

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

February 27, 2002

1:10 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative Jeannette James  
Representative John Coghill  
Representative Kevin Meyer  
Representative Ethan Berkowitz  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Scott Ogan, Vice Chair

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 15

Proposing amendments to the Constitution of the State of Alaska relating to inflation- proofing the permanent fund.

- MOVED CSHJR 15(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 25

Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions.

- MOVED HJR 25 OUT OF COMMITTEE

HOUSE BILL NO. 213

"An Act relating to initiative and referendum petitions; and providing for an effective date."

- MOVED HB 213 OUT OF COMMITTEE

HOUSE BILL NO. 350

"An Act relating to terroristic threatening."

- HEARD AND HELD

HOUSE BILL NO. 328

"An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility, criminal mischief, and

terroristic threatening; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HJR 15

SHORT TITLE:CONST. AM: PERMANENT FUND

SPONSOR(S): RLS BY REQUEST OF LEG BUDGET & AUDIT

Jrn-Date	Jrn-Page		Action
02/14/01	0316	(H)	READ THE FIRST TIME - REFERRALS
02/14/01	0316	(H)	JUD, FIN
10/19/01		(H)	JUD AT 11:00 AM Anch LIO Conf Rm
10/19/01		(H)	Heard & Held
10/19/01		(H)	MINUTE(JUD)
02/04/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/04/02		(H)	Scheduled But Not Heard
02/08/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/08/02		(H)	Heard & Held MINUTE(JUD)
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 25

SHORT TITLE:CONST AM: INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S)WILLIAMS

Jrn-Date	Jrn-Page		Action
03/26/01	0728	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0728	(H)	STA, JUD, FIN
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102
04/24/01		(H)	Bill Postponed
04/26/01		(H)	STA AT 8:00 AM CAPITOL 102
04/26/01		(H)	Scheduled But Not Heard
04/26/01		(H)	MINUTE(STA)
04/26/01	1256	(H)	COSPONSOR(S): WILSON
04/28/01		(H)	STA AT 9:00 AM CAPITOL 102
04/28/01		(H)	<Bill Postponed>
02/07/02		(H)	STA AT 8:00 AM CAPITOL 102
02/07/02		(H)	Moved Out of Committee MINUTE(STA)
02/08/02	2176	(H)	STA RPT 5DP 2DNP
02/08/02	2176	(H)	DP: WILSON, STEVENS, JAMES,

02/08/02	2176	(H)	FATE, COGHILL; DNP: CRAWFORD, HAYES
02/08/02	2177	(H)	FN1: (GOV)
02/20/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/20/02		(H)	Heard & Held MINUTE(JUD)
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 213

SHORT TITLE: INITIATIVE/REFERENDUM PETITIONS

SPONSOR(S): REPRESENTATIVE(S) WILLIAMS

Jrn-Date	Jrn-Page		Action
03/26/01	0729	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0729	(H)	STA, JUD, FIN
04/24/01		(H)	STA AT 8:00 AM CAPITOL 102
04/24/01		(H)	Bill Postponed
04/26/01		(H)	STA AT 8:00 AM CAPITOL 102
04/26/01		(H)	Heard & Held
04/26/01		(H)	MINUTE(STA)
04/26/01	1257	(H)	COSPONSOR(S): WILSON
04/28/01		(H)	STA AT 9:00 AM CAPITOL 102
04/28/01		(H)	<Bill Postponed>
02/07/02		(H)	STA AT 8:00 AM CAPITOL 102
02/07/02		(H)	Moved Out of Committee MINUTE(STA)
02/08/02	2178	(H)	STA RPT 5DP 1DNP 1NR
02/08/02	2178	(H)	DP: WILSON, STEVENS, JAMES, FATE,
02/08/02	2178	(H)	COGHILL; DNP: CRAWFORD; NR: HAYES
02/08/02	2178	(H)	FN1: ZERO(GOV)
02/20/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/20/02		(H)	Heard & Held MINUTE(JUD)
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 350

SHORT TITLE: TERRORISTIC THREATS

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

Jrn-Date	Jrn-Page		Action
01/23/02	2040	(H)	READ THE FIRST TIME - REFERRALS
01/23/02	2040	(H)	TRA, JUD
02/19/02		(H)	TRA AT 1:15 PM CAPITOL 17

02/19/02		(H)	Moved CSHB 350(TRA) Out of Committee -- Time Change --
02/19/02		(H)	MINUTE(TRA)
02/20/02	2334	(H)	TRA RPT CS(TRA) NT 5NR 1AM
02/20/02	2334	(H)	NR: SCALZI, OGAN, KOOKESH, MASEK,
02/20/02	2334	(H)	KOHRING; AM: WILSON
02/20/02	2335	(H)	FN1: ZERO(CRT)
02/20/02	2335	(H)	FN2: INDETERMINATE(ADM)
02/20/02	2335	(H)	FN3: INDETERMINATE(LAW)
02/20/02	2335	(H)	REFERRED TO JUDICIARY
02/20/02	2348	(H)	FIN REFERRAL ADDED AFTER JUD
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 328

SHORT TITLE:TERRORISTIC THREATENING/PIPELINE DAMAGE  
 SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/02	1978	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1978	(H)	JUD
01/16/02	1978	(H)	FN1: ZERO(ADM); FN2: ZERO(LAW)
01/16/02	1978	(H)	GOVERNOR'S TRANSMITTAL LETTER
01/16/02	1978	(H)	REFERRED TO JUDICIARY
02/27/02		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE LESIL McGUIRE  
 Alaska State Legislature  
 Capitol Building, Room 418  
 Juneau, Alaska 99801  
 POSITION STATEMENT: Sponsor of HB 350.

ANNE CARPENETI, Assistant Attorney General  
 Legal Services Section-Juneau  
 Criminal Division  
 Department of Law (DOL)  
 PO Box 110300  
 Juneau, Alaska 99811-0300  
 POSITION STATEMENT: Presented HB 328 on behalf of the administration 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: During discussion of HB 328 spoke to the need for a technical amendment to Amendment 2.

**ACTION NARRATIVE**

TAPE 02-25, SIDE A  
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

HJR 15 - CONST. AM: PERMANENT FUND

Number 0041

CHAIR ROKEBERG announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 15, Proposing amendments to the Constitution of the State of Alaska relating to inflation-proofing the permanent fund. [Before the committee was committee substitute (CS) for HJR 15, version 22-LS0568\C, Cook, 1/31/02, which was adopted as a work draft on 2/8/02.]

Number 0083

REPRESENTATIVE JAMES moved to report committee substitute (CS) for HJR 15, version 22-LS0568\C, Cook, 1/31/02, out of committee [with individual recommendations and the accompanying fiscal notes]. There being no objection, CSHJR 15(JUD) was reported from the House Judiciary Standing Committee.

HJR 25 - CONST AM: INITIATIVE/REFERENDUM PETITIONS

Number 0112

CHAIR ROKEBERG announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 25, Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions.

Number 0201

REPRESENTATIVE JAMES moved to report HJR 25 out of committee with individual recommendations and the accompanying fiscal note.

Number 0218

REPRESENTATIVE BERKOWITZ objected. He said he did not think that there is a problem with the current method of handling initiative and referendum petitions; therefore, there is no need to alter the Alaska State Constitution as is proposed by HJR 25.

Number 0250

A roll call vote was taken. Representatives Coghill, Meyer, James, and Rokeberg voted to report HJR 25 from committee. Representative Berkowitz voted against it. Therefore, HJR 25 was reported out of the House Judiciary Standing Committee by a vote of 4-1.

HB 213 - INITIATIVE/REFERENDUM PETITIONS

Number 0330

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 213, "An Act relating to initiative and referendum petitions; and providing for an effective date."

Number 0334

REPRESENTATIVE JAMES moved to report HB 213 out of committee with individual recommendations and the accompanying zero fiscal note.

Number 0336

REPRESENTATIVE BERKOWITZ objected.

Number 0338

A roll call vote was taken. Representatives Meyer, James, Coghill, and Rokeberg voted to report HB 213 from committee. Representative Berkowitz voted against it. Therefore, HB 213 was reported out of the House Judiciary Standing Committee by a vote of 4-1.

CHAIR ROKEBERG called an at-ease from 1:14 p.m. to 1:17 p.m.

HB 350 - TERRORISTIC THREATS

[Contains references and comparisons to HB 328, along with mention that aspects of both HB 350 and HB 328 would perhaps be combined in a committee substitute (CS).]

Number 0340

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 350, "An Act relating to terroristic threatening." [Before the committee was CSHB 350(TRA).]

Number 0389

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor, noted that CSHB 350(TRA) adds to existing statutes, which already provide for the crime of criminal mischief in the first degree - a class B felony - and the crime of terroristic threatening - a class C felony. She explained that HB 350 adds tampering with water to the statute pertaining to criminal mischief in the first degree. It also adds, to the statute pertaining to terroristic threatening, a reference to public area; mode of public transportation; disruption of the schedule of an entity providing transportation services; and the functioning of [oil or] gas pipelines and their supporting utilities, facilities, and transportation/cargo facilities. She noted that the later change is located in Section 2 of HB 350.

REPRESENTATIVE McGUIRE offered that HB 350, much like HB 328, is simply an attempt by the State of Alaska to address issues raised in the wake of the national tragedy that occurred on September 11, 2001, and to address potential new crimes relating to terrorism. She noted that current statutes already address some of these issues, and opined that HB 350 merely strengthens those statutes. In response to the question of whether a power plant would fall under the definition of utility, she said that it would. In conclusion, she asked the committee for its support of HB 350.

CHAIR ROKEBERG referenced the standard of "intentionally damages" found in Section 1, page 1, line 15, of HB 350. He noted that, in contrast, HB 328 proposes to remove that language and replace it with "tampers with", which, he opined, did not provide for any standard at all. He asked Representative McGuire to comment on this point.

REPRESENTATIVE McGUIRE indicated that she did have some concern with that aspect of HB 328, given that it proposes to change the mental state from "intentionally", which, she opined, is a good standard to have. She noted that this is the first opportunity to hear both HB 350 and HB 328 together "as a [possible] merge." She surmised that the Department of Law would be able to address that issue during the hearing on HB 328. She added that she would prefer for the language to remain "intentionally damages".

CHAIR ROKEBERG noted that this same section of HB 328 [Section 3] also includes reference to airplanes and helicopters. He asked Representative McGuire whether she thought this would be a good addition.

REPRESENTATIVE McGUIRE said yes; "I'm comfortable with that language and I think it's highly appropriate."

CHAIR ROKEBERG noted that after adding "tampers with" in this section, HB 328 also refers to a "reckless disregard" standard.

REPRESENTATIVE McGUIRE, notwithstanding that point, opined that keeping an intentional standard would be better.

Number 0744

REPRESENTATIVE McGUIRE, to wrap up, remarked that the legislature is charged with monitoring the statutes to ensure that they address current events, and certainly what occurred on September 11 is one such event. She stated that her intent with HB 350 is simply to bring the statutes up to date, and posited that this is also the governor's intent with HB 328.

CHAIR ROKEBERG mentioned that although Section 2 of HB 350 merely expands the existing crime of terroristic threatening, HB 328 appears to create a new crime [of terroristic threatening in the first degree].

REPRESENTATIVE McGUIRE replied that Section 2 of HB 350 does not create a new crime, it simply adds to the existing crime of terroristic threatening, which is class C felony. But, she opined, one could argue that it's a new crime in the sense that if a person meets the elements of making a false report of a circumstance that exists or is about to exist, then that would be a new crime; however, "the statutory framework, as you can see, is already there for that to be a class C felony." Therefore, HB 350 is just adding language stipulating that if, in making that false report, it causes the evacuation of a

public area or mode of transportation, then the person can be charged with a class C felony.

CHAIR ROKEBERG announced that HB 350 would be held over.

HB 328 - TERRORISTIC THREATENING/PIPELINE DAMAGE

[Contains references and comparisons to HB 350, along with mention that aspects of both HB 328 and HB 350 would perhaps be combined in a committee substitute (CS).]

Number 0905

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 328, "An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility, criminal mischief, and terroristic threatening; making conforming amendments; and providing for an effective date."

Number 0911

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), mentioned that HB 328 originated along with the administration's other bills pertaining to the terroristic threats that have occurred in our country. She added that HB 328 was drafted as a result of meetings by district attorneys throughout the state who were considering what the possibilities were of terroristic acts in Alaska and what could be done to make the statutes more responsive to those possibilities.

MS. CARPENETI explained that HB 328 focuses on what is considered the most vulnerable property in Alaska, the oil pipeline and its supporting facilities. Intentionally damaging an oil or gas pipeline or supporting facility is currently considered criminal mischief in the first degree and is a class B felony, which carries a maximum of ten years' incarceration; considering the possibility of harm to the state if intentional damage were committed to the pipeline, HB 328 changes this crime to a class A felony. Also, the crime of tampering with an oil or gas pipeline or supporting facility is currently considered criminal mischief in the second degree and is a class C felony; HB 328 raises this crime to a class B felony [under criminal mischief in the first degree], and "has the same culpable mental state of reckless disregard to damage."

MS. CARPENETI noted that HB 328 also provides that making a false threat of damaging an oil or gas pipeline or supporting facility would be a class C felony under terroristic threatening in the second degree, which is an additional crime created by HB 328. Under current law, it's criminal mischief in the first degree - a class B felony - to tamper with food; drugs; cosmetics; or a container for food, drugs, or cosmetics, with the intent to cause physical injury to another person. House Bill 328 adds tampering with a person's water supply or a container for a water supply to that same prohibition.

MS. CARPENETI explained that Section 7 of HB 328 creates the crime of terroristic threatening in the first degree - a class B felony - if a person sends an imitation biological or chemical substance [with intent to] cause serious physical injury or evacuation of a building; this provision of HB 328 mirrors the current law of terroristic threatening but makes it a more serious offense to send an imitation biological or chemical substance. After noting that the current statute regarding terroristic threatening would become terroristic threatening in the second degree - a class C felony - she said that HB 328 adds the prohibition of making a false threat to send an imitation chemical or biological substance that is harmful to persons. She remarked that HB 328 also makes various conforming amendments that she would be happy to explain since they might be confusing to a reader.

Number 1139

CHAIR ROKEBERG asked whether, "in terms of the whole panoply of terroristic threatening as a crime," HB 328 has created a new first-degree level.

MS. CARPENETI concurred that there would be a new level of terroristic threatening.

CHAIR ROKEBERG surmised, then, that the current statute would become second degree terroristic threatening and that there would be additional aspects to it.

MS. CARPENETI said that is correct. She also reiterated that the penalties have been raised for causing harm to an oil or gas pipeline or supporting facility; this would become a class A felony for intentionally causing damage, and would become a class B felony for tampering with such.

MS. CARPENETI mentioned that members should have in their packets a proposed amendment suggested by the DOL [which would become Amendment 2]. She noted that [Amendment 2] does two things. First, it amends Alaska's conspiracy law to provide that it would be a crime to conspire to intentionally cause damage to an oil or gas pipeline, to conspire to commit terroristic threatening in the first degree, or to conspire to commit criminal mischief in the first degree such as tampering with a food or water supply or tampering with an oil or gas pipeline.

CHAIR ROKEBERG asked whether those additions would occur because of [paragraphs 4 and 5 of Amendment 2].

Number 1251

MS. CARPENETI clarified that Section 1 [of Amendment 2] would add those items to the conspiracy law by amending AS 11.31.120(i)(2), changing the definition of "serious felony offense" as it relates to the conspiracy law therein. She noted that the rationale for this change to the conspiracy law is that terrorists generally act in groups rather than individually. She added that to qualify as a conspiracy, two or more people have to agree to commit a crime and one person has to take a step in furtherance of the commission of that crime.

MS. CARPENETI, referring to Section 2 [of Amendment 2], explained that it would add two more ways in which a person could commit the crime of murder in the first degree, which is an unclassified felony. One of the additional ways would be if, acting alone or with other people, the person commits intentional damage to an oil or gas pipeline, and in the course of that offense or in immediate flight from it, any person causes the death of a person other than one of the participants. She noted that this is "a felony murder theory" that the state could charge murder in the first degree for somebody who, for example, set fire to an oil pipeline and a worker was killed as a result, without having to prove that the defendant intentionally caused the death of that person, which is the traditional theory of murder in the first degree.

MS. CARPENETI, still referring to changes proposed by Section 2 [of Amendment 2], explained that the other additional way to commit murder in the first degree would be when a person commits terroristic threatening in the first degree, and in the course of or immediate flight from that crime, causes the death of another person other than one of the participants. She added

that these changes would allow the state to charge a person with murder in the first degree even though there's not proof that the person actually intended to kill that individual while committing or fleeing from the underlying crime. She noted that [the death] must have occurred "pretty immediate - pretty close - to the crime." For example, if a person blows up a pipeline facility and people get killed, the state would not have to prove that the person actually intended to kill people, just that he/she intended to cause harm to the facility. In response to a question, she explained that Alaska does have statutes pertaining to felony murder in the first degree and felony murder in the second degree.

Number 1508

REPRESENTATIVE BERKOWITZ, noting that he is not speaking to [Amendment 2], said of HB 328:

There's some incongruities between the [class] A felony proposed about damaging an oil pipeline and a [class] B felony. I mean, you could be in a situation where someone could be charged with [a class] A felony, for example, [for] tearing down a fence at an oil or gas pipeline or supporting facility; ... its an intentional crime, ... it's [a class] A felony. And, at the same time, someone could blow up a power plant and that's a [class] B felony. I think the incongruity I see is, when we carve out an exception for oil or gas pipeline or supporting facility, what we're really trying to say is, "This is the type of facility that the state places a lot of importance on." And if we could find a way of generalizing that language so [that] we would have the [class] A felony option available more broadly, [then], in essence, there's more discretion. I think that's a better kind of law than being as specific as we are by specifying oil or gas pipeline or supporting facility.

MS. CARPENETI responded:

For the class A felony offense? Well, ... on the Senate side, the first committee of [referral], instead of making only intentionally damaging an oil or gas pipeline the class A felony, they made all the conduct covered in criminal mischief in the first degree a class A felony. And that seems to me what you're suggesting.

REPRESENTATIVE BERKOWITZ replied that there are reasons to have gradations in charging, but noted that there should also be recognition in the law that there are certain facilities so essential to the community - power plants, water supplies, or oil/gas pipelines, for example - that they should be taken special care of. There ought to be a way of generalizing the language, he opined, to allow more discretion in charging, depending on the circumstances; also, there is the danger with HB 328 that simply by tearing down a fence, someone could be charged with a class A felony.

MS. CARPENETI remarked that in the aforementioned example of someone tearing down a fence at an oil or gas pipeline or supporting facility, that person would certainly not be charged at the class A felony level.

REPRESENTATIVE BERKOWITZ, to counter, and referring to a prior hearing on legislation pertaining to felony eluding, noted that the committee had heard several examples of poor discretion in charging. "Having been a prosecutor, I will tell you that there are folks that use their discretion well, and there are folks that use their discretion in an effort to force charge-bargaining." He opined that it is not appropriate for the legislature to give "them" that kind of latitude.

CHAIR ROKEBERG asked: Was there a "lesser included crime" under this?

Number 1656

MS. CARPENETI said yes. The crime of damaging an oil or gas pipeline or facility is currently in law as a class B felony, she explained, and Section 2 of HB 328 creates [a new statute pertaining solely to] that activity and makes it a class A felony. And then Section 3 of HB 328 makes tampering with an oil or gas pipeline facility a class B felony, instead of a class C felony as it is in current law. She noted that HB 328 also adds to terroristic threatening in the second degree, which is a class C felony, the crime of making a false report threatening damage to an oil or gas pipeline or supporting facility. So, she observed, there are gradations of conduct and, certainly, charging discretion amongst those.

CHAIR ROKEBERG asked Ms. Carpeneti to continue with her explanation of [Amendment 2].

MS. CARPENETI referred to the first section of page 3 of [Amendment 2], which pertains to page 4, line 7, of HB 328. She noted that this proposed change was suggested by Jerry Luckhaupt, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency. Currently, HB 328 provides that it is terroristic threatening in the first degree to send an imitation biological or chemical substance with intent to cause fear or evacuation of a building or serious public inconvenience. Ms. Carpeneti relayed that Mr. Luckhaupt posed the question of what would happen to a person if he/she sent a real biological or chemical substance that didn't harm anybody physically but still caused fear, evacuation of a building, or serious [public inconvenience]. Therefore, this portion of [Amendment 2] is intended to address that situation, since even if no one was hurt as a result of sending a real biological or chemical substance, the intent is the same and it is just as dangerous, or more so, as sending an imitation biological or chemical substance. She added that should someone send a real biological or chemical substance and cause harm, then that person could also be charged with other crimes such as assault.

Number 1773

CHAIR ROKEBERG pointed out that this proposed change to HB 328 would result in the person only being charged with a class B felony for sending real anthrax.

MS. CARPENETI concurred but stipulated that such would be the case only if no one was physically harmed as a result

REPRESENTATIVE BERKOWITZ said that is his point. He then informed members that he would be offering an amendment to "that section."

MS. CARPENETI, referring to the final section on page 3 of [Amendment 2], explained that it is a conforming amendment that defines the terms "chemical or biological substance" and "imitation chemical or biological substance" for the purpose of terroristic threatening in the first degree.

CHAIR ROKEBERG, referring to the portion of [Amendment 2] that says "'a chemical or biological substance' means a material that is harmful to the health of a person", opined that [that language] is a little weak.

REPRESENTATIVE BERKOWITZ indicated that he was "going to fix that too."

MS. CARPENETI said that it really depends on how specific the legislature wants to be. Maybe, she suggested, it would be best to say "causes serious physical injury", rather than "physical injury"; that's another option for defining a chemical or biological substance.

REPRESENTATIVE BERKOWITZ distributed [Amendment 1] and noted that it focuses on [Sections 7 and 8] of HB 328. In response to the question of which amendment should be addressed first, he said it did not make much difference, but noted that there would still need to be conforming amendments made.

REPRESENTATIVE JAMES suggested that the committee should come to an agreement on the issues raised and then create a committee substitute (CS).

CHAIR ROKEBERG mentioned that he did intend to have a CS, but posited that by addressing the proposed amendments, they could provide direction to the drafter.

Number 1949

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1.

Number 1957

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE BERKOWITZ explained that Amendment 1 [as it affects Section 7] would add making a false report about any substance to the crime of terroristic threatening in the first degree; would remove the language specifying the means of delivery; would change the language referring to places of assembly and public transportation facilities so that it "tracks the language that most states use, which is also parallel to what the model penal code uses when discussing terroristic threatening"; and would provide that a person convicted of this crime may be sentenced to pay restitution in an amount equal to the cost of the evacuation.

CHAIR ROKEBERG noted that Representative Berkowitz had provided members with a handout; he then asked what that entailed.

REPRESENTATIVE BERKOWITZ relayed that that handout is from the model penal code. He said that his preliminary research has indicated that a number of states, including Hawaii and Kentucky, have used this language.

Number 2021

REPRESENTATIVE BERKOWITZ went on to explain that Amendment 1, as it affects Section 8 of HB 328, would change the language so that it is more general, listing "life, health or property"; would mirror the model penal code with regard to places of assembly and public transportation facilities; and would also provide that a person convicted of this crime may be sentenced to pay restitution in an amount equal to the cost of the evacuation.

REPRESENTATIVE BERKOWITZ noted that he had once prosecuted someone under the current statute, and recalled that it is a very awkward statute the way it is currently written. He said that the more words that "get thrown in, the more opportunity there is to hang up a case." He recounted that on the case he worked on, someone had called in a bomb threat to Hope Cottages, Inc., up in Anchorage, but they weren't able to effect a complete evacuation because some of the people were so incapacitated that they couldn't be removed from the building before the bomb squad came, so there was an issue about whether there was really an evacuation.

CHAIR ROKEBERG expressed disbelief that the defense attorney would attempt to assert that.

REPRESENTATIVE BERKOWITZ assured him that "the jury saw through it." But that [case] just highlights the danger of leaving unnecessary words in a statute, he said, and that is why he thinks the language is cleaner if it just stipulates "any substance". He continued: "We talk about biological or chemical, what would that do for radioactive? I don't know what category that fits in. What if it's not really harmful? There's all kinds of possibilities that might get argued."

CHAIR ROKEBERG said he would hate to get a false report about a "peanut butter cheesecake or something."

REPRESENTATIVE BERKOWITZ responded that wouldn't put a person in fear of physical injury.

CHAIR ROKEBERG said it would depend on what a person's diet is.

REPRESENTATIVE JAMES asked, what if the person was allergic to peanuts?

REPRESENTATIVE BERKOWITZ said: "Well, if you knew that there were people who were allergic to peanuts, then, of course, it could be [considered a threat]."

Number 2154

CHAIR ROKEBERG noted that the administration uses the litany of "a building, public place, business premises", as opposed to Representative Berkowitz's language of "place of assembly".

REPRESENTATIVE BERKOWITZ said the reason he thinks that is preferable is that "if we use language that other states use, that other jurisdictions use, then there's more clarity in what we're talking about." He surmised that the impact is the same regardless of which language is used.

CHAIR ROKEBERG asked whether those places - a public place or a business premise - would be included within Representative Berkowitz's definition of a "place of assembly"?

REPRESENTATIVE BERKOWITZ said yes.

REPRESENTATIVE JAMES said that she agrees with Representative Berkowitz's rationale that it is better to avoid listing too many things because if something is left out of that list, then it creates a loophole. It is better to have a definition that is "all-reaching," she added

MS. CARPENETI said she agrees that "the clearer you write, the better." But the problem, she went on to say, is that with [Amendment 1] there is a different concept. With HB 328, terroristic threatening in the first degree applies to actions; it doesn't apply to false threats. Terroristic threatening in the second degree, or what is presently terroristic threatening, applies to false threats. So there is a difference in conduct: one is an action and one is a "verbal threat." And this raises the concern that in Amendment 1, making the false report becomes a class B felony, whereas threats about other things are still class C felonies. She added that she very concerned about the term "substance" in Amendment 1; she understands the concept of wanting to use general terms but "substance" would have to be defined because this is a criminal law and people need to be on notice, at least to a certain extent, as to what is against the

law - what conduct is acceptable and what is not - and that would be difficult to do with a definition of "substance". Notwithstanding this difficulty, she said that she would "be happy to work on it."

Number 2279

CHAIR ROKEBERG asked if "radiological" substances would be included in biological or chemical substances.

MS. CARPENETI said she believes so. She reiterated, however, that she believes that if "substance" alone is used, it would have to be defined.

CHAIR ROKEBERG suggested that perhaps the legislation could refer to a "CBR" [a chemical, biological, radiological, and nuclear weapons] manual from the Department of Defense.

MS. CARPENETI, in response, reminded members that the goal is to use general language. She reiterated her concern that a class B felony under Amendment 1 contains both verbal threats and actions, and opined that it would be more logical to have actions as a higher level of crime, as opposed to threats. She offered that the DOL does exercise discretion wisely in charging. "You want to have our criminal laws as specific as possible and give notice as clearly as possible to people as to what is against the law," she reiterated, and making a false threat about "any substance" is pretty broad.

REPRESENTATIVE BERKOWITZ clarified that it's not just making any false report. If someone makes a false report that there is anthrax in the mail, how is the consequence any different from there actually being anthrax in the mail? The impact of either action - one action being the delivery, and the other action being the false report about a delivery - is the same, he said, and it ought to be clear to people that under certain circumstances, speech is conduct.

MS. CARPENETI said she agreed that in terms of the public inconvenience, both actions could create a similar harm. But if it's real anthrax as opposed to imitation anthrax, the potential harm is greater, she argued.

CHAIR ROKEBERG, to illustrate a possible argument, said, "But it was only a joke."

REPRESENTATIVE BERKOWITZ acknowledged that there is a lot of discussion about that in the commentaries [applicable] to other states; that's always a defense: "I was just kidding." But a false report can, just the same as a true report, place a person in fear, it can cause evacuation, and it can cause public inconvenience.

REPRESENTATIVE JAMES added that it could cause people to get hurt as well.

MS. CARPENETI said that is correct, noting that it is a class C felony under current law. Therefore, the question, she surmised, is whether a false report under those circumstances ought to be a class B felony instead, just as actually sending [real anthrax] is. She opined that there is a quantitative difference in that conduct, between the threat and the actual sending.

Number 2412

REPRESENTATIVE BERKOWITZ asked Ms. Carpeneti to comment on the restitution provisions of Amendment 1.

MS. CARPENETI indicated that those provisions should be located in Title 12 rather than in Title 11, adding her belief that "we're already able to do that," but that it wouldn't hurt to make some provision in Title 12 specifying that restitution may be imposed for these particular crimes. In response to questions, she clarified that the restitution provisions of Amendment 1 are not part of existing Title 11 but may be part of existing law in Title 12, which is the reasonable location for restitution provisions.

MS. CARPENETI noted that currently, Section 8 of HB 328 provides that it is a crime to make a false report that a "circumstance dangerous to human life exists", which is a more general term, but Amendment 1 would change the language to read, "circumstance dangerous to life, health or property". She indicated that she would like to give more thought to the concept of adding property to the crime of terroristic threatening in the second degree, and offered that she would be happy to work with "Representative Berkowitz and the drafter in trying to put ... all these things into one bill."

CHAIR ROKEBERG mentioned that he would like to have more input from the committee regarding "which direction we want to go."

He surmised that the administration supports a "three-part criminal act," which is what HB 328 entails.

MS. CARPENETI asked: You mean in terms of damage to the pipeline?

CHAIR ROKEBERG said no; he meant in terms of what terroristic threatening is.

MS. CARPENETI clarified that the administration supports two levels of offense.

CHAIR ROKEBERG surmised, then, that damage to the pipeline would be the first offense.

TAPE 02-25, SIDE B  
Number 2503

MS. CARPENETI clarified that the crime of causing damage to the pipeline is found under the property section of criminal law, whereas the crimes of terroristic threatening would be found under a different section of Title 11. In response to questions, she acknowledged that she believes that the crime of making a false report should be an aspect of terroristic threatening in the second degree, instead of the first degree. Referring to the term "place of assembly", she said that although that language may be used in other state statutes, to her knowledge it isn't used in Alaska's criminal law.

MS. CARPENETI said that because of this, she would prefer to use a term that is more familiar to "our criminal law," but acknowledged that using "place of assembly" would be acceptable as long as it is also defined in the statute. She noted that a "place of assembly" could be a street corner where people stop and cross the street, and so she [is reluctant] to put unfamiliar terms in Title 11 without giving it more thought. She also noted that while HB 328 currently says "building, public place, business premises, or means of public transportation", the term "business premises" was not intended to refer strictly to offices or nonprofit corporations; the administration intended that it also pertain to the grounds of business premises.

CHAIR ROKEBERG concluded that Amendment 1 adds making a false report [about a substance] "a first degree offense."

REPRESENTATIVE BERKOWITZ noted that Amendment 1 also deals with the "substance" issue.

Number 2363

CHAIR ROKEBERG said he considers that aspect of Amendment 1 to be a matter of definition, and indicated that he wants to talk about the false report issue because that pertains to "the level of crime." He concluded that the distinction between Sections 1 and 2 of Amendment 1 is that either [sending] a substance or making a false report about a substance would be terroristic threatening in the first degree, whereas making a false report about a dangerous circumstance would be terroristic threatening in the second degree. He said he is not very comfortable with that [distinction].

REPRESENTATIVE BERKOWITZ noted that another distinction between Sections 1 and 2 of Amendment 1 is that for the first-degree crime, the person has to commit the act with the intent to cause other things to happen, whereas with the second-degree crime, the person knowingly makes a false report.

CHAIR ROKEBERG remarked that there is a slight shift in standards there.

REPRESENTATIVE BERKOWITZ explained that under Section 1 of Amendment 1, making a false report with the intent [to cause something to happen], such as evacuating a building, would be a class B felony. By contrast, under Section 2 of Amendment 1, a person could knowingly make a false report without intending any of the consequences listed.

CHAIR ROKEBERG said that although he appreciates the distinction between the knowingly standard and the intent standard, he sides with the administration on this point - that is, to not include making a false report about a substance in the crime of terroristic threatening in the first degree.

REPRESENTATIVE MEYER asked how a bomb threat would be treated under Amendment 1.

MS. CARPENETI opined that since a bomb would be included in the term "any substance", making a false bomb threat would be terroristic threatening in the first degree - a class B felony, but under HB 328, making a false threat would only be terroristic threatening in the second degree - a class C felony.

CHAIR ROKEBERG pointed out that under the description she just gave, a false bomb threat could also be terroristic threatening in the first degree.

Number 2221

MS. CARPENETI said that she stands corrected; a [false bomb threat] could be considered a biological or chemical substance, and so it would qualify as terroristic threatening in the first degree under HB 328 as well.

REPRESENTATIVE MEYER recounted that someone made the claim that a bomb had been planted in his home, and that person was subsequently convicted of a class C felony.

REPRESENTATIVE BERKOWITZ noted that under HB 328, if Representative Meyer were in Juneau at the time the threat was made, it could be argued that Representative Meyer was not in fear of physical injury and he did not have to evacuate his home since he was out of town, and that the threat wouldn't cause any serious public inconvenience since it pertained to his private residence; therefore, that situation might not be considered terroristic threatening in the first degree.

MS. CARPENETI countered that under HB 328, it would still be considered terroristic threatening in the first degree if the threat puts any person in fear of physical injury, not just the homeowner.

CHAIR ROKEBERG, returning to the issue of "substance", surmised that Representative Berkowitz is proposing that the term "any substance" encompasses actual or imitation biological, chemical, radiological, or other substances. Chair Rokeberg said he is not so sure that is true.

REPRESENTATIVE BERKOWITZ, in response, referred to the last provision of [Amendment 2], which defines real and imitation chemical or biological substances, and said he could argue that teargas, for example, would not be covered by the term "a material that is harmful to the health of a person", because it has no long-term health consequences. He asked: Would the police use it if there were? Are we going to subject the police to suit if they use it? What if you use something that didn't have a long-term effect, but just had an effect that didn't affect a person's health? All of a sudden, he remarked, questions of proof are raised. For example, does [a substance]

really affect someone's health or does it just temporarily incapacitate a person, he asked.

Number 2075

MS. CARPENETI acknowledged that she could understand Representative Berkowitz's concern with the definition in [Amendment 2], and that it may need tightening up; however, she has more concern with the use of the term "substance" than with the definition which is at least limited in some regard.

REPRESENTATIVE BERKOWITZ offered to research whether "substance" is defined [in statute].

MS. CARPENETI mentioned that there is a definition of "controlled substance", but opined that there is not a statutory definition of "substance".

CHAIR ROKEBERG called an at-ease from 2:13 p.m. to 2:15 p.m.

REPRESENTATIVE BERKOWITZ returned to the issue of the pipeline. He mentioned that during a conversation he had with Ms. Carpeneti the other day, she had indicated that because of the state's interpretation of double jeopardy, Alaska would not pursue a case if another sovereign [entity] pursued the case first. Therefore, since the fellow that shot the pipeline [last year] is now being prosecuted in federal court, it would seem, according to his understanding of the aforementioned conversation, that the state would not be pursuing a case against that man.

MS. CARPENETI clarified that the federal government is charging that individual with being a felon in possession of a firearm; not damage to the pipeline. The damage-to-the-pipeline charges will be pursued by the State of Alaska [under criminal mischief in the first degree] and that trial is scheduled for September, she explained.

REPRESENTATIVE BERKOWITZ asked whether there are any federal statutes that could have been used regarding damage to the pipeline, but that because of some accommodation between the state and that federal government, the "feds" are opting to step aside and let the state pursue that prosecution.

MS. CARPENETI replied that there could be [federal statutes pertaining to damage to the pipeline] but she did not know whether there was any such agreement made between the state and

the federal government regarding the prosecution of that case. She noted that being a felon in possession of a "concealable" firearm is also against Alaska law, but since the federal government is prosecuting that offense, the state will not do so. She mentioned that she had the charging document with her, if any members were interested in obtaining a copy.

CHAIR ROKEBERG said he assumes that there is a [federal] criminal statute against damage to an interstate pipeline, and so imagines that there was some form of accommodation.

Number 1927

REPRESENTATIVE MEYER noted that [Section 3 of] HB 328 addresses the issue of tampering with an airplane or helicopter. He asked whether this provision would allow the state to prosecute someone for this crime should the federal government opt not do so.

MS. CARPENETI said that is correct; however, if the federal government prosecutes the crime of tampering with an airplane or helicopter first, then the state is forbidden by law to prosecute the same act.

REPRESENTATIVE BERKOWITZ noted that although Alaska statutes say Alaska cannot be the second entity to prosecute someone for a crime, nothing precludes the federal government from doing so; "the feds aren't as constrained as we are."

MS. CARPENETI said that is correct.

REPRESENTATIVE BERKOWITZ mentioned that this makes sense; sometimes, if there is a case with a "tricky prosecution," for example, the state might opt to go first in order to "work the bugs out" - sort of take a dry run at it - and then the federal government could go next.

MS. CARPENETI said that although that is a possibility, such a scenario is highly unlikely. A lot of "ferry-type" crimes or other [difficult] cases are sent to the federal government in the hopes that "they will do something."

REPRESENTATIVE BERKOWITZ, returning to the issue of "substance", explained that although the dictionary's definition is long, it in essence means "the essential matter." He surmised that the common usage of the word "substance" would work in statute.

CHAIR ROKEBERG pointed out, however, that it could also refer to a peanut butter cheesecake.

Number 1756

REPRESENTATIVE KOOKESH countered:

Not if you take the word in the whole sphere of what we're trying to do here, because when you look at it and it talks about terroristic threatening in the first degree, you certainly don't think about a peanut butter sandwich, and you can't take it out of context like that.

CHAIR ROKEBERG said, "True; however, the modifiers 'chemical' and 'biological' certainly get your attention."

REPRESENTATIVE BERKOWITZ, referring again to the definition found in the last provision of [Amendment 2], noted that in the phrase "'a chemical or biological substance' means a material that is harmful to the health of a person", the words "harmful to the health of the person" goes to define chemical or biological, whereas, according to his recollection of sentence diagramming, "substance" means a material.

CHAIR ROKEBERG suggested that it could be changed to say "a harmful substance", at the very least.

REPRESENTATIVE COGHILL posited that the terms "chemical" and "biological" will always be part of the discussion, and asked if it would be possible to just say those and "any substance with the intent". He remarked that at least that way, "we have a direction of intent in statute that gives some idea of what we're looking at." He indicated that in this way, a nuclear substance or some other natural substance could also be covered under the additional term of "any substance".

REPRESENTATIVE JAMES mentioned the possibility of saying "any substance with chemical properties".

Number 1641

CHAIR ROKEBERG, referring to the restitution provisions of Amendment 1, noted that the DOL would prefer those provisions to be included in [Title 12]. He asked Ms. Carpeneti to comment further.

MS. CARPENETI pointed out that Title 12 contains all sentencing provisions, and suggested looking to see if the restitution provisions of Amendment 1 are already covered in Title 12. If they are not, then language could be drafted to include them in Title 12, she said.

CHAIR ROKEBERG mentioned that restitution would be appropriate if a threat incurs expenses.

REPRESENTATIVE BERKOWITZ remarked that it would help on the fiscal note too.

MS. CARPENETI, in response to questions, pointed out that HB 328 has indeterminate fiscal notes.

CHAIR ROKEBERG mentioned that he is inclined to agree with the administration's viewpoint, rather than Representative Berkowitz's, regarding Amendment 1; therefore, he would be voting against Amendment 1. He acknowledged, however, that perhaps some aspects of Amendment 1 ought to be adopted [via a CS].

REPRESENTATIVE JAMES mentioned that she is not comfortable that the discussion thus far has clarified the committee's intention regarding language for a CS.

REPRESENTATIVE COGHILL said that there were a couple of things he likes about Amendment 1. He said that he likes the idea of having restitution, even if moved to Title 12, as well as the idea of having a false report [about substances] be included in terroristic threatening in the first degree. He mentioned that for these reasons, he is inclined to vote for Amendment 1.

CHAIR ROKEBERG, referring to Amendment 1, observed that making the distinction between acting with intent - as is stipulated in Section 1 - and acting knowingly - as is stipulated in Section 2 - will be difficult to do when charging.

Number 1420

REPRESENTATIVE BERKOWITZ pointed out that the distinction has to go to the effect. "You have to intend the consequence with the [class] B felony, [whereas] you just have to know what you're doing with [the class] C felony," he said. "If I tell you that there is a bomb, and I don't really care what happens, that's a [class] C felony. But if I tell you that there is a bomb

because I want you to clear out of the building, that's a [class] B felony."

CHAIR ROKEBERG asked how that intent could be discerned before the person is apprehended.

REPRESENTATIVE BERKOWITZ offered that there is the totality of circumstances.

CHAIR ROKEBERG asked: Well, isn't a duck a duck, and a bomb threat a bomb threat?

REPRESENTATIVE BERKOWITZ offered that "one way of getting there" would be if the person had written "a long tract" about how he/she hated a particular institution.

CHAIR ROKEBERG argued that it would still be difficult to make a distinction between the two standards.

REPRESENTATIVE COGHILL pointed out that while there might be less carnage with a false threat, terrorists generally intend the same outcome as with a real threat - to terrorize the people.

REPRESENTATIVE JAMES expressed concern with the concept of holding someone to a different standard, depending on whether anyone gets hurt.

CHAIR ROKEBERG acknowledged that he could be convinced that making a false report could be just as damaging as making a real report; however, the problem is still one of drafting the statutes so that their application is clear and practical.

REPRESENTATIVE MEYER asked whether any of the language discussed thus far is based on statutes from other states.

REPRESENTATIVE BERKOWITZ said, "This is an amalgam of our thinking and the model penal code." He noted that a lot of other people all across the country are going to be thinking about these issues, so it would behoove the legislature to see what those people are coming up with.

MS. CARPENETI said that the model penal code was the basis of "our criminal-code revision commission in the late '70s in enacting terroristic threatening." The model penal code was used for a number of crimes, but with regard to terroristic threatening in current law, she added, it only pertains to

threats. The crime of terroristic threatening in the first degree as proposed by HB 328 pertains to acts - acts that are threatening - she explained.

Number 1120

REPRESENTATIVE COGHILL noted that it all comes down to the question of when a threat becomes an act. He remarked that after [the terrorist attacks of] September 11, 2001, every threat became a national emergency.

REPRESENTATIVE BERKOWITZ, referring to the language proposed for the crime of terroristic threatening in the first degree, pointed out that sending or delivering is actual conduct, but attempting to send or deliver, or soliciting the sending or delivery, is an action that is short of the actual act. Therefore, in many ways, the concept of making a false report fits in with that second category of soliciting or attempting to send or deliver. In fact, he said, he would suggest that it is even more aggravated than a solicitation.

CHAIR ROKEBERG said he would agree with that.

MS. CARPENETI noted that the legal distinction is that if a person is soliciting somebody, it means he/she intends to do the act; by contrast, making a false report is intending to make a false report, not to actually do the act of sending [or delivering]. That's why an attempt to actually deliver would probably be considered more serious, because the person actually has the item and is trying to do something with it, instead of just merely talking about it, as is the case when making a false report. That's a qualitative difference in the conduct, she noted.

REPRESENTATIVE BERKOWITZ argued that in terms of the harm to the community, which is one of the things that is supposed to be addressed in the criminal code, if a person sends an noxious substance, that's bad; if a person delivers it, that's bad - there's a consequence - and if a person makes a false report on it, it will generate a public response. But if a person attempts to send or deliver a noxious substance and it is intercepted, the public harm is minimized. He noted that the latter is also true regarding a solicitation since a solicitation without the act itself is an indication that there was no general harm. A solicitation falls far short of causing the same kind of harm as a false report, he opined.

Number 0926

MS. CARPENETI opined that a lot of these [actions] can be distinguished by the facts, and with regard to soliciting or attempting to send or deliver, it is the potential danger that is the issue; the possibility that the item will, in fact, be sent. Whereas with a false report, "only the words are going to sent."

REPRESENTATIVE COGHILL asked how many cases have been prosecuted under terroristic threatening versus other types of "verbal assault".

MS. CARPENETI surmised that it is much more common to prosecute as "assault four," rather than as terroristic threatening, since the crime of terroristic threatening is considered a crime against a large group of people.

REPRESENTATIVE COGHILL noted that causing a serious public inconvenience, which could happen in a variety of different ways, is also a crime under terroristic threatening.

MS. CARPENETI assured the committee that all of the elements of the crime have to be proven beyond a reasonable doubt; "if we're missing one, we lose everything." In response to questions, she said that prosecutors have an ethical duty not to bring a charge unless he/she believes that every element of the case can be proven beyond a reasonable doubt, and that the provision regarding causing a serious public inconvenience is currently in statute under terroristic threatening.

Number 0712

REPRESENTATIVE BERKOWITZ withdrew Amendment 1, adding that if HB 328 and HB 350 are going to be consolidated and then brought back before the committee, it would give everyone another chance to discuss any unresolved issues.

Number 0690

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 2. There being no objection, Amendment 2 was adopted.

Number 0680

HEATHER M. NOBREGA, Staff to Representative Rokeberg, House Judiciary Standing Committee, Alaska State Legislature,

mentioned that there is need for a technical amendment to Amendment 2. She said that on page 3, line 3, it should say "a biological or chemical substance or".

Number 0661

CHAIR ROKEBERG, noting that there was no objection to the technical amendment, stated that Amendment 2, as amended, was adopted.

CHAIR ROKEBERG noted that according to the criminal mischief statutes, the crime of criminal mischief in the first degree is a class B felony, and that HB 328 would make the crime of damaging an oil or gas pipeline or supporting facility a separate crime - a class A felony. He mentioned that the Senate has taken a different approach.

MS. CARPENETI explained that the Senate has proposed that there be five levels of the crime of criminal mischief as opposed to the current four levels. She added that there are five levels of the crime of misconduct involving a weapon, so it is not unprecedented to have five levels of a crime. In response to questions, she explained that the rationale the Senate offered is that it is better public policy and better drafting to work within the current framework, instead of making this a [separate] crime. She said that the response to that rationale is that in terms of record keeping, it is more practical to do it the way HB 328 proposes.

CHAIR ROKEBERG noted that the Senate has also proposed adding the crime of tampering with air to the [criminal mischief statutes]. Chair Rokeberg said that rather than appoint a subcommittee, he would work with Representative Berkowitz's office to fine-tune some of these issues. He mentioned that he has concerns that "we're going to end up with two crimes and one will be never be used." He announced that HB 328 would be held over.

#### **ADJOURNMENT**

Number 0304

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:45 p.m.