

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 20, 2002

1:15 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**

SENATE BILL NO. 242

"An Act relating to concealed handgun permittees."

- MOVED SB 242 OUT OF COMMITTEE

HOUSE BILL NO. 341

"An Act relating to assault in the fourth degree that is a crime involving domestic violence."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 36

Proposing an amendment to the Constitution of the State of Alaska relating to limiting the rate of state individual income taxes and sales taxes.

- MOVED CSSSHJR 36(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 197

"An Act relating to directives for personal health care services and for medical treatment."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: SB 242

SHORT TITLE: CONCEALED HANDGUN PERMITTEES  
 SPONSOR(S): SENATOR(S) TAYLOR

Jrn-Date	Jrn-Page		Action
01/16/02	1962	(S)	READ THE FIRST TIME - REFERRALS
01/16/02	1962	(S)	JUD
01/23/02		(S)	JUD AT 1:30 PM BELTZ 211
01/23/02		(S)	<Above Item Removed from Agenda>
02/01/02		(S)	JUD AT 1:30 PM BELTZ 211
02/01/02		(S)	<Bill Postponed to 2/11/02> - - Meeting Canceled --
02/11/02		(S)	JUD AT 1:30 PM BELTZ 211
02/11/02		(S)	Moved Out of Committee
02/11/02		(S)	MINUTE(JUD)
02/13/02	2173	(S)	JUD RPT 5DP
02/13/02	2173	(S)	DP: TAYLOR, THERRIAULT, DONLEY,
02/13/02	2173	(S)	COWDERY, ELLIS
02/13/02	2173	(S)	FN1: ZERO(DPS)
02/21/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
02/21/02		(S)	-- Meeting Postponed to 2/22/02 --
02/22/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
02/22/02		(S)	MINUTE(RLS)
02/25/02	2298	(S)	RULES TO CALENDAR 2/25/02
02/25/02	2300	(S)	HELD TO 2/27 CALENDAR
02/27/02	2319	(S)	READ THE SECOND TIME
02/27/02	2319	(S)	ADVANCED TO THIRD READING UNAN CONSENT
02/27/02	2320	(S)	READ THE THIRD TIME SB 242
02/27/02	2320	(S)	PASSED Y16 N3 A1
02/27/02	2320	(S)	HOFFMAN NOTICE OF RECONSIDERATION
03/01/02		(H)	MINUTE(JUD)
03/01/02	2343	(S)	RECON TAKEN UP - IN THIRD READING
03/01/02	2344	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
03/01/02	2344	(S)	AM NO 1 FAILED Y5 N13 E2
03/01/02	2344	(S)	AUTOMATICALLY IN THIRD READING
03/01/02	2345	(S)	PASSED ON RECONSIDERATION Y15 N3 E2

03/01/02	2350	(S)	TRANSMITTED TO (H)
03/01/02	2350	(S)	VERSION: SB 242
03/04/02	2459	(H)	READ THE FIRST TIME - REFERRALS
03/04/02	2459	(H)	JUD
03/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 341

SHORT TITLE:FELONY 4TH DEG DOMESTIC VIOLENCE ASSAULT  
 SPONSOR(S): REPRESENTATIVE(S)HAYES

Jrn-Date	Jrn-Page		Action
01/18/02	2007	(H)	READ THE FIRST TIME - REFERRALS
01/18/02	2007	(H)	JUD, FIN
01/18/02	2007	(H)	REFERRED TO JUDICIARY
01/28/02	2087	(H)	COSPONSOR(S): GUESS
03/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 36

SHORT TITLE:CONSTITUTIONAL AMENDMENT : TAX CAPS  
 SPONSOR(S): REPRESENTATIVE(S)CROFT

Jrn-Date	Jrn-Page		Action
02/01/02	2115	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2115	(H)	JUD, FIN
02/19/02	2306	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/19/02	2306	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2306	(H)	JUD, FIN
02/22/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/22/02		(H)	Heard & Held MINUTE(JUD)
02/22/02	2368	(H)	COSPONSOR(S): HALCRO
03/01/02	2448	(H)	COSPONSOR(S): DYSON
03/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 197

SHORT TITLE:HEALTH CARE SERVICES DIRECTIVES  
 SPONSOR(S): REPRESENTATIVE(S)HUDSON

Jrn-Date	Jrn-Page		Action
03/19/01	0649	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0649	(H)	HES, JUD
03/28/01	0762	(H)	COSPONSOR(S): KERTTULA

04/10/01		(H)	HES AT 3:00 PM CAPITOL 106
04/10/01		(H)	<Bill Postponed to 4/17>
04/17/01		(H)	HES AT 3:00 PM CAPITOL 106
04/17/01		(H)	Heard & Held
04/17/01		(H)	MINUTE(HES)
04/19/01		(H)	HES AT 3:00 PM CAPITOL 106
04/19/01		(H)	Heard & Held
04/19/01		(H)	MINUTE(HES)
04/19/01		(H)	MINUTE(HES)
04/24/01		(H)	HES AT 3:00 PM CAPITOL 106
04/24/01		(H)	Moved CSHB 197(HES) Out of Committee
04/24/01		(H)	MINUTE(HES)
04/25/01	1196	(H)	HES RPT CS(HES) NT 3DP 2NR 1AM
04/25/01	1197	(H)	DP: JOULE, CISSNA, DYSON; NR: COGHILL,
04/25/01	1197	(H)	STEVENS; AM: KOHRING
04/25/01	1197	(H)	FN1: ZERO(H.HES/HSS)
01/28/02	2086	(H)	COSPONSOR(S): CRAWFORD, LANCASTER
03/20/02		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CAROLYN THOMAS, Staff  
to Senator Robin Taylor  
Alaska State Legislature  
Capitol Building, Room 30  
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 242 on behalf of the sponsor,  
Senator Taylor.

CHARLES KOPP, Lieutenant  
Vice President  
Alaska Peace Officers Association (APOA)  
PO Box 1030  
Kenai, Alaska 99611

POSITION STATEMENT: Testified in opposition to SB 242.

BRIAN JUDY, Alaska State Liaison  
Institute for Legislative Action  
National Rifle Association of America (NRA)  
555 Capitol Mall, Suite 625  
Sacramento, California 95814

POSITION STATEMENT: Testified that his testimony on HB 346, companion bill to SB 242, would stand for his testimony on SB 242; and responded to questions.

REPRESENTATIVE JOE HAYES  
Alaska State Legislature  
Capitol Building, Room 422  
Juneau, Alaska 99801

POSITION STATEMENT: Sponsor of HB 341.

MELINDA BRUNO, Staff  
to Representative Joe Hayes  
Alaska State Legislature  
Capitol Building, Room 422  
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 341 on behalf of the sponsor, Representative Hayes.

DANTE FOSTER  
PO Box 83940  
Fairbanks, Alaska 99708

POSITION STATEMENT: Testified in support of HB 341.

ROBYN SMITH  
115 Bridget Avenue, Number 2  
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in support of HB 341.

JANET BAIRD  
306 Slater Street  
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in support of HB 341.

SHANNA KARELLA  
PO Box 75449  
Fairbanks, Alaska 99707

POSITION STATEMENT: Testified in support of HB 341.

LINDA WILSON, Deputy Director  
Public Defender Agency (PDA)  
Department of Administration  
900 West 5th Avenue, Suite 200  
Anchorage, Alaska 99501-2090

POSITION STATEMENT: Provided comments during discussion of HB 341.

JULIA P. GRIMES, Lieutenant

Division of Alaska State Troopers  
Department of Public Safety (DPS)  
5700 East Tudor Road  
Anchorage, Alaska 99507

POSITION STATEMENT: Provided comments during discussion of HB 341.

WILLA FREY, Minister  
Community of Christ  
PO Box 71714  
Fairbanks, Alaska 99707

POSITION STATEMENT: Testified in support of HB 341.

BRENDA STANFILL, Executive Director  
Interior Alaska Center for Non-Violent Living  
717 9th Avenue  
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in support of HB 341.

SHEILA KIVI, Facilitator  
Alternative Behaviors & Choices [Services]  
1616 Cushman Street  
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in support of HB 341.

JOAN ADAMS  
PO Box 70894  
Fairbanks, Alaska 99707

POSITION STATEMENT: Testified in support of HB 341.

SUSAN SCUDDER, Executive Director  
Council on Domestic Violence and Sexual Assault (CDVSA)  
Department of Public Safety (DPS)  
PO Box 111200  
Juneau, Alaska 99811-1200

POSITION STATEMENT: Testified in support of HB 341 and responded to questions.

LAUREE HUGONIN, Executive Director  
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)  
130 Seward Street, Room 209  
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 341 and responded to questions.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section-Juneau

Criminal Division  
Department of Law (DOL)  
PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: During discussion of HB 341 provided comments and responded to questions.

CANDACE BROWER, Program Coordinator/Legislative Liaison  
Office of the Commissioner - Juneau  
Department of Corrections (DOC)

431 North Franklin Street, Suite 400  
Juneau, Alaska 99801

POSITION STATEMENT: During discussion of HB 341 responded to questions.

MELANIE LESH, Staff  
to Representative Bill Hudson  
Alaska State Legislature  
Capitol Building, Room 502  
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 197 on behalf of the sponsor, Representative Hudson.

SIOUX PLUMMER, President  
Board of Directors  
Foundation for Hospice and Home Care of Juneau Alaska  
5050 Thane Road  
Juneau, Alaska 99801

POSITION STATEMENT: Assisted with the presentation of HB 197, testified in support, and responded to questions.

RICHARD BLOCK  
Christian Science Committee on Publication  
for the State of Alaska  
360 West Benson Boulevard, Suite 301  
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 197.

MARK JOHNSON, Chief  
Community Health & Emergency Medical Services  
Division of Public Health  
Department of Health & Social Services (DHSS)  
PO Box 110616

Juneau, Alaska 99811-0616

POSITION STATEMENT: Testified in support of the intent of HB 197.

LYN FREEMAN, Executive Director  
Alaska Commission on Aging  
Division of Senior Services  
Department of Administration  
PO Box 110209

Juneau, Alaska 99811-0209

POSITION STATEMENT: Testified in support of Version O of HB  
197.

MARIE DARLIN

AARP Capitol City Task Force  
415 Willoughby Avenue  
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of Version O of HB  
197.

### **ACTION NARRATIVE**

TAPE 02-33, SIDE A  
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:15 p.m. Representatives Rokeberg, James, Coghill, and Meyer were present at the call to order. Representatives Berkowitz and Kookesh arrived as the meeting was in progress.

### SB 242 - CONCEALED HANDGUN PERMITTEES

Number 0042

CHAIR ROKEBERG announced that the first order of business would be SENATE BILL NO. 242, "An Act relating to concealed handgun permittees."

Number 0098

CAROLYN THOMAS, Staff to Senator Robin Taylor, Alaska State Legislature, sponsor, read the following sponsor statement:

A statutory revision is needed to further clarify the recognition of concealed handgun permits from other states. The 21st Legislature passed SB 294, a bill sponsored by Senator Taylor, which provided for the recognition of permits from states with permit requirements similar to Alaska, and from states which recognize Alaska's permits. Senate Bill 294 also

directed the department of Public Safety to determine which states and political subdivisions grant reciprocity to Alaska permit holders and distribute the list to each law enforcement agency in this state. The department has yet to fully implement this statutory requirement, some 16 months later.

This legislation will simplify the process by plainly recognizing all permits issued by other states. In so doing, the burden on the department of having to evaluate all the other states' laws to determine which ones recognize Alaska permits, as well as the subjectivity on the part of the department in determining which other states' statutes are similar to Alaska law will be removed.

SB 242 will better serve the public and permit holders.

CHAIR ROKEBERG asked whether SB 242 is identical to HB 346.

MS. THOMAS replied yes.

CHAIR ROKEBERG noted that the House Judiciary Standing Committee has already had a public hearing on HB 346.

Number 0275

CHARLES KOPP, Lieutenant; Vice President, Alaska Peace Officers Association (APOA), testified via teleconference. Lieutenant Kopp announced that APOA originally supported SB 242 because of the checks and balances. However, the removal of important screening criteria such as verification of age and eligibility requirements [is cause for concern]; although it takes time to implement the screening criteria, it promotes safety nonetheless. He said the APOA opposes reciprocity to another state if the screening criteria of [that state] isn't equal to or greater than that of Alaska.

Number 0454

BRIAN JUDY, Alaska State Liaison, Institute for Legislative Action, National Rifle Association of America (NRA), testified via teleconference. Mr. Judy reminded the committee that he provided fairly lengthy testimony on HB 346, the companion to SB 242, and thus that testimony would stand for SB 242.

Number 0510

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 1, which reads as follows:

"**Section 1.** Amend AS 18.65.748 to read:

**Sec. 18.65.748. Permit holders from other jurisdictions considered Alaska permit holders.** A person is exempt from the requirements in AS 18.65.710 if the person is a nonresident who is at least 21 years of age, has successfully completed a handgun or firearms safety course, has been subject to a fingerprint-based criminal records search and who has a valid permit to carry a concealed handgun from another state; however, a permit under AS 18.65.710 must be obtained by the end of a 120-day period after entry into the state."

REPRESENTATIVES JAMES and COGHILL objected.

REPRESENTATIVE BERKOWITZ recalled testimony on HB 346 regarding an analogy about driver's licenses. Upon review of the driver's license statutes, Representative Berkowitz discovered that people are allowed to drive in Alaska without an Alaskan driver's license so long as the nonresident is at least 16 years of age and has a valid driver's license issued by another state. However, [a nonresident] must obtain an Alaska driver's license after being in the state for a 90-day period. Therefore, for driver's licenses a minimum age is required and another state's driver's license is recognized for a maximum of 90 days in the state.

REPRESENTATIVE BERKOWITZ explained that parallel to the driver's license [statute], Amendment 1 would ensure that [nonresidents] comply with Alaska's age standard of 21 [for concealed handguns] and would allow a period of 120 days in the state [before requiring an Alaskan concealed handgun permit]. Representative Berkowitz felt that the concealed handgun permit should be treated as the driver's license is [with regard to nonresidents in this state].

REPRESENTATIVE KOOKESH commented that this makes sense.

CHAIR ROKEBERG surmised, then, that Amendment 1 adds back some of the provisions that were repealed, and requires [nonresidents

with concealed handguns], who stay in Alaska for more than 120 days, to obtain an Alaskan concealed handgun permit.

REPRESENTATIVE BERKOWITZ said he wasn't sure about "the repealer portion," only that he wanted to ensure that these concealed handgun requirements parallel the driver's license statutes.

CHAIR ROKEBERG pointed out that people don't have to get fingerprinted to obtain a driver's license.

REPRESENTATIVE BERKOWITZ reiterated that in order to get an Alaska driver's license, people are required to be 16 years of age whether they are Alaskan or nonresident.

Number 0692

REPRESENTATIVE KOOKESH inquired about the intent to stay. He posed a situation in which a person with a concealed handgun permit from another state has no intent to stay, but decides to act as if he/she is.

REPRESENTATIVE BERKOWITZ returned to the driver's license analogy, which requires a nonresident to obtain a driver's license after being in the state for more than 90 days. He suggested that if one is here for more than 90 days, then the individual is going to stay and if not, the individual will be leaving shortly. Therefore, he felt the 120-day requirement in Amendment 1 provided an additional buffer. Representative Berkowitz said he didn't know what would happen if there wasn't an intent to stay. He noted that he would accept [intent to stay] language as a friendly addition to Amendment 1.

REPRESENTATIVE JAMES relayed her belief that SB 242 has nothing to do with whether one intends to stay but rather with whether the individual is in the state and has a [concealed handgun] permit from another state.

MR. JUDY announced that he opposes Amendment 1 because he views it as unnecessary. He said that people from other states, regardless of whether those states have [concealed handgun permit] processes that are less or more difficult than Alaska's, aren't causing problems in their states and won't cause problems in Alaska. Mr. Judy informed the committee that if the time limitation is included, there is at least one state, Texas, that won't reciprocate and recognize Alaska's permit because Alaska's law would be more rigid than that state's law. Mr. Judy urged the committee to pass SB 242 unamended.

CHAIR ROKEBERG asked if it was fair to say that most other states have these provisions [such as those proposed in Amendment 1] in order to obtain a permit.

MR. JUDY answered that most states with a specific law require a background check. Most states require fingerprints and training courses. Regardless of the level of the criteria, the empirical data illustrates that permit holders are responsible individuals and aren't causing problems and thus won't cause problems when in Alaska.

CHAIR ROKEBERG related his understanding, then, that adoption of Amendment 1 would defeat the purpose of SB 242 because it hampers reciprocity with other states.

MR. JUDY answered, "more or less." He remarked, "What we believe ... [is that] self-defense is a fundamental right and the right should not stop at the state borders." Ideally, every state would recognize every other state's permit, which is what SB 242 would accomplish in Alaska. "The more states that we can get to adopt clean bills, clean laws of that type, the easier it's going to be to pass those types of laws in other states; the quicker we can do that, the quicker Alaskans will have their permits recognized by more states," he said.

Number 1008

REPRESENTATIVE BERKOWITZ clarified that he has never asserted that people with concealed handgun permits are anything other than more law-abiding than the rest of the population. However, there is the consideration of being a sovereign state and the responsibility of exercising independent judgment regarding the best interest of Alaskans. Representative Berkowitz pointed out that [the legislature] decided that concealed handgun permit holders who are Alaska residents have to follow certain requirements; thus it would seem that visitors should follow the same rules. He reiterated the driver's license analogy: those who stay beyond a certain time period must obtain an Alaska driver's license.

REPRESENTATIVE JAMES said that although she understood Representative Berkowitz's argument, she didn't believe it is [relevant] in this case. She explained:

The reason for that is: We put these rules and regulations on our own people, and in order for our

own people to have the full protection of being able to go anyplace and take their 'concealed-carry' permit and have it mean anything, ... we have to agree that we're going to have this reciprocal agreement. So, saying this amendment is to protect us ... is false in a way because what [SB 242] really does is allow us to carry [concealed] in other states.

REPRESENTATIVE JAMES asserted that if one assumes that these are the "good people" that have these concealed-carry permits, then Alaska has to have a provision that allows reciprocity with each state that allows the same. Representative James noted her opposition to Amendment 1.

Number 1158

REPRESENTATIVE BERKOWITZ remarked that Representative James's argument invites an equal protection challenge on the grounds that an Alaskan who doesn't qualify for a concealed-carry permit in Alaska may be able to obtain the permit from another jurisdiction, which would be recognized here. Therefore, that individual would be in a different position. Representative Berkowitz explained that he is thinking in terms of what occurs when the aforementioned differential between "our citizens" is created.

REPRESENTATIVE JAMES said that [SB 242] is a benefit and recognizes concealed-carry permit holders are law-abiding citizens. She opined that Representative Berkowitz's example is absurd.

CHAIR ROKEBERG inquired as to the costs of such a permit in Alaska.

REPRESENTATIVE JAMES recalled that her renewal was only \$25.

CHAIR ROKEBERG indicated that the initial fee is \$99. He also indicated agreement with Representative James that someone isn't going to cross state lines to find lower standards to obtain a concealed-carry permit for a \$99 fee.

REPRESENTATIVE BERKOWITZ emphasized that the difficulty with this issue is that it involves guns and thus people focus on the gun part of it rather than the law part. Upon reviewing the law aspect of SB 242, Alaskans are placed in a different posture in their ability to comply with the law. Representative Berkowitz clarified that he has never said that people who carry concealed

handguns are completely law-abiding; however, he acknowledged that they are more law-abiding than the general population. Representative Berkowitz said, "I think that the state has a responsibility; when we have laws, regardless of the subject matter, we ought to make sure that those laws are enforced." Therefore, if people wanted to visit Alaska they could do so, but those who stay here have to live by our laws.

CHAIR ROKEBERG remarked, "If the length of residency and not fulfilling the duties of a new citizen of Alaska was your intention, you could perhaps modify this amendment and might have greater legs [to stand on]."

REPRESENTATIVE BERKOWITZ announced, "I would accept that as a friendly amendment to my amendment." He clarified that he would be willing to amend Amendment 1 such that it would read as follows: "A permit under AS 18.65.710 must be obtained by the end of a 120-day period after entry into the state."

REPRESENTATIVE KOOKESH commented that he felt that would clarify it. If a person comes to Alaska and stays more than 120 days, then what they bring with them should eventually become Alaskan.

CHAIR ROKEBERG recalled Mr. Judy's testimony that there may be some states that run afoul of that.

REPRESENTATIVE BERKOWITZ said that those states, then, could modify their laws to come into compliance with Alaska.

Number 1403

REPRESENTATIVE BERKOWITZ moved to amend Amendment 1 such that it would read as follows: "A permit under AS 18.65.710 must be obtained by the end of a 120-day period after entry into the state."

REPRESENTATIVE MEYER objected.

REPRESENTATIVE JAMES objected, noting that a number of [seasonal workers] come to Alaska for less than 120 days. She said she interpreted the [amendment to Amendment 1] to [mean] that if that person was here once and returned 120 days later, that person would have to get a local permit. She said she didn't believe it should work that way. Furthermore, obtaining reciprocity is the thrust of this legislation. Although the amendment to Amendment 1 is less onerous than Amendment 1 itself, she said that it remains too onerous for her to support.

REPRESENTATIVE KOOKESH expressed concern with Representative James's last comment because it illustrates that she is worrying about people from other states. He said he felt that the worry should be in regard to Alaskans.

REPRESENTATIVE MEYER relayed his understanding of Representative James's comments to be that there is a certain amount of trust with regard to other states [with concealed-carry laws] trusting Alaska and vice versa. This legislation protects Alaskans in the sense that other states aren't going to make outlandish requirements on Alaskans traveling through that state. Therefore, he felt that [SB 242] should be left alone unless it is found not to work.

Number 1536

MR. JUDY pointed out that with or without "this amendment" regarding the 120-day limitation, Alaska will recognize every state's permits, although only for a limited amount of time. For example, someone from Texas with a permit could come to Alaska and carry a [concealed handgun]. However, because Alaska imposes that restriction on Texas, Texas will not recognize Alaska's permits. Therefore, a permit holder from Texas will still be able to come to Alaska for 120 days, but Alaskans won't receive the benefit of reciprocity. Mr. Judy said that he didn't understand the issue of 120 days because he believes the majority of those coming to Alaska will be present significantly less than 120 days. "To me the whole thing seems to be really a non-issue," he said.

REPRESENTATIVE JAMES reiterated her thoughts regarding reciprocity, and said that "any of these kinds of things destroys the intent."

REPRESENTATIVE BERKOWITZ asked, "Whose intent?"

REPRESENTATIVE JAMES answered: The intent of the sponsor of SB 242.

CHAIR ROKEBERG called the question.

A roll call vote was taken. Representatives Berkowitz and Kookesh voted for the amendment to Amendment 1. Representatives James, Coghill, Meyer, and Rokeberg voted against the amendment to Amendment 1. Therefore, the amendment to Amendment 1 failed by a vote of 2-4.

REPRESENTATIVE BERKOWITZ withdrew Amendment 1.

Number 1732

REPRESENTATIVE COGHILL moved to report SB 242 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 242 was reported from the House Judiciary Standing Committee.

HB 341 - FELONY 4TH DEG DOMESTIC VIOLENCE ASSAULT

Number 1747

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 341, "An Act relating to assault in the fourth degree that is a crime involving domestic violence."

Number 1757

REPRESENTATIVE JOE HAYES, Alaska State Legislature, sponsor, thanked the committee for hearing HB 341, and indicated that while he was available for questions, his staff, Melinda Bruno, would be presenting the bill.

Number 1777

MELINDA BRUNO, Staff to Representative Joe Hayes, Alaska State Legislature, on behalf of Representative Hayes, sponsor, said that as a deterrent to continuing cycles of domestic violence (DV), it is imperative that Alaska adopt legislation that will make punishments more severe. Increased penalties may discourage abusers from committing an offense and encourage them to seek necessary and appropriate treatment programs. She explained that the primary reason for introducing HB 341 is to provide a tool to help break the cycle of domestic violence. Currently, a person can have any number of "fourth degree assault convictions" related to DV, and each successive conviction for assault in the fourth degree related to DV is still subject to the same punishment as the previous convictions. She posited that this is completely unacceptable; therefore, the sponsor is introducing HB 341, which will amend AS 11.41.230(b) so that the third conviction of fourth degree assault involving DV is a class C felony. In conclusion, she said that HB 341 is necessary to help protect Alaska's families, especially those that have already been victimized by domestic violence.

REPRESENTATIVE MEYER, referring to a letter in members' packets from William R. Satterberg, Jr., asked Representative Hayes to comment.

REPRESENTATIVE HAYES said that he would be working with Mr. Satterberg over the upcoming interim in an effort to address some of the concerns expressed in the aforementioned letter. Noting that one of those concerns pertained to charging acts of nonphysical [behavior] in DV situations as assault in the fourth degree, Representative Hayes pointed out that in Alaska, the courts have never tried such cases because those situations have always been resolved out of court. He also pointed out that HB 341 is not intended to address DV situations involving nonphysical [behavior]. In response to a question, he assured committee members that he is primarily concerned with addressing physically violent DV situations. Because DV situations tend to escalate, he said, one of his ultimate fears is that by the time a DV situation is dealt with, it may be too late and someone has been killed. He indicated that his hope is that HB 341 will prevent people, after a second conviction for assault in the fourth degree involving domestic violence, from committing subsequent acts of DV.

Number 1979

DANTE FOSTER testified via teleconference in support of HB 341, and read the following testimony regarding the economic consequences of domestic violence:

Nothing comes for free, not even a bill as promising as this one. But the costs associated with [HB 341] must be considered within the appropriate context. You see, domestic violence does not come for free either. It exacts a tremendous economic toll on our nation and represents nothing less than a pervasive drain on our economic resources. According to the American Institute on Domestic Violence and the Bureau of National Affairs, the corporate cost of domestic violence is in excess of \$67 billion per year. This includes \$3-5 billion in domestic-violence-related medical expenses and \$100 million in lost wages, sick leave, and absenteeism. It does not include the social, political, or judicial costs associated with domestic violence.

The first systematic study of the relationship between abuse and employment was conducted in 1987 by Friedman and Couper. The pair found that 56 percent of women seeking counseling assistance at a victims' services agency had lost at least one job because of domestic violence, [and] 54 percent reported missing three or more days of work per month because of domestic violence. In a comparable study, Shepard and Pence found that 58 percent of shelter residents were working at the time that they were abused and that their work performance was seriously compromised by absenteeism and tardiness related to their abuse.

The Effects of Violence on Work and Family Project, which was conducted in Chicago, found that battered women are more likely to have been unemployed and to suffer from a range of physical and mental health problems known to affect employability and job performance. While 57 percent of women interviewed reported having been unemployed when they wanted to be working, 70 percent of battered women reported having been so unemployed. Additional studies found that battered women are more likely to collect public assistance and that abuse increases the length of time and the number of times that women return to welfare.

MS. FOSTER concluded:

Reliance on public assistance, decreased productivity, increased medical expenses and absenteeism all come at a price - a price we will pay whether or not it is included in state budgets or appears on the national balance sheet. The only way to reduce the price is to stop violence. House Bill 341 is an excellent place to start. While it may increase the amount spent on incarcerating repeat offenders, it will also ensure that their victims have time to assess their situation and, perhaps, move on to more secure circumstances in which they can lead productive, violence-free lives. Any increase in the cost of incarceration will be offset by their unfettered participation in the workforce. I therefore urge you to do everything in your power to advance [HB 341], and thank you very much for taking domestic violence seriously.

CHAIR ROKEBERG remarked that for "such a small bill, it's got a big price tag," with the fiscal notes totaling over \$2 million.

REPRESENTATIVE HAYES agreed that the fiscal notes were relatively large.

Number 2163

ROBYN SMITH testified via teleconference and indicated simply that as a victim of domestic violence herself for two and a half years, she is in support of HB 341. She also made mention of fact that she has scars on her forehead and cigarette burns on her arms that she has to live with and look at everyday. She said she believes that abusers need to have "successive scars" attached to their records so that they can "pay for the scars of what they've done to other people."

Number 2196

JANET BAIRD testified via teleconference in support of HB 341. She noted that she was speaking on behalf of herself, on behalf of the "Domestic Violence portion of the Equal Justice Committee at the New Hope Methodist-Presbyterian Church in North Pole, and ... as chair of the Social Concerns Committee for the Yukon Presbyter." She noted that in most of the statistical charts that she sees, Alaska is at the top in terms "violence, domestic violence, and child abuse." She said she did not like living in a state that is number one in "that category," nor did she think Alaska's women and children should be treated "that way." She urged the legislature to do everything it could to change this situation.

MS. BAIRD offered that there are three things that HB 341 would accomplish. One, it would increase awareness that domestic violence is a serious crime. Two, it would raise the stakes for the perpetrators. And three, it would create a deterrent. For all these reasons, she said, HB 341 is a very useful bill and one that is worth working on. She posited that it would also be useful to see what domestic violence is not: It is not random and it is not a result of uncontrollable emotions or moods. Rather, domestic violence is a learned behavior that is controlling and strategically planned.

MS. BAIRD said that domestic violence has devastating effects on children; in Alaska the statistics show that 60 percent of child abuse occurs in homes where domestic violence exists. She noted that nationally, there are up 10 million children who will witness domestic violence, and that in homes where a batterer is abusing a partner, the batterer is also abusing the children in

that home. She mentioned that in Fairbanks, there are many people who work very hard in setting up networks in order to have a coordinated plan against domestic violence, and she invited the legislature to join in on that effort by voting for HB 341.

Number 2303

SHANNA KARELLA testified via teleconference and read the following testimony in support of HB 341:

I am a domestic violence and stalking victim. I am here to testify in favor of [HB 341]. There are many domestic violence victims who are unable to voice their own needs and concerns. Although this bill does not benefit me personally in any way, I testify today on behalf of those who are unable to speak to you for themselves.

The hardest thing for a domestic violence victim to do is to get out of the relationship. It is easier and safer to stay. Statistics show that the victim's likelihood of being killed by their partner increases when they try to leave. I was lucky in one respect. My relationship had not progressed to violence before I was able to get out. Even so, it took me two and a half years to leave after I began to think I needed to leave. It is much more difficult for someone who has been terrorized, threatened, and beaten to leave; the fear is overpowering.

Once a victim does manage to leave their batterer, he or she is met with a frustrating lack of legislation or legal support. As a victim, I have followed all of the recommendations from the court, the troopers, and the local women's shelter. I have a restraining order. I have changed and unlisted my phone number. I sold my house and moved. I have informed my children's schools, and provided them copies of the restraining order and a photo of the perpetrator. I log blocked phone calls that I continue to get at work. I report every new violation of the restraining order to the troopers. My teenage daughters and I have changed our e-mail addresses more than once. I vary my route to work and school. In short, I do everything I am supposed to do, but that isn't enough. Legislation needs to change.

When domestic violence victims do make the effort to get away from their batterer, they put themselves and perhaps their children at greater risk of violent reprisal and death. They need legislative support. Current Alaska state law offers an incredible lack of serious consequences for those convicted of domestic violence assault. This leaves both victims and perpetrators of domestic violence with the accurate impression that the perpetrator can basically "get away with it."

MS. KARELLA concluded:

House Bill 341 will change that. Domestic violence batterers will know that there are serious legal consequences to their actions. Domestic violence victims will be safer, and will have the support and protection they desperately need. I urge you to vote to pass [HB 341]. Thank you.

Number 2440

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration, testified via teleconference, noting that the PDA certainly agrees that Alaska - in both rural and urban areas - suffers from a high rate of domestic violence. She commended Representative Hayes for bringing forth [HB 341], and acknowledged that domestic violence affects a vast number of federal, state, and local organizations that strive to deal with its many ramifications. There certainly is a need for effective intervention and deterrence, she said, and that should be the goal of any legislation addressing domestic violence. The million-dollar question, however, is: what is effective? Citing the Domestic Violence Caucus and the Domestic Violence Committee, she acknowledged the efforts of these and other state and local agencies and partnerships to look into domestic violence issues and try to improve treatment, services, access to treatment and services, and monitoring.

MS. WILSON pointed out, however, that increasing penalties and jail time has not been proven to be effective as a deterrent to domestic violence; instead, increasing the "consequences to a felony," she warned, would have many accompanying costs. She remarked that the fiscal note submitted by the PDA is a [conservative] estimate.

TAPE 02-33, SIDE B  
Number 2510

MS. WILSON continued, saying that most of the domestic violence cases that occur in Anchorage are handled by the city, but they may very well wind up being handled by the state should HB 341 come to pass. Thus the fiscal repercussions might be even higher than estimated. She said that certainly efforts need to be made to create fundamental, long-term changes that will prove to be effective deterrents to domestic violence, such as education and treatment.

Number 2471

JULIA P. GRIMES, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference, and concurred that domestic violence is an enormous problem, both statewide and nationally. In fact, she said, domestic violence has been a big enough problem in Alaska that in 1996, the legislature passed the Domestic Violence Prevention and Victim Protection Act, and within that Act there were many changes to the approach taken to domestic violence. The most significant, from a law-enforcement perspective, was the mandatory arrest. With mandatory arrest, in a domestic violence case, she explained, "we were looking for greater and more immediate consequence for the batterer - for the offender; we're looking for something that's going to cause change in behavior for these folks" so that their battering behavior does not continue.

LIEUTENANT GRIMES noted that previous testimony has indicated that domestic violence is not only a continuing problem in many families, but it is also an escalating problem in that the violence escalates in severity. The hope was that the mandatory-arrest provision would reduce the potential for future domestic violence offenses to occur within a family. This [type of intervention] was needed because escalating violence in DV situations ultimately results in homicide; unfortunately, Alaska is very much in line with the rest of the country in terms of U.S. Department of Justice statistics which show that nationally, 30 percent of homicides are DV-related. She relayed that even according to the Anchorage Police Department (APD), 30 percent of homicides occurring within its jurisdiction are DV-related. She relayed, however, that within the Alaska State Troopers' jurisdiction, just under 50 percent of the homicides that occurred in 2001 are DV related.

LIEUTENANT GRIMES stated that these statistics are unacceptable, and recounted that on November 24, 2001, Alaska State Trooper Hans Roelle was killed while responding to a domestic violence call that ended in the murder of a one-year-old and a three-year-old and the suicide of the children's father. Lieutenant Grimes opined that HB 341 would allow for greater periods of confinement, which equals less exposure for the victim, and, more significantly, with the class C felony there would be supervised probation for offenders, which would allow for a more structured enforcement of treatment programs and other successful interventions. She relayed that a July 2001 National Institute of Justice study has concluded that arresting batterers is consistently related to reducing subsequent domestic violence assaults.

Number 2312

WILLA FREY, Minister, Community of Christ, testified via teleconference in support of HB 341. She noted that she is also president of the Tanana Valley Conference of Churches. She said that over the years, [her organizations] have developed several committees that try to improve the lives of those in the community. She remarked that HB 341 is one way in which the legislature can join in with their efforts to eliminate the problem of domestic violence.

Number 2260

BRENDA STANFILL, Executive Director, Interior Alaska Center for Non-Violent Living, testified via teleconference in support of HB 341. She said that batterers need to experience the consequences of their actions. Currently, however, that does not occur; when a batterer goes to court, he/she is perhaps sentenced to three days in jail - although most of the time it is just overnight due to credit for time already served upon arrest - and must attend "Alternatives to Violence." And although this is a good step in the right direction, it is not enough because it is simply a misdemeanor charge and does not contain any follow-up or oversight. She recounted that in her community at a recent point in time, there were over 350 men and women who, after being convicted of domestic violence and ordered by the court to go to treatment, were noncompliant. She said that consistently, intervention is not occurring.

MS. STANFILL said that although putting money into education is key to solving the problem of domestic violence, there also has to be a way of ensuring that people receive that education once

they go through the court system. Without a felony charge, there is no supervised probation and no way to track whether people are complying. She remarked that any follow-up that is currently occurring is being done by local agencies that are not receiving any funds for this extra activity. She said her agency is doing this on its own, doing its best to try to make sure that the proper authorities are notified when people are noncompliant, but it doesn't have the resources to serve warrants. "So when you're looking at a fiscal note saying, 'We can't afford this,'" she remarked, a way simply must be found. She reiterated that she is in support of [HB 341], and urged members to pass it out of committee for further consideration.

Number 2185

SHEILA KIVI, Facilitator, Alternative Behaviors & Choices [Services], testified via teleconference in support of HB 341, and suggested that the economic penalties on batterers could be set high enough so as to offset HB 341's fiscal notes. She opined that batterers need more jail time, and that if HB 341 is not passed, the situation will remain the same and more women are going to die and more families are going to be harmed. She said that she has to deal with noncompliant batterers, and noted that the rate of noncompliance has risen this year. Because the offense is just a misdemeanor, most people play it off as, "It's just family violence, it's just not our business"; however, "we need to make it our business," she stated, adding that legislators in Alaska need to make it their business without worrying about the cost, because "we'll find a way" to pay for it. She opined that everyone needs to help find a way to stop the crime of domestic violence.

Number 2128

JOAN ADAMS testified via teleconference in support of HB 341, noting that she supervises three batterers intervention programs: one in the Fairbanks Correctional Center, one in the Northstar Center - a halfway house, and one program offered to the [Fairbanks] community. She explained that the first time a batterer stands before a judge is not the first time that he/she has been abusive; it is likely that the emotional/psychological abuse has been going on for months and possibly years, and it is simply the first time that the victim has finally reached out for help from law enforcement. She relayed that the dynamics of domestic violence are such that over time, it gets more serious and more frequent. The danger, even, with having a third

conviction be a felony is that it is not known how much abuse must be suffered before even that threshold is reached.

MS. ADAMS said that there seems to be a double standard with regard to how regular assaults between strangers are treated when compared to how DV assaults are treated. Why is it that there are not the same sort of consequences for people who assault their intimate partners, over whom they have power and control? She also relayed her feeling that there is a lot of minimization and denial, not only in the batterers' and victims' minds, but also from a systems standpoint; often, the professionals who work with DV issues attempt to minimize how DV impacts victims, and deny the seriousness of the DV behavior. She noted that because of the "Dr. Jekyll/Mr. Hyde" aspect of a batterer's personality, it has often been a real challenge to get assistance for a victim, simply because when he/she goes for help, those that know or have met the batterer say that that person is so nice, he/she couldn't possibly be abusive.

MS. ADAMS remarked that one of the things that can make a difference in changing the behavior of a batterer is creating an opportunity for him/her to be accountable for the abusive behavior; unfortunately, at least in Fairbanks, there is not yet a very good system in place to provide that accountability. She noted that batterers have relayed that one of the things that would assist them in changing their behavior is to have a system in place that consistently shows them that battering behavior is wrong and comes with severe consequences. In conclusion, she said she strongly supports HB 341, and thinks that a message needs to be sent to batterers that domestic violence is not acceptable.

Number 1956

SUSAN SCUDDER, Executive Director, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety (DPS), said that the CDVSA is in favor HB 341. She relayed that last year in Alaska there were more than 7,000 women and children who sought direct services from shelters for more than 50,000 "shelter nights." The vast majority of perpetrators of domestic violence are not charged; they don't end up in court. Therefore, when someone is in court for the third time, she opined, it is not unreasonable to raise the punishment to the felony level. She surmised that doing so will make Alaska's women and children safer, if for no other reason than the batterer is out of their lives for a longer length of time.

REPRESENTATIVE JAMES asked Ms. Scudder: "If you had all your druthers, of all the different methodologies that you think would assist in eliminating or at least reducing ... domestic violence ..., where would you begin?"

MS. SCUDDER said that that was a difficult question because there are so many choices. She observed that the punishment portion of the solution, such as is found in HB 341, is certainly one aspect to consider; simply getting batterers off the street and out of the households should be considered. Another aspect of the solution is educating both the public and those affected by DV that Alaskan's are being hurt and that DV should [not] be considered an "okay way" to hurt one another: DV is not a family issue, it is not a private issue, it is a criminal issue.

REPRESENTATIVE JAMES indicated that domestic violence is a very stressful issue to her. She acknowledged that many families are destroyed by DV, and that it is a difficult issue to find a solution for. She said, however, that although more rules and regulations are being created, it just seems as though the problem is getting worse. Because of this, she said, she is not totally convinced that increasing penalties is "getting us where we want to go." She suggested that perhaps education should start at the elementary-school level; people should be taught at a very young age that violent behavior against anyone is unacceptable. She said that at least by putting money into education, it will result in reducing this problem in the future.

MS. SCUDDER said that currently, programs throughout the state are in the school system at all levels, and that this is part of breaking the cycle of domestic violence.

Number 1786

REPRESENTATIVE JAMES opined that assertiveness training for both boys and girls is essential to ending the problems caused by living in a combative society. She remarked that she is looking for alternatives to simply increasing punishment, because that alone does not seem to be working.

REPRESENTATIVE MEYER asked whether a counseling option could be added to HB 341 as a mitigating factor. In this way, if someone agreed to attend counseling, the charge could be reduced down from a felony level, which would in term help mitigate the cost of HB 341. He asked whether counseling really helps.

MS. SCUDDER said that there are batterers' intervention programs throughout the state, but cautioned that it is still a fairly new concept. She also recalled that previous testimony indicated that one of the problems is that recidivism and noncompliance rates are high because there is no tracking of misdemeanants to ensure that they follow through with counseling/treatment programs. Felons, on the other hand, are tracked to ensure that counseling/treatment requirements are met.

REPRESENTATIVE JAMES asked whether there is any way to have individuals tracked without going to a felony charge.

MS. SCUDDER mentioned that there are a variety of programs that have been offered [to that effect] and there are some pilot programs that are usually done at one specific court; however, there is not a statewide program at this time.

REPRESENTATIVE JAMES asked whether such could be done on a statewide basis via legislation.

MS. SCUDDER replied that that is a question for the Alaska Court System.

Number 1633

LAUREE HUGONIN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said that the ANDVSA supports HB 341, raising assault in the fourth degree involving domestic violence (DV) from a misdemeanor level to a felony level on the third conviction. She opined that three times in front of a court is plenty for a batterer to get the idea that he/she has made a mistake. She explained that the first time someone is before the court for this crime, he/she does not "get any time; you can read your local daily paper where they print the criminal records and you can see, 'DV assault - 30 days/30 days suspended, one year probation,' or, '[DV assault] - two weeks/time served, one year probation.'" When one looks at these types of sentences day after day, month after month, she remarked, it is apparent how people could be left with the impression that nothing is being done to perpetrators of DV.

MS. HUGONIN said that there is a responsibility on the community's part to tell the court that it needs to pay more attention to this serious crime. She recounted that in 1998, Representatives Berkowitz and Dyson passed legislation that said

a person [shall be sentenced to] 30 days in jail for a second conviction of DV assault, and 60 days for a third conviction. This was done as a way to try to help both the court and the perpetrator see that the community took these crimes very seriously and wanted to make an impact in such a way that perpetrators would be less likely to re-offend. She observed, however, that with misdemeanants, there is no probation and there is no way to monitor their activity to see whether they are going to batterers' intervention programs.

MS. HUGONIN remarked that even on a national level, there are not very many studies that prove one way or another how effective batterers' intervention programs are. So, even if someone does attend such a program for 26 weeks with up to a year of follow-up, there is still a certain amount of continuing violence that he/she perpetrates - maybe not on the original victim, but on someone new. She opined that these batterers are not changing their behavior due to intervention programs; thus giving them a longer period of jail time at least has the effect of giving their victims more time in which to be safe and move forward with their lives.

MS. HUGONIN, with regard to the concern that fourth degree assault might simply refer to instances in which someone is being yelled at, pointed out that fourth degree assault can also refer to instances in which someone is beaten in the face so badly with a broom handle that his/her face is swollen to twice its normal size. It can also refer to instances in which someone is thrown down a staircase and has his/her ribs broken. It can also refer to instances in which someone is kicked so badly in the stomach that his/her spleen must be surgically removed. "Misdemeanor fourth degree assault can be very serious physical injury," she stated. So it's not just "a slap" or just "a little yell"; those kinds of cases don't get into the court, she remarked. With HB 341, "we're talking about serious crime where there's definite injuries"; currently, people have to live with the knowledge that there is no justice: the perpetrator is just getting a slap on the wrist after breaking someone else's bones or destroying someone else's internal organs. It doesn't seem quite right, she stated.

Number 1410

MS. HUGONIN recalled that prior testimony indicated that one of the advantages of raising the third offense of this nature to a felony level is that it would provide for supervision and probation. She noted that in Palmer in 1997, there was a pilot

project involving supervised, misdemeanor-level probation for batterers specifically. However, after the pilot program lapsed, the Department of Corrections (DOC) indicated that statewide misdemeanor probation would be too expensive because, at the time, the DOC did not see any way of singling out domestic violence offenders; it was either all misdemeanants or no misdemeanants.

MS. HUGONIN relayed that there have been studies that looked at the effectiveness of incarceration. From these studies, it appears that when there is an incident of domestic violence, if there is an immediate arrest, if there is a short time to wait for the trial, and if there are fast consequences - meaning immediate sentencing - then incarceration is more effective than merely talking to the offender about how he/she got into that situation to begin with. She pointed out that "we don't talk to burglars; we don't send them to an intervention program to say, 'Now, why did you feel compelled to break into that house and steal that piece of jewelry,' and give them ten steps to not [repeat that behavior]." She acknowledged, however, that some people feel that there is some efficacy in trying to help people who batter choose a different way of behaving.

MS. HUGONIN pointed out that there are some felonies currently on the books that certainly seem less important than keeping a violent person in prison. One involves writing a bad check for \$500; that's a class C felony. One involves being a concert promoter who waits more than 10 days to return concert proceeds totaling at least \$1,000 to the entity entitled to those proceeds; that's a class C felony. One involves being a telephone solicitor who does not register with the Department of Law 30 days before beginning solicitations; that's a class C felony. However, "you can beat your partner to within an inch of her life, break her bones, bruise her body," and it's just a class A misdemeanor. She acknowledged that there is a high cost associated with providing higher penalties for domestic violence, but remarked nonetheless that at some point this [discrepancy between violent DV misdemeanors and the aforementioned nonviolent felonies] should be questioned. "Just because it costs a lot doesn't mean that we shouldn't be having these violent people under more serious supervision and incarceration," she concluded.

Number 1210

REPRESENTATIVE JAMES remarked that it isn't the cost by itself that causes her concern, it is that she is not yet convinced that just increasing penalties is going to bring results.

MS. HUGONIN said that the ANDVSA agrees that "there needs to be several different things going on at the same time," and thus supports and provides prevention and education programs in the schools.

REPRESENTATIVE JAMES remarked that because of the complexity of domestic violence issues, it is difficult to look at just one aspect of the solution and think that it will be applicable in all cases.

REPRESENTATIVE MEYER indicated that he would like to be creative and look at other possible solutions rather than just throwing people in jail.

MS. HUGONIN replied:

I think the first time you're in front of the court, let's be creative. This bill is even saying the second time you're in front of the court, you can still be creative. It's saying the third time you're in front of the court, it's time that you have a serious-penalty wakeup call; you need to be out of the community for a while. And I think that's the difference. You know, I think in the first and second instances, people are still willing to try to see what can work. ... [With regard to the victim], when are we going to say it's her turn now? Three times is a lot of times; I mean, it's not easy to get somebody to the place where they're in court in front of the judge.

Number 0991

It's not: the first time a person commits that act, the police come in and have a flawless investigation, and it's right there for the prosecutor and the prosecutor gets that conviction or gets that plea bargain. ... I wish that was how our judicial system works, but it's not. So even to get to court in the first place, you're going to have a lot of violence that has gone on before, and a lot of ugliness that has happened. And then you're going to ... [be in front of a court] a second time, which is not going to

be the second time [DV has] happened; it's going to be the second of this long process of getting there. And then the third time -- and at some point you just have to say, you know, enough is enough.

REPRESENTATIVE MEYER indicated he agreed. He mentioned that even if programs in the school do try to teach alternatives to violence, if children then go home and witness domestic violence, that training in the school doesn't do any good; thus sometimes the only solution is to remove the perpetrator from the home.

MS. HUGONIN remarked that [society's] language and customs also contribute to the prevalence of domestic violence. As an example, she recounted that the previous day, in another committee, someone who was testifying kept saying: "My rule of thumb is ...," and, "This is the rule of thumb...." She explained:

Violence against women permeates our communities so completely that I bet he didn't even know the source of that phrase, which we take to mean, "Well, the general way of doing things, the accepted way of doing things, how you usually do things." That's from a court ruling in England in the 1700s where a judge said, "Yes, you do have a right to beat your wife, but let's not do it with a switch that's any bigger around than your thumb." And that's where the "rule of thumb" comes from: it's actually a measurement of the instrument that you can use to beat you wife. ... Our violence is everywhere. So it's not just educating our children; it's educating us to pay attention to what we say.

Number 0838

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that because a lot of the issues surrounding HB 341 have already been discussed, she didn't have much to add, although she did want to address the issue of proportionality that had been raised by Ms. Hugonin. She elaborated:

I was thumbing through Title 11 this morning and I noticed that first-time car theft is a class C felony, and first-time first degree harming a police dog is a class C felony. So, my proportionality argument is

the same as [Ms. Hugonin's]: we have to set our values in this state, and I don't think they're set in a proportional way to the harm that's caused by domestic violence.

MS. CARPENETI pointed out that there is also an issue regarding the drafting of HB 341. She remarked that if a third-time offense is going to become a class C felony, "you ought to put it in 'third degree assault' so that you don't have police officers and records [keepers] having to figure out whether conviction of [AS] 11.41.230 is a misdemeanor." She added that she would be happy to help draft that language.

CHAIR ROKEBERG commented that it looked to him as though all the DV assault statutes need to be reviewed, and perhaps rewritten, for proportionality and symmetry, and that to just "tweak" this one statute is not going to alleviate the problems highlighted by the testimony.

MS. CARPENETI remarked that at least a third DV assault conviction should be a felony.

CHAIR ROKEBERG said that the statutes ought to be able to make a distinction between the levels of violence in a DV situation.

MS. CARPENETI said that the statutes do that, although it is true that some really shocking behavior only gets prosecuted at a misdemeanor level. In response to questions, she relayed that "Nygren credit" can apply to all felony sentences and perhaps to misdemeanors as well; however, in order for "Nygren time" to count, it has to be "similar to incarceration" and must be served in a court appointed treatment program. She said she did not know whether just volunteering to go to a treatment program before the criminal procedure takes place would automatically qualify a person for Nygren credit.

Number 0552

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner - Juneau, Department of Corrections (DOC), added that it's automatic if it's been court-ordered and they go to treatment. And treatment is confinement, essentially, in most in-patient treatment programs, and is particularly restrictive for convicted offenders. But if a person voluntarily attends a treatment program prior to conviction/sentencing, she relayed, it would be up to the judge to decide whether to give Nygren credit for that time served.

MS. CARPENETI, in response to earlier comments regarding instituting education and prevention programs in the school system, relayed that she has heard from children of various ages that such programs do exist in the Juneau school system.

CHAIR ROKEBERG, after mentioning that the sponsor is willing to work further on some of the issues raised, announced that HB 341 would be held over.

HJR 36 - CONSTITUTIONAL AMENDMENT : TAX CAPS

Number 0441

CHAIR ROKEBERG announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 36, Proposing an amendment to the Constitution of the State of Alaska relating to limiting the rate of state individual income taxes and sales taxes.

Number 0420

CHAIR ROKEBERG moved to adopt committee substitute (CS) for SSHJR 36, version 22-LS1402\P, Kurtz, 3/20/02, as a work draft. There being no objection, Version P was before the committee.

CHAIR ROKEBERG remarked that in Version P, [subsection] (a) of Section 1 has been rewritten and now reads: "The rate of an individual income tax levied by the State may not exceed five percent of an individual's taxable income, as that term is defined in federal law." He indicated that this constitutes a flat tax rate not to exceed 5 percent.

REPRESENTATIVE JAMES indicated that using an individual's [federal] taxable income as a basis by which to determine whether a state income tax had reached its cap was fine with her.

Number 0092

REPRESENTATIVE COGHILL made a motion to adopt Representative Ogan's Amendment 1, 22-LS1402\L.1, Kurtz, 2/22/02, [which would need to be altered to conform with line numbers in Version P]. Amendment 1 read:

Page 1, lines 1 - 2:  
Delete "**limiting the rate of**"

Page 1, line 6, following "Tax Caps"

Insert "; Voter Approval of New Taxes and Rate Increases"

Page 1, following line 14:

Insert a new subsection to read:

"(c) A new individual income tax or sales tax or an increase in the rate of levy of an individual income tax or sales tax enacted by the legislature does not take effect unless ratified by a majority of the voters at the first statewide election held following enactment of the tax or the tax increase."

REPRESENTATIVE COGHILL explained that Amendment 1 simply asks that any individual income tax or sales tax, or any increase in such, would not take effect unless ratified by a majority of the voters at the next statewide election held following enactment by the legislature of the tax or tax increase. He remarked that because citizens don't currently pay a state tax, they are disconnected from state government; he suggested that Amendment 1 would help reestablish that connection.

TAPE 02-34, SIDE A  
Number 0016

REPRESENTATIVE BERKOWITZ mentioned that he was pleased to see that some of his colleagues were interested in putting matters to a public vote, and that he hoped they would "carry that logic through in other matters." He remarked, however, that he is concerned with whether [Amendment 1] would fit in with the current Alaska State Constitution, which precludes the public from voting on appropriation matters.

CHAIR ROKEBERG said he tends to agree that [Amendment 1] cedes the legislature's power of appropriation to the public and, thus, the legislature would not be doing its job by adopting it.

REPRESENTATIVE JAMES indicated agreement.

REPRESENTATIVE MEYER remarked that the Municipality of Anchorage (MOA) is doing something similar to what is being attempted via Amendment 1.

REPRESENTATIVE JAMES pointed out that a statewide issue cannot be compared to municipal issue. She opined that adoption of Amendment 1 would be abdicating the legislature's

responsibility. She also noted that one of the problems with putting an issue before the voters is that not everybody that can vote does so.

REPRESENTATIVE COGHILL offered that having an issue like Amendment 1 on the ballot might increase voter turnout.

REPRESENTATIVE JAMES argued, however, that less than 20 percent of eligible voters even voted [on the advisory vote of September 1999] regarding use of the permanent fund. And so although 83 percent voted "No," it was merely 83 percent of a very small portion of the population.

CHAIR ROKEBERG, after noting that he was speaking in defense of the Alaska State Constitution, said that Amendment 1 would be abdicating the legislature's responsibility; he then asked Representative Coghill to withdraw Amendment 1.

Number 0312

REPRESENTATIVE COGHILL, after arguing that Amendment 1 is merely "ratification" rather than "installation," nonetheless withdrew the motion to adopt Amendment 1.

Number 0351

REPRESENTATIVE BERKOWITZ moved to report committee substitute for SSHJR 36, version 22-LS1402\P, Kurtz, 3/20/02, out of committee [with individual recommendations and the accompanying fiscal note].

CHAIR ROKEBERG objected for the purpose of stating: "What this does is make this a 5 percent cap on an individual's taxable income, as opposed to the aggregate."

CHAIR ROKEBERG then withdrew his objection and noted that there were no further objections. Therefore, CSSSHJR 36(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 2:55 p.m. to 2:57 p.m.

HB 197 - HEALTH CARE SERVICES DIRECTIVES

Number 0413

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 197, "An Act relating to directives for

personal health care services and for medical treatment."  
[Before the committee was CSHB 197(HES).]

Number 0430

MELANIE LESH, Staff to Representative Bill Hudson, Alaska State Legislature, sponsor, speaking on behalf of the sponsor, noted that [the proposed committee substitute (CS) for HB 197, version 22-LS0712\0, Bannister, 2/26/02,] is quite expanded from CSHB 197(HES). She mentioned that [Version 0] incorporates [the Uniform Health Care Decisions Act], which is national model language that other states have also adopted. She relayed that there is also a proposed amendment that speaks to concerns raised by the Department of Health & Social Services (DHSS) regarding the emergency medical technicians' protocol for responding to do-not-resuscitate (DNR) orders.

Number 0582

REPRESENTATIVE JAMES moved to adopt the proposed committee substitute (CS) for HB 197, version 22-LS0712\0, Bannister, 2/26/02, as a work draft. There being no objection, Version 0 was before the committee.

Number 0600

SIOUX PLUMMER, President, Board of Directors, Foundation for Hospice and Home Care of Juneau Alaska, relayed that during the time she'd worked for Representative Hudson, she'd also chaired the Juneau End of Life Task Force. She said that she, along with other likeminded people, supports HB 197. Because of her interest in issues related to death and dying, she said, it became evident to her that "we could improve existing statute in Alaska for persons who wish to die here." "We could make dying better, if you'll forgive the phrase, but, in fact, dying can be improved if you would accept that language," she added. The fundamental intent of HB 197 is to clear up, improve, and make more readily available to Alaskans this language based on the idea of the "Five Wishes," language which currently exists in the state laws of 35 or more states.

MS. PLUMMER reiterated her support of HB 197, and relayed her hope that HB 197 would be reported out of committee after serious consideration. She mentioned that on a personal level, she hadn't been very familiar with death and dying until [she watched] the "Bill Moyers special," which addressed dying in America and which was broadcast on public television a couple of

years ago. As a result of that program, here in Juneau as well as across the nation in many cities, local groups formed to learn more about issues of death and dying. She said it was at one such conference that she learned about the Five Wishes, about why the notion of these wishes is so prevalent throughout the United States, and about why there is a new trend in the country relating to improving issues pertaining death and dying.

REPRESENTATIVE JAMES asked what the Five Wishes are.

MS. PLUMMER, noting that they were listed in the sponsor statement, said that the wishes include: "The person I want to make care decisions for me when I can't"; "The kind of medical treatment I want or don't want"; "How comfortable I want to be"; "How I want other people to treat me"; and "What I want my loved ones to know." These are wishes that persons who are terminally ill or who know they are going to die soon would want to express to their caregiver, their medical provider, their family, and their loved ones. These Five Wishes are the premise upon which HB 197 is based.

MS. PLUMMER relayed that within the last three years, she lost four of her closest family members: her husband, her brother, her mother, and her father. Up until that time, she said, she had never paid attention to what it must be like to die; now, because of her recent personal experiences, she has a real strong feeling about the necessity of having very clear language and clear law that enables people to die the way they would like to.

Number 0823

CHAIR ROKEBERG asked Ms. Lesh to comment on the DHSS's concerns and the proposed amendment.

MS. LESH said that she has just spoken with almost everyone in the "Comfort One Do-Not-Resuscitate (DNR) program" affected by the proposed amendment as it relates to Version 0. She explained that [HB 197] repealed the statutes for the Comfort One DNR program, the Organ Donation program, and the Living Will program and re-enacted them in one new chapter. More importantly, the legislation added the expanded health care directives in which one can write his/her health care wishes succinctly. Ms. Lesh noted that in repealing and reenacting the aforementioned programs, the very important Comfort One DNR program was [inadvertently] left out. Under this program an individual, with a physician's consent, can obtain a bracelet

and documentation which specifies that the individual has chosen, with a physician's concurrence, to not have CPR administered. Ms. Lesh said that the intent of [Amendment 1] is to [reenact] the Comfort One DNR program since the sponsor did not wish to impact the DNR protocol already existing in statute.

Number 0982

RICHARD BLOCK, Christian Science Committee on Publication for the State of Alaska, testified via teleconference in support of [Version 0]. First, it places the four statutes, which are currently in different locations and [are] in conflict with one another, together in harmony. He opined that that is reason enough alone to adopt the bill. Second, the bill grants a great deal of latitude to the person preparing a health care directive document in regard to how that person wishes his/her surrogate to make health care decisions on his/her behalf. Furthermore, it allows persons with religious considerations to express those and to have those protected through the health care directive. Therefore, Mr. Block said, he viewed [Version 0] as positive because it returns to individuals the ability to make provisions for their own care. Mr. Block reiterated support for [Version 0] and urged its adoption. Mr. Block mentioned that he couldn't comment on the amendment since he hadn't yet seen it.

Number 1186

MARK JOHNSON, Chief, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services (DHSS), announced support of the intent of HB 197. As mentioned earlier, the Comfort One DNR program is already in place for the EMS (Emergency Medical Services) community, and seems to be working. He noted that there had been a discussion with the sponsor [regarding working out that issue]. He informed the committee that EMS providers are trained to restore life whenever possible, but there is no desire to prolong suffering at the end of someone's life.

CHAIR ROKEBERG asked if Amendment 1 satisfies [the DHSS's] concerns as relayed in the letter in the committee packet.

MR. JOHNSON answered that he believes the sponsor intends to satisfy those concerns, although it still needs to be sorted out a bit. He remarked that it's clear to him that the sponsor shares [the DHSS's] goal.

Number 1262

LYN FREEMAN, Executive Director, Alaska Commission on Aging, Division of Senior Services, Department of Administration, testified in support of Version O. She relayed that the commission feels that it's very important and meaningful that this draft incorporates the Uniform Health Care Decisions Act and includes the Five Wishes form. Specifically, the commission is pleased with the thoroughness, completeness, and understanding of the Five Wishes component for the general population. She relayed the importance this kind of direction has for the individual and their family members. Ms. Freeman encouraged the committee to support Version O.

Number 1402

MARIE DARLIN, AARP Capitol City Task Force, informed the committee that AARP was one of the organizations that pushed for this legislation to be introduced last year. Ms. Darlin said AARP wants to urge the committee's support. She pointed out that the committee should have a letter from AARP's legislative committee, which supports the bill. The idea of placing all the directives in one location [in statute] is very important. She explained that the AARP really likes the Five Wishes because it opens up the opportunity for families to discuss what an individual's last wishes would be in a situation in which the individual can't make his/her own decisions. Ms. Darlin relayed the belief that discussions regarding amendments will take care of most everything of concern.

Number 1462

REPRESENTATIVE COGHILL moved to adopt Amendment 1, 22-LS0712\0.1, Bannister, 3/20/02, which read:

Page 7, line 19:

Delete "do not resuscitate protocol"

Insert "protocol for do not resuscitate orders"

Page 10, line 30:

Delete "orders not to resuscitate"

Insert "do not resuscitate orders"

Page 18, following line 29:

Insert new paragraphs to read:

"(4) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation;

(5) "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a qualified patient; in this paragraph,

(A) "qualified patient" means a patient who has been determined by the attending physician to be in a terminal condition;

(B) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two physicians, when available, who have personally examined the patient, one of whom must be the attending physician, result in death within a relatively short time; in this subparagraph, "life-sustaining procedures" means medical procedures or interventions that, when administered to a qualified patient, will serve only to prolong the dying process; "

Renumber the following paragraphs accordingly.

Page 19, lines 2 - 3:

Delete "do not resuscitate protocol"

Insert "protocol for do not resuscitate orders that is"

Page 19, line 12:

Delete "orders not to resuscitate"

Insert "do not resuscitate orders"

CHAIR ROKEBERG, noting that there was no objection, stated that Amendment 1 was adopted.

CHAIR ROKEBERG announced that public testimony would be held open for HB 197. [HB 197, Version 0, as amended, was held over.]

#### **ADJOURNMENT**

Number 1515

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.