ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 11, 2002
1:04 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 321
"An Act relating to the purpose for crime victims' compensation; and limiting the factors that may be considered in making a crime victims' compensation award in cases of sexual assault or sexual abuse of a minor."

- MOVED CSSSHB 321(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 330
"An Act relating to providing alcoholic beverages to a person under 21 years of age."

- MOVED CSHB 330(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 332
"An Act extending the termination date of the Council on Domestic Violence and Sexual Assault; and providing for an effective date."

- MOVED CSHB 332(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 375
"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- BILL HEARING POSTPONED

HOUSE BILL NO. 384
"An Act relating to submission of civil litigation information; and amending Rules 41(a) and 58, Alaska Rules of Civil Procedure, Rule 511(c) and (e), Alaska Rules of Appellate Procedure, and Rule 503(d), Alaska Rules of Evidence."

- BILL HEARING POSTPONED TO 2/13/02

PREVIOUS ACTION

BILL: HB 321
SHORT TITLE:CRIME VICTIMS' COMPENSATION
SPONSOR(S): REPRESENTATIVE(S)GUESS

Jrn-Date	Jrn-Page		Action
01/14/02	1959	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1959	(H)	JUD, FIN
01/16/02	1993	(H)	COSPONSOR(S): MEYER
01/30/02	2094	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/30/02	2094	(H)	READ THE FIRST TIME - REFERRALS
01/30/02	2094	(H)	JUD, FIN
02/04/02	2152	(H)	COSPONSOR(S): DYSON
02/08/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/08/02		(H)	Bill Postponed To 2/11/02
02/11/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 330
SHORT TITLE:PROVIDING ALCOHOL TO PERSONS UNDER 21
SPONSOR(S): JUDICIARY BY REQUEST

Jrn-Date	Jrn-Page		Action
01/16/02	1980	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1980	(H)	JUD, FIN
02/11/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 332
SHORT TITLE:EXTENDING COUNCIL ON DOMESTIC VIOLENCE
SPONSOR(S): REPRESENTATIVE(S)BUNDE

Jrn-Date	Jrn-Page		Action
01/16/02	1981	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1981	(H)	JUD, FIN

02/08/02	(H)	JUD AT 1:00 PM CAPITOL 120
02/08/02	(H)	Heard & Held MINUTE(JUD)
02/11/02	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE GRETCHEN GUESS
Alaska State Legislature
Capitol Building, Room 112
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SSHB 321.

DEL SMITH, Deputy Commissioner
Office of the Commissioner
Department of Public Safety (DPS)
PO Box 111200
Juneau, Alaska 99811-1200
POSITION STATEMENT: Assisted with the presentation of SSHB 321, stated support for its current language, and responded to questions.

KAREN BITZER, Executive Director
Standing Together Against Rape (STAR)
1057 West Fireweed Lane, Suite 230
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in support of SSHB 321 and responded to questions.

HEATHER M. NOBREGA, Staff
to Representative Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 330 on behalf of the House Judiciary Standing Committee, sponsor.

MARTI GREESON, Executive Director
Anchorage Chapter
Mothers Against Drunk Driving (MADD)
3600 Arctic Boulevard, Suite 3
Anchorage, Alaska 99503
POSITION STATEMENT: Provided testimony during discussion of HB 330.

PAMELA WATTS, Executive Director

Governor's Advisory Board on Alcoholism and Drug Abuse
Office of the Commissioner
Department of Health and Social Services (DHSS)
3290 Nowell Avenue
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 330 and responded to questions.

CINDY CASHEN
Juneau Chapter
Mothers Against Drunk Driving (MADD)
211 4th Street, Suite 102
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 330.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090
POSITION STATEMENT: During discussion of HB 330 expressed the PDA's concerns.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Testified in support of HB 330 and responded to questions.

PATTI SWENSON, Staff
to Representative Con Bunde
Alaska State Legislature
Capitol Building, Room 501
Juneau, Alaska 99801
POSITION STATEMENT: On behalf of the sponsor, Representative Con Bunde, responded to questions regarding the proposed committee substitute (CS) to HB 332.

ACTION NARRATIVE

TAPE 02-15, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Rokeberg, Ogan, Coghill, and Meyer were present at the call to order. Representatives James and Berkowitz arrived as the meeting was in progress.

HB 321 - CRIME VICTIMS' COMPENSATION

Number 0096

CHAIR ROKEBERG announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 321, "An Act relating to the purpose for crime victims' compensation; and limiting the factors that may be considered in making a crime victims' compensation award in cases of sexual assault or sexual abuse of a minor."

Number 0105

REPRESENTATIVE GRETCHEN GUESS, Alaska State Legislature, sponsor, explained that the Victims' Compensation Board and the statutory language that governs it were established in 1971, and she posited that this entity and its governing language were created at a time when sexual assault and sexual abuse of minors was not discussed in depth. She offered her belief that SSHB 321 would bring the statute in line with what "we believe as a community." She added that SSHB 321 would not change the criteria for any other victims, only for victims of sexual assault and sexual abuse of a minor.

REPRESENTATIVE GUESS explained that SSHB 321 deletes from the purpose statement in AS 18.67.010 what she calls the antiquated language of "innocent persons"; instead, it refers simply to "persons". It also adds language specifying that in cases of sexual assault or sexual abuse of a minor, the board [may not deny an order based on considerations of provocation, the use of alcohol or drugs by the victim, or the prior social history of the victim]. She noted that SSHB 321 has the support of the administration, "the network," Standing Together Against Rape (STAR), the Alaska Native Justice Center, [and the Alaska Native Women's Sexual Assault Committee].

REPRESENTATIVE OGAN asked why "innocent" is being deleted from the description of who will be compensated.

REPRESENTATIVE GUESS posited that it is redundant language; in Section 2, she pointed out, there is language directing the

board, "when ... dealing with any other crimes," to consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the victim that directly or indirectly contributed. Therefore, she opined, there is no real reason to have "innocent" in the purpose statement; "I believe it is old language, and I also believe it provides a subjectivity in cases of sexual assault, where the board could say the victim wasn't innocent because, for example, they used alcohol or drugs." She added that she thinks removing "innocent" makes the statute clearer.

Number 0348

DEL SMITH, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), offered support of the language in SSHB 321; "I don't think anybody's any less a victim based upon what they might have consumed in the way of alcohol, and I believe that that is no license for anybody to do anything [harmful to another person]." He said that according to his understanding, the Violent Crimes Compensation Board (VCCB), which is located within the DPS, already makes it's determinations using the guidelines proposed in SSHB 321, which, he added, is the reason for a zero fiscal note. He noted, however, that although the current VCCB operates under these proposed guidelines, there is the potential that future boards may approach the claims differently and not compensate those victims. He urged the committee to support the language change proposed by SSHB 321, which, he reiterated, is simply a reflection of the VCCB's current practice.

CHAIR ROKEBERG mentioned that he has some concerns regarding the issues of negligence and culpability. He mentioned the term "comparative negligence," and asked whether excluding the prior social history of the victim, for example, "wouldn't that be like excluding the prior criminal record of a criminal?"

MR. SMITH acknowledged that "if you picked a fight with somebody, Mr. Chairman, and then were injured in that [fight], that is the kind of thing that I would say would mitigate the compensation that you might have." "But if you chose to get intoxicated, and passed out on the street," he countered, pointing out that it is now a crime to have sex with someone who is passed out, "I am not sure that you chose to be a victim." A person might make some bad choices regarding alcohol and/or drugs, he noted, and while that behavior should be discouraged to the extent possible, when that person becomes the victim of a

crime because he/she appeared vulnerable, then "that makes a difference to me, as a law enforcement officer."

REPRESENTATIVE OGAN noted that minors do not have the maturity to make certain choices, and so with regard to crimes against a minor, not as much culpability could be attributed to someone who is not an adult. He asked whether the sponsor agreed.

Number 0644

REPRESENTATIVE GUESS said that in general terms, she agrees, but added that when it comes to cases of sexual assault, she has to disagree; "provocation, the use of alcohol or drugs, past social history, I don't believe fall under culpability when it comes to rape," whether of a minor or an adult, which is what SSHB 321 is addressing.

CHAIR ROKEBERG asked whether she had taken into consideration the varying degrees of sexual-abuse-of-a-minor crimes.

REPRESENTATIVE GUESS said she had not.

CHAIR ROKEBERG asked whether there is a degree of sexual abuse of a minor that might just involve contact.

REPRESENTATIVE BERKOWITZ said he did not recall the exact distinction, but surmised that what SSHB 321 does is make sure that victims of crimes receive compensation. Therefore, he opined, the type of crime wouldn't really be material to whether someone is entitled to that compensation.

CHAIR ROKEBERG remarked, "If it's the Satch Carlson contact, I'm not sure why it would even [be] before the board unless there was mental health problems."

REPRESENTATIVE GUESS interjected to say that as SSHB 321 is currently written, it is excluding three things but leaving in everything else; it's leaving in consent and other relevant matters, and is just stating that provocation, use of alcohol or drugs, or the victim's prior social history cannot be considered.

REPRESENTATIVE BERKOWITZ suggested that [this issue] "goes to the 'No means no,' regardless of anything else. He noted that in the "evidentiary code," we have what's called the 'rape shield law,'" offering that it basically says that character evidence cannot be used to prove conduct. To further this

point, he paraphrased from the Commentary section, Alaska Rules of Court, which read:

> There is a current trend, especially in rape cases, to exclude all or much character evidence that relates to the victim. ... Total exclusion may protect the victim against the introduction of deeply personal facts in cases where introduction of such facts is intended to embarrass the victim rather than help the defendant, but it does so at the expense of allowing such evidence to come in for the benefit of the accused when it would substantially improve his case."

REPRESENTATIVE BERKOWITZ offered the interpretation that this says, "we're not going into the victim's character, because that doesn't matter to the crime; that's irrelevant." He surmised that this kind of thinking, which, he opined, is generally accepted in the criminal code, is carried forward by "this sort of legislation" when dealing in the area of victims' rights. He added that this is a well-established line of thinking and would not raise "even a legal eyebrow."

Number 0900

REPRESENTATIVE GUESS, in response to questions, said that in most of the cases she has looked at, the victims were compensated for health reasons.

MR. SMITH added that a person could file a claim with the VCCB for medical treatment, for counseling, and possibly for compensation due to loss of work, and the claim is then evaluated with regard to what is compensable and what is not.

REPRESENTATIVE COGHILL asked to what degree provocation "counts" with regard to other criminal proceedings.

REPRESENTATIVE GUESS, after offering the interpretation that Representative Coghill is perhaps referring to the fine line between provocation and consent, noted that this fine line is one of the reasons why consent was left out of the exclusions proposed by SSHB 321. She indicated her agreement with Representative Berkowitz that the victim of sexual assault or sexual abuse of a minor does not, by definition, provoke that type of crime.

REPRESENTATIVE COGHILL asked whether trying to prove guilt or innocence in a court of law is linked with getting funds through the VCCB.

REPRESENTATIVE BERKOWITZ explained that when the VCCB processes a victim's claim, it is an entirely separate proceeding. He said that in a courtroom, the general rule in admitting evidence is that the judge will weigh whether the prejudicial value of the evidence is greater than the probative value; in other words, whether something is more likely to inflame the jury than it is to enlighten the jury. For the most part, he added, evidence related to the victim's character is inadmissible in sexual assault cases because it is deemed, almost universally, irrelevant. He suggested that any hypothetical situation where this is not so would be so extreme that he could not imagine [drafting] a law just for that extreme example.

Number 1150

KAREN BITZER, Executive Director, Standing Together Against Rape (STAR), testified via teleconference in support of SSHB 321, and said that she is speaking on behalf of the victims and loved ones that STAR serves everyday. She noted that last year, STAR advocates responded to 279 new adult cases of sexual assault and almost 300 new cases of sexual assault of minors. She explained that STAR is an advocacy agency working to help victims and ensuring that they have access to tools for recovery. She noted that STAR's messages are constant and consistent: "We believe you; it was not your fault." One of the goals of victim's crime compensation, she said, is to help make the victims whole for their loss as a result of crime. While victims may not be made completely whole because of the physical and emotional damage they sustain, she explained that advocacy agencies such as STAR can reinforce their ability to regain control of their lives. "As one victim so aptly put it, 'It's not enough to survive; I want to thrive,'" she relayed.

MS. BITZER said, "I can appreciate the struggle that we have with contributing concepts regarding all victims of crime, and I know it's one way that we protect ourselves." She noted that sexual assault truly challenges one's sense of personal safety. She said:

> Do you ever compare your behavior to that of someone else and say, "Well, I don't do that so this won't happen to me"; "I don't eat at McDonalds so my arteries won't clog"; or "I always wear my seatbelt so

> I won't be that injured in an auto accident"? Unfortunately we can't say that about sexual assault. You can do all the "right things" - not go out alone, not drink - and still be a victim of sexual assault. Are they any more or less a victim than, say, someone who was out walking alone in the dark?

MS. BITZER said that [the language in SSHB 321] puts the responsibility for the crime where it belongs: on the offender. She noted that it provides victims access to services - such as therapeutic services, intervention services, and services that meet other needs - when no other resources for funds are available. She explained that over the years, STAR has helped victims secure dental work and glasses replacements when they were not able to access "victims'-of-crime compensation." She said that STAR believes that SSHB 321 will bring the statutes into line with current practice as well as into the 21st century's view of the victim. In conclusion, she applauded the sponsors "for helping to make government work for its citizens," and applauded the committee for reviewing SSHB 321 early in the session.

MS. BITZER, in response to questions, said that victims' advocates at STAR do assist clients with filling out paperwork requesting victims' crime compensation, and that the advocates have written letters on behalf of clients. She said that usually, compensation covers the cost of counseling, for both victims and their families, and therapeutic intervention. She also recounted that STAR has assisted victims of sexual-abuse-of-a-minor crimes in applying to the VCCB for compensation. She added that oftentimes, it is the teenagers that have the hardest time receiving compensation from the VCCB; they may have been drinking and so may be more likely to be turned down for benefits. She explained that they, too, need intervention - not just the small children who are victims - so, in order for those teenagers to access those services, it is important for the VCCB to reach out to them as well.

Number 1446

REPRESENTATIVE OGAN expressed the concern that the language in SSHB 321 is ambiguous. He indicated that he was not sure which crimes were being discussed.

REPRESENTATIVE GUESS explained that the language being added in Section 2 refers to crimes of sexual assault and crimes of sexual abuse of a minor. In response to questions, she

reiterated her comments that the word "innocent" is redundant, that it hurts in cases of sexual assault and sexual abuse of a minor, and that it should no longer be included in the purpose statement of AS 18.67. To elaborate, she pointed out that the language change to AS 18.67.080(c), as proposed by Section 2, still allows the board to consider all circumstances - including provocation, consent, or any other behavior of the victim that directly or indirectly contributes - for claims based on all other crimes; the language being added only addresses claims based on the crime of sexual assault or the crime of sexual abuse of a minor. She suggested that the change proposed by SSHB 321 still allows the board to consider the supposed innocence of a person who, for example, starts a bar brawl and gets his/her teeth kicked in. In response to further questions, she opined that claims for compensation are subject to all subsections of AS 18.67.080 - (a) through (d) - so a person could not get paid under AS.67.080(a) alone, for example.

CHAIR ROKEBERG noted that AS 18.67.080(c) does say: "In determining whether to make an order under this section ...."

REPRESENTATIVE GUESS posited that it is the inclusion of that language in AS 18.67.080(c) that makes the use of the word "innocent" in AS 18.67.010 redundant.

REPRESENTATIVE OGAN asked how many claims based on sexual assault have been denied by the VCCB.

REPRESENTATIVE GUESS said that because of confidentiality restrictions, reports from the VCCB do not include information pertaining to why claims are denied, so it is difficult to provide statistical data.

REPRESENTATIVE BERKOWITZ asked whether there is any anecdotal evidence.

REPRESENTATIVE GUESS confirmed that there is anecdotal evidence "from the community" showing that there are some cases that are questionable and which could be clarified by the removal of the word "innocent" from the purpose language. She mentioned a case in which a 14-year-old was gang raped but the VCCB denied compensation because there was alcohol involved. She said that she did not know whether the appeals process altered the outcome of that [claim], but suggested that removing "innocent" as proposed by SSHB 321 would clarify the statute on this issue.

CHAIR ROKEBERG closed the public hearing on SSHB 321.

Number 1699

CHAIR ROKEBERG made a motion to adopt Amendment 1, to reinsert "innocent" on page 1, line 7; Amendment 1 has the effect of keeping that language in the purpose statement of AS 18.67, which governs the VCCB.

Number 1715

REPRESENTATIVE BERKOWITZ objected.

CHAIR ROKEBERG, to clarify, pointed out that the purpose of the VCCB is to only award funds to people who are innocent. He noted that SSHB 321 "carves out ... an exception", and posited that the addition of the language in Section 2 is sufficient for that purpose.

REPRESENTATIVE JAMES agreed. She, too, noted that the purpose statement pertains to the entirety of AS 18.67 rather than to just the provision that would be altered by Section 2. She opined that leaving the word "innocent" in the purpose statement would not affect the changes proposed by Section 2 to AS 18.67.080(c).

CHAIR ROKEBERG called an at-ease from 1:34 p.m. to 1:35 p.m.

REPRESENTATIVE BERKOWITZ, in defense of his objection to Amendment 1, said:

> A lot of times you hear on the news that someone "pled innocent" to a charge. Nobody pleads innocent; that's never what happens in a criminal case. People are judged "not guilty." And when you try and introduce the concept of innocence, ... I think it implies complete purity. What we're doing in subsection (c) is saying ... that the totality of circumstances are what are to be evaluated, because assessing complete innocence is -- you've got to disprove all the negatives. I think it's clear without the term "innocent" in there; it's an adjective that doesn't add much to the statute.

REPRESENTATIVE OGAN asked if Representative Berkowitz would prefer to replace "innocent" with "not guilty".

REPRESENTATIVE BERKOWITZ said no; "I just think you withdraw it and you pay compensation to persons injured." He offered that there is a tension between "innocent persons" and looking at the totality of circumstances. He opined that by getting into the issue of what innocence is, it introduces a whole other set of issues that the VCCB must then evaluate, which, he surmised, is potentially problematic.

Number 1896

REPRESENTATIVE COGHILL, although acknowledging that that is a good point, noted that the VCCB is being asked to make a determination based on provocation, consent, and other behavior - to perform kind of a triage. He opined that the term "innocent" merely acts as a guiding factor.

REPRESENTATIVE JAMES remarked that when reading the entire paragraph, it makes sense to retain "innocent". She suggested that it clarifies that payments won't be made to the people who are guilty of the crimes that the claims are based on.

CHAIR ROKEBERG said he is offering Amendment 1 because he believes that "the degree of contributory negligence ... can be measured by the board as to the amount of the award." He opined that this is reflected currently in AS 18.67.080(c), and he surmised that SSHB 321 proposes to exclude that consideration in cases of sexual assault and sexual abuse of a minor.

REPRESENTATIVE MEYER asked for the sponsor's opinion of Amendment 1.

REPRESENTATIVE GUESS said that she did not think it is a "deal breaker"; it just shows that after 30 years, maybe the entire statute needs to be reviewed at some point. She noted that the Department of Law has a different opinion than the Legislative Legal and Research Services Division. She surmised that her goal could still be accomplished even if Amendment 1 is adopted.

REPRESENTATIVE BERKOWITZ said he is maintaining his objection to Amendment 1.

Number 2058

A roll call vote was taken. Representatives Coghill, James, Ogan, and Rokeberg voted for Amendment 1. Representatives Meyer and Berkowitz voted against it. Therefore, Amendment 1 was adopted by a vote of 4-2.

REPRESENTATIVE OGAN said he would be more comfortable with SSHB 321 if it only pertained to sexual abuse of a minor. He expressed concern that if it becomes mandatory for the VCCB to award compensation to victims of sexual abuse, there might be people who will take advantage of the system if, due to mental illness or chronic substance abuse, they repeatedly put themselves in situations where they are sexually assaulted.

REPRESENTATIVE BERKOWITZ asked whether Representative Ogan is suggesting that some women deliberately go out and get themselves drunk and then raped in order to get compensation?

REPRESENTATIVE OGAN said no. He said that what he is suggesting is that there are probably some people who, because of serious social problems, are far more subject to sexual assault - not that they purposely seek to be raped - but then, when they are raped, they discover a system that they can repeatedly take advantage of. He said he would like to know whether there are people who "have shown up" time and time again and, if so, whether they are being denied.

REPRESENTATIVE JAMES said that she could understand Representative Ogan's point but opined that there are few people who would abuse the system in that fashion. She suggested that the benefits of the change proposed by SSHB 321 outweigh the potential for abuse.

REPRESENTATIVE COGHILL remarked that the VCCB has a tough job, "resources being what they are," and then having to decide whom to help and whom to deny. He asked whether the fact that someone receives compensation could affect either the ongoing court proceeding or any forthcoming appeal. He also noted his concern that the VCCB is having its discretion curtailed, given that SSHB 321 would prohibit a denial based on the items listed in Section 2.

REPRESENTATIVE OGAN said he, too, has concerns about taking away the VCCB's discretion regarding cases of sexual assault, noting that he did not have any problem doing so in cases of sexual abuse of a minor.

REPRESENTATIVE MEYER said he supports SSHB 321 and posited that the concerns expressed at this meeting would be considered by the VCCB. He opined that if anyone does attempt to abuse the system in the manner suggested by Representative Ogan, the VCCB will simply deny those claims.

Number 2377

REPRESENTATIVE BERKOWITZ moved to report SSHB 321, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE OGAN objected for purpose of discussion. He opined that passage of SSHB 321 would mandate payment of claims based on sexual assault, regardless of how often the claimant seeks compensation. Representative Ogan then removed his objection.

Number 2416

CHAIR ROKEBERG asked whether there were any further objection to reporting SSHB 321, as amended, out of committee. There being no objection, CSSSHB 321(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 1:50 p.m. to 1:53 p.m.

HB 330 - PROVIDING ALCOHOL TO PERSONS UNDER 21

Number 2423

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 330, "An Act relating to providing alcoholic beverages to a person under 21 years of age."

Number 2435

REPRESENTATIVE OGAN moved to adopt the proposed committee substitute (CS) for HB 330, version 22-LS1178\O, Ford, 2/11/02, as a work draft.

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion.

Number 2461

HEATHER M. NOBREGA, Staff to Representative Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, on behalf of the House Judiciary Standing Committee, sponsor, explained that after the accident last summer in which Anchorage police officer Justin Wollam was killed, Mothers Against Drunk Driving (MADD) requested that the penalties be increased for adults who provide alcohol to minors who then go on to hurt or

kill someone. She noted that currently, a person who provides alcohol to a minor could be charged with a misdemeanor. She relayed that the original version of HB 330 would make it a class C felony for a person to provide alcohol to a minor who then, while under the influence of that alcohol, injures or kills someone. She pointed out that Version O adds the stipulations that the minor act with "civil negligence" and that the injury be a "serious physical injury".

TAPE 02-15, SIDE B
Number 2500

MS. NOBREGA explained that the Department of Law suggested that there be a negligence standard included in this legislation, so she had first researched the different standards of conduct at the criminal level, which include "knowingly", "criminal negligence", and "recklessly". She mentioned that the definitions for those standards are included in members' packets. After first considering use of the term "criminal negligence", she said it was determined that proving criminal negligence requires proof beyond a reasonable doubt, and so, instead, opted to use the lowest standard possible, which is civil negligence. She noted that another reason for including this standard is to prevent a minor who has done nothing wrong but who is in an accident from being used as the impetus for charging an adult with a felony.

REPRESENTATIVE BERKOWITZ said: "I appreciate the conceptual changes but I have an alternative way of getting there." He asked members to turn to the original version of HB 330, and suggested that [paragraph 2] should be altered to say:

> the person under 21 years of age who receives the alcoholic beverage seriously injures or causes the death of another person and the injury or death occurs because the person under 21 years of age was under the influence of the alcoholic beverage received in violation of this section.

REPRESENTATIVE BERKOWITZ offered that this change maintains the simplicity of the original version of HB 330.

CHAIR ROKEBERG argued that such a change makes a huge difference in the bill and "raises the standard completely above -- to a .08 or impairment standard of being under the influence."

REPRESENTATIVE BERKOWITZ responded: "Not at all."

CHAIR ROKEBERG said: "Yes it does; if he's under the influence, he's got to be at least meeting the criminal definition of impairment."

REPRESENTATIVE BERKOWITZ replied: "No, ... the .08 standard -- it's merely a presumption ... [and] those are all arguable; arguably, an individual can be under the influence at .001 or .002. What the statutes have are presumptions that have to be rebutted."

Number 2351

REPRESENTATIVE BERKOWITZ, in response to questions, said he is maintaining his objection to the adoption of Version O as a work draft and opined that it would be much more complicated to amend than the original version of HB 330.

REPRESENTATIVE OGAN asked whether, with a civil negligence standard, someone causing serious physical injury could be convicted using the "civil standard of proof of clear and convincing."

MS. NOBREGA said she thinks so, adding that the DOL has indicated that civil negligence requires a lower standard of proof, perhaps even simply by a preponderance of the evidence.

REPRESENTATIVE OGAN said his concern is whether someone could be criminally convicted, using a civil standard of negligence, for the behavior of somebody else.

MS. NOBREGA said that according to her understanding, that is possible.

REPRESENTATIVE BERKOWITZ added that it seems to him that the criminal conduct for which the defendant would be convicted would be the supplying of alcohol, and once the defendant supplies the alcohol, then, in essence, he/she assumes the risk that the alcohol will result in death or serious physical injury. He noted that this is just his initial assumption, and that they could check with the DOL.

Number 2183

A roll call vote was taken. Representatives James, Ogan, Coghill, and Rokeberg voted for the adoption of Version O as a work draft. Representatives Meyer and Berkowitz voted against

it. Therefore, Version O was before the committee by a vote of 4-2.

Number 2171

MARTI GREESON, Executive Director, Anchorage Chapter, Mothers Against Drunk Driving (MADD), testified via teleconference and indicated that one of the primary reasons that the legal drinking age is 21 is because young people make bad decisions when they drink. She suggested that when an adult provides alcohol to someone under the legal drinking age, a higher standard of responsibility and culpability should be imposed. She mentioned the issue of possibly adding a provision to HB 330 requiring the naming of victims, and briefly relayed some of the details of the accident that killed Officer Wollam and the ensuing court case.

Number 2052

PAMELA WATTS, Executive Director, Governor's Advisory Board on Alcoholism and Drug Abuse, Office of the Commissioner, Department of Health and Social Services (DHSS), said that the advisory board appreciates the committee's recognition of the seriousness of adults providing alcohol to persons under 21 years of age, and supports the passage of HB 330. She noted that many adults fail to realize how serious providing alcohol to underage individuals is, and how potentially life-threatening this behavior is. She relayed that research indicates that drinking is associated with risk-taking and sensation-seeking behaviors among adolescents, and that it has a "disinhibiting" effect that may increase the likelihood of unsafe activities. In 1997, nationally, 21 percent of young drivers - 15 to 21 years old - who were killed in crashes were intoxicated; a further breakdown indicated that that was 25 percent of the young males and 12 percent of the young female drivers.

MS. WATTS relayed that people who begin drinking before the age of 15 are four times more likely to develop alcohol dependence than those who wait until age 21. Each additional year of "delayed drinking onset" reduces the probability of alcohol dependence by 14 percent. Family and peers can actively influence underage-drinking behavior by explicitly discouraging use or, passively, by providing models of drinking behavior. She noted, for example, that a Columbia University study reports that adolescents whose fathers have more than two drinks a day have a 71 percent greater risk of substance abuse themselves. She also relayed that 95 percent of violent crime on college

campuses is alcohol-related and 90 percent of "college rapes" involve alcohol use by the victim and/or the assailant.

MS. WATTS, after acknowledging that prevention programs are working, also stated:

> They need your continued support and advocacy to encourage activities and initiatives that will change community standards and emphasize healthy lifestyles. We need to develop sufficient resources to meet community needs for appropriate levels of intervention and treatment for the underage population who are identified as having alcohol or other drug problems. But the bottom line here is that those adults who provide alcohol to underage drinkers assume a heavy responsibility, and this legislation makes clear what that responsibility is and the consequences associated with it. The Advisory Board on Alcoholism and Drug Abuse encourages your support of this bill.

REPRESENTATIVE MEYER relayed that after the aforementioned accident, he, too, wanted to see the penalty increased to a felony; however, his research indicated that most of the time, the adults who furnish alcohol to minors are, for example, an older brother who is 21 buying a six-pack of beer for a younger brother who is 19. He opined that HB 330 would exclude persons in this type of example unless they had a prior conviction for this crime. He asked Ms. Watts who, in her experience, is contributing [alcohol] to minors.

REPRESENTATIVE BERKOWITZ disagreed, indicating that Representative Meyer is incorrect in his interpretation that HB 330 would not apply in the aforementioned example.

Number 1870

CHAIR ROKEBERG and MS. WATTS confirmed this, pointing out that the language says "; or".

REPRESENTATIVE MEYER asked Ms. Watts whether she wanted HB 330 to apply in cases where it is merely an older sibling providing alcohol to a younger one. He acknowledged that in the situation in which Officer Wollam was killed, someone who was 31 and who should have "known better" provided the alcohol.

MS. WATTS, after noting that she did not have any statistical information regarding who, in most cases, is providing alcohol

to minors, added that during the course of her work in the field for over ten years, she has seen a cross section of individuals purchase alcohol for underage drinkers. She said that in some instances, parents provide alcohol in a misguided effort to help their children "learn how to drink," without really recognizing what the implications might be. She concurred that in some instances, alcohol is provided by the minor's peers or older siblings. She surmised, however, that because the law does have a cut-off age of 21, it might not be possible to refrain from holding someone accountable simply because he/she is a relative or merely a year older. She also pointed out that regardless of the relationship or age differential between the minor and the person providing, the end result could be the same - loss of life, serious injury, or damage to property.

REPRESENTATIVE MEYER agreed.

Number 1761

CINDY CASHEN, Juneau Chapter, Mothers Against Drunk Driving (MADD), indicated that she agreed with Ms. Greeson's comments regarding naming the victims. She said MADD supports HB 330 because it will act as a deterrent. Referring to the example posed by Representative Meyer, that of an older sibling providing alcohol to a minor, she opined that almost certainly, the older sibling is a "habitual purchaser" and is not doing it for the first time; it will have been many times, until something tragic happens. In light of this, she said, "Yes, we do need to make it a felony." "Because we have given ourselves so many rights," she added, "we are now a state of victims ... and we now need to send a message out that we need to protect ourselves from ourselves."

Number 1647

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference and said that the PDA is encouraged by the "amendments made or suggested towards" Version O. She noted that since she does not yet have a copy of Version O, she is not sure where the language pertaining to negligence would go. She mentioned that originally, she was going to comment on the use of the broad term "injures", but Version O has addressed those concerns.

MS. WILSON pointed out, however, that the PDA still has concerns about causation. When HB 330 requires that the person provide alcohol and that the minor be under the influence of an

alcoholic beverage, causation becomes a problem because determining or tracking what alcohol that person is under [the influence of] may be very difficult. "If somebody gives somebody else a beer, another person gives them another beer, four hours later they get another beer, well, what alcohol are they under the influence of?" she asked. She predicted that that would be a difficult question to answer.

MS. WILSON, referring to that same scenario, noted that there are also time factors that could come into question. "How long is the person who provides the alcohol exposed [to] liability," she asked. And with regard to the injury, she asked "what about intervening causes," and "what about superseding causes if the person is involved in something where self-defense is required: they leave, they get into a scuffle, there's serious physical injury, but it's in self-defense?" "What if the person who caused the injury was not expected/anticipated," she asked, pointing out that there might be "renegade actions" of a minor that aren't related.

MS. WILSON remarked that the PDA has submitted an indeterminate fiscal note because it's very difficult to tell what percentage of the cases that the PDA handles regarding furnishing alcohol to minors might involve a situation where the minor seriously physically injures or kills somebody. The PDA tracks what happens to the person who furnishes the alcohol, she explained, noting that in many situations, that is the only charge; the PDA does not currently have the capability of tracking or correlating information about a separate offense or some other incident involving the minor.

MS. WILSON surmised that making the crime of furnishing alcohol a felony as proposed by HB 330 could very well have a fiscal impact. She pointed out that statewide, the PDA handled over 100 cases of furnishing alcohol to minors, and she did not know what percentage of those cases might be charged as felonies, which require more time and effort than misdemeanor charges. To illustrate, she recounted, "You have a larger jury pool; you have indictments, more court hearings; if they are convicted, you have pre-sentence reports; aggravators [and] mitigators apply. So felonies take more time; they increase the workload."

Number 1436

MS. WILSON concluded by saying that narrowing the language to "serious physical injury" is an improvement because that is a term already defined in Title 11. In response to a question,

she said that she did not believe that the term "furnished" is defined in statute.

REPRESENTATIVE BERKOWITZ said:

> One of the questions I have is whether we're prescribing conduct. For example, if you have an alcohol company that knows that a lot of kids are getting a hold of its booze, and one of those kids then goes out and seriously physically injures or kills somebody while under the influence. Do you think this statute would reach the corporate furnisher or deliverer?

MS. WILSON surmised that the crime of furnishing alcohol to minors by a licensee is covered by another statute; AS 04.16.052 covers a licensee, or an agent or an employee of a licensee who furnishes alcohol. In response to the question of whether the two [statutes] are exclusive, she said probably not because "sometimes this particular statute could apply to a bartender."

REPRESENTATIVE BERKOWITZ said it seems to him that under Version O, if a company that makes an alcoholic beverage has information that a lot of underage kids are drinking its product, then "you could go out and prosecute the corporation or its officers for furnishing" if, one day, one of those kids goes out and kills someone while under the influence of that product.

MS. WILSON said she did not have an answer to that but noted that since HB 330 says "person", she is assuming that it has to be the "person" furnishing or delivering; which could, for example, be a bartender or a bar owner.

REPRESENTATIVE BERKOWITZ said:

> But if the bar owner knew that there was a pattern where there was a lot of underage drinking at that bar and didn't take the steps to clean it up, then you could go back and reach the bar owner for feloniously providing. I'd be willing to take the case as a prosecutor."

Number 1261

CHAIR ROKEBERG suggested that there is a separate statute under Title 4 that "is against the license, not the criminality."

REPRESENTATIVE BERKOWITZ noted that the two statutes are not exclusive; both could apply.

CHAIR ROKEBERG offered that one is a "license action" and one is a criminal action.

REPRESENTATIVE MEYER, after noting that the Sullivan Arena, for example, provides alcohol at its events, asked who would be responsible if a minor was supplied with alcohol and then got into an accident on the way home, would it be the City of Anchorage or whoever has the license, or both?

CHAIR ROKEBERG suggested that the bartender could be charged with the criminal offense under HB 330, and the licensee could have his/her license suspended/revoked under the other statute that applied. Thus the single occurrence could result in both a civil action and a criminal action.

REPRESENTATIVE BERKOWITZ noted that a single course of conduct could result in more than one criminal charge.

[The Department of Law provided a proposed amendment, which would later become Amendment 1, and which read as follows with original punctuation provided:]

> (2) the person who receives the alcoholic beverage negligently causes death or serious physical injury to another while under the influence of the alcoholic beverage received in violation of this section; in this paragraph "serious physical injury" has the meaning given in AS 11.81.900, and "negligently" means acting with civil negligence.

Number 1148

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that both the language in Version O and the language in [Amendment 1] "get you to the same place"; it is merely a question of which language style is preferred. She noted that the DOL supports HB 330 and agrees with the PDA regarding the two additions: "serious physical injury" and the reference to wrongdoing on the part of the child. She explained that the latter point would insure that a person could not be charged with a felony if the child goes out and gets in an accident that was not his/her fault. She acknowledged that there are

causation problems [with HB 330] and surmised that [any resulting cases] will be difficult to prove.

CHAIR ROKEBERG mentioned that he has some concern with Ms. Wilson's point that there could be some question as to which alcohol contributed to any resulting accident.

MS. CARPENETI agreed that that issue could pose problems; nevertheless, [adoption of this type of legislation] is still worth doing even if such cases are difficult to prove. She noted, for example, that there might be cases where someone has been at a party that has "several furnishers."

REPRESENTATIVE JAMES suggested that there could also be cases where someone has been drinking before arriving at such a party, does not drink anything at the party, and then later gets in an accident. She mentioned that she is having a struggle with this whole issue because she sees a lot of loopholes and because a felony charge is a serious charge. She asked Ms. Carpeneti for her thoughts on Ms. Cashen's testimony.

MS. CARPENETI indicated her agreement with Ms. Cashen's statement that people should simply not be furnishing alcohol to minors; it is a very serious thing to do, and people who do so should take [responsibility for] the consequences. She noted that although she, too, has some concerns, both she and the DOL support HB 330.

Number 0920

REPRESENTATIVE JAMES said she has concern about situations in which the alcohol is provided by a spouse.

CHAIR ROKEBERG clarified that AS 04.16.051(b) says: "This section does not prohibit the furnishing or delivery of an alcoholic beverage (1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing or deliver occurs off licensed premises". And, in an effort to alleviate Representative James's concern about providing for a felony charge, he noted that it is currently a felony under AS 04.16.051 if the person has been previously convicted of this same crime within the five years preceding the current violation. In response to questions, he confirmed that HB 330 would make it a felony for a first-time conviction but only if the underage drinker goes on to cause a serious physical injury or a death while acting in a negligent manner.

MS. CARPENETI suggested that if the committee is concerned about the legislation including cases in which persons who are over 21 years old furnish alcohol to persons who are 18, 19 or 20 years old, language could be inserted to the effect that it would only become a felony if the alcohol is provided to a minor - someone under the age of 18. She reiterated, though, that the DOL supports HB 330 as is. In response to a question, she noted that even if such a change were made, the person who was 18, 19 or 20 years old would still be charged with minor in possession.

MS. CARPENETI, in response to questions, explained that a class C felony can result in a sentence of up to five years' incarceration, whereas a class A misdemeanor can result in a sentence of up to one year, and that this difference, in part, results in the increased cost associated with prosecuting and defending felony charges. In response to a question of whether a felony charge might be negotiated down to a misdemeanor, she noted that there is always the possibility of negotiations, depending on the facts, regardless of whether the initial charge is a felony or a misdemeanor.

Number 0578

REPRESENTATIVE BERKOWITZ asked whether there is any mens rea - culpable mental state - associated with knowing that the person was [under 21].

MS. CARPENETI replied: "The culpable mental state is acting with criminal negligence, [which] violates this section, so you'd have to be criminally negligent about that."

REPRESENTATIVE BERKOWITZ surmised, then, that "we're not going to have to check anyone's ID or anything like that."

MS. CARPENETI said, "Well, if it were me, I would."

CHAIR ROKEBERG mentioned that there would have to be a death or a serious injury "preceding this whole charge."

MS. CARPENETI said, "I think you have to act with criminal negligence."

REPRESENTATIVE BERKOWITZ asked what sort of sentence range are first- and second-time offenders subject to under the current statutory scheme.

MS. CARPENETI posited that it would depend on the facts, adding that she would have to research that information and provide it later.

REPRESENTATIVE BERKOWITZ, referring to his earlier example about a hypothetical company that knew underage drinkers were accessing its product, asked whether HB 330 could be used to prosecute that company.

MS. CARPENETI said that she reads [HB 330] to be more limited than that; she posited that it applies to the person who actually provides the alcohol. She remarked that, as Chair Rokeberg has already stated, there are other statutes that would apply in Representative Berkowitz's example. She added that she would research the issue to see whether the DOL has ever attempted to prosecute such a case or whether it has been done in another jurisdiction under a similar statute.

REPRESENTATIVE BERKOWITZ encouraged the DOL to look into that possibility, saying that it seems to him that an aggressive prosecution could, under the current statutory scheme, reach the corporate executives of his hypothetical example and, under certain circumstances, might indeed be warranted.

Number 0383

CHAIR ROKEBERG closed the public hearing on HB 330. He noted that one of the issues the committee must decide is whether to use the language proposed by the DOL [via Amendment 1] or to retain the language in Version O.

REPRESENTATIVE JAMES said that it did not matter that much to her which language is used. She mentioned, however, that it seems to her, during attempts to increase penalties because something horrible has happened, that the consistent argument for doing so is that raising the penalties will act as a deterrent, but in her experience, such has not proved to be the case. She added that she has a problem with the concept of trying to create, via laws and penalties, a perfect life on earth; it's just not ever going to happen.

REPRESENTATIVE MEYER indicated that he is not too concerned over which language is used either. And while HB 330 may not deter everyone from providing alcohol to underage drinkers, he said he feels that HB 330 is "a victim's-rights bill" in the sense that at least there will be a serious penalty associated with this

offense in instances when an underage drinker goes out and causes the death of someone.

REPRESENTATIVE BERKOWITZ opined that the simpler language [in Amendment 1] would be preferable; "it's clearer, it's easier to prosecute, people know what the rules are, and, when we're sending messages with our legislation, it ought not to be cryptic."

CHAIR ROKEBERG noted that he is not "wedded to either one."

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE OGAN commented that word of this type of a law, which could make it a felony to provide alcohol to a minor if a serious accident results, will quickly spread.

TAPE 02-16, SIDE A
Number 0001

REPRESENTATIVE OGAN also mentioned that in "the valley," the problem of adults buying alcohol for minors is epidemic.

Number 0048

REPRESENTATIVE OGAN moved to report the proposed committee substitute (CS) for HB 330, version 22-LS1178\O, Ford, 2/11/02, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 330(JUD) was reported from the House Judiciary Standing Committee.

HB 332 - EXTENDING COUNCIL ON DOMESTIC VIOLENCE

Number 0074

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 332, "An Act extending the termination date of the Council on Domestic Violence and Sexual Assault; and providing for an effective date." He noted that the committee has received a proposed committee substitute (CS) that addresses a concern discussed at the prior hearing on HB 332.

Number 0116

PATTI SWENSON, Staff to Representative Con Bunde, Alaska State Legislature, sponsor, on behalf of the sponsor, confirmed that the proposed CS does address that concern, and asked the committee to also consider amending the proposed CS to say "may" instead of "shall" on page 1, line 6. She explained that such a change would give the executive director flexibility with regard to hiring staff; for example, if there are ten authorized positions, the executive director would not have to fill all of those positions if budget constraints prevailed. She also suggested deleting from page 1, lines 7-8, "**that is authorized by the legislature in the budget documents relating to the council**". She opined that this change would give the executive director the flexibility "to change the office around"; for example, if a grant writer was needed, the executive director could fill that need instead of hiring two clerical staff.

Number 0240

REPRESENTATIVE BERKOWITZ moved to adopt the proposed committee substitute (CS) for HB 332, version 22-LS1290\C, Lauterbach, 2/8/02, as a work draft. There being no objection, Version C was before the committee.

Number 0297

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, which would replace "shall" with "may" on page 1, line 6. There being no objection, Amendment 1 was adopted.

Number 0324

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 2, which would delete "**that is authorized by the legislature in the budget documents relating to the council**" from page 1, lines 7-8.

REPRESENTATIVES JAMES and OGAN objected.

REPRESENTATIVE JAMES opined that the executive director should only hire staff as authorized by the legislature, adding that this may mean that the council might still have empty positions.

REPRESENTATIVE BERKOWITZ said that according to his understanding of Ms. Swenson's testimony, "if we require hiring and staff decisions to be made according to budget documents, it precludes hiring decisions being made, say, if there's a grant or other source [of funds] that comes to the council."

MS. SWENSON clarified that that is not exactly what she said although it is also true. She said that by taking out that language, it would give the executive director the flexibility to change the office makeup around, and still hire what is authorized within the budget; authorized funds for two clerical staff, for example, could be used instead for one grant writer.

CHAIR ROKEBERG called an at-ease from 2:49 p.m. to 2:50 p.m.

MS. SWENSON, in an effort to alleviate concerns, suggested that instead of the change proposed by Amendment 2, the language could be altered to say: "the executive director may hire staff not to exceed the budget authorization".

REPRESENTATIVE BERKOWITZ objected.

REPRESENTATIVE JAMES also objected, and said that "that assumes that everyone's going to go out and exceed the [budget authorization]."

CHAIR ROKEBERG proposed leaving the language on page 1, lines 7-8, as is, and suggested that if the sponsor wants to propose a further change to the authorization language, he could do so before the House Finance Committee.

REPRESENTATIVE BERKOWITZ withdrew Amendment 2.

Number 0609

REPRESENTATIVE BERKOWITZ moved to report the proposed committee substitute (CS) for HB 332, version 22-LS1290\C, Lauterbach, 2/8/02, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 332(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0613

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:53 p.m.