, to achieve Representative Pruitt's desire the language would have to be changed. To that end, he suggested that possibly a committee member could review the matter with Mr. Svobodny to determine whether both the Department of Law and the State Archivist's Office could be accommodated in this bill or the public record's law.

REPRESENTATIVE LEDOUX suggested that the language on page 3, line 7, addresses specific situations such as murder investigations in which records need to be retained. With regard to Representative Pruitt's concerns, other statutes that may require records be retained may be. However, for purposes of this bill, Representative LeDoux said she did not see a problem.

REPRESENTATIVE GRUENBERG clarified he did not necessarily see a problem with the language, but the archivist has expressed a concern.

[2:59:15 PM](#)

REPRESENTATIVE PRUITT announced public testimony open would be left open and HB 255 would be held over.

[2:59:31 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned 2:59 PM.