

HOUSE FINANCE COMMITTEE
April 21, 2004
1:53 P.M.

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TAPE HFC 04 - 93, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:53 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Eric Croft
Representative Hugh Fate
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

None

ALSO PRESENT

Susan Parkes, Deputy Attorney General, Criminal Division, Department of Law; Ernesta Ballard, Commissioner, Department of Environmental Conservation; Dan Easton, Director, Division of Facility Construction and Operation, Department of Environmental Conservation; Ron Wolfe, Corporate Forester, Sealaska Corporation; Representative Paul Seaton; Cindy Cashen, Mothers Against Drunk Driving, Juneau; Mike Barnhill, Assistant Attorney General, Department of Law; Tom Wright, Staff to Representative Harris; Susan Burke, Attorney, Juneau; Larry Meyers, Deputy Director, Tax Division, Department of Revenue

PRESENT VIA TELECONFERENCE

Gunnar Knapp, Economics Professor, University of Alaska, Anchorage

SUMMARY

HCR 28 Relating to the socioeconomic impacts of salmon harvesting cooperatives.

CS HCR28(FIN) was REPORTED out of Committee with a DO PASS recommendation and two zero fiscal impact notes.

HB 244 An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date.

HB 244 was heard and HELD in Committee for further consideration.

HB 546 An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date.

CSHB 546(JUD) was REPORTED out of Committee with individual recommendations and one previously published fiscal impact note.

HB 552 An Act relating to gambling and gaming.

CSHB 552(FIN) was REPORTED out of Committee with individual recommendations and two new indeterminate fiscal impact notes.

#HCR28

HOUSE CONCURRENT RESOLUTION NO. 28

Relating to the socioeconomic impacts of salmon harvesting cooperatives.

Vice-Chair Meyer MOVED to ADOPT Work Draft 23-LS1419, Version V, Utermohle, dated 3-31-04, as the version of legislation before the Committee. There being NO OBJECTION, it was so ordered.

REPRESENTATIVE PAUL SEATON explained that HCR 28 was brought forward at the recommendation of the joint legislative Salmon Industry Task Force that convened for the last two sessions. The resolution requests that the University of Alaska and its subunit study the socioeconomic effects of

the management regime in the Chignik Cooperative fishery because the Task Force lacked data on which to base decisions. The short timeframe led to a \$100 thousand fiscal note. The new version removed the date and requested that the University continue its studies. He noted that the Institute of Social and Economic Research (ISER) had conducted studies on the Chignik fishery, which were based on fishermen's surveys of the economic impacts on themselves, but did not address the economic impacts on the community. Representative Seaton pointed to the zero fiscal note and discussed a couple of the public policy issues.

GUNNAR KNAPP, ECONOMICS PROFESSOR, UNIVERSITY OF ALASKA ANCHORAGE, INSTITUTE OF SOCIAL & ECONOMIC RESEARCH (ISER), VIA TELECONFERENCE, ANCHORAGE, spoke representing himself and ISER. He stated that the Chignik Salmon Cooperative is an issue that has received attention regarding its effects on the community. He thought that this issue deserved study and the University would assist as its budget allows.

Representative Hawker referred to the letter from the United Fishermen of Alaska (UFA), (copy on file), asking if the Committee Substitute addresses their concerns and whether the studies look beyond the existing cooperative.

Representative Seaton replied that Chignik is the only allocative cooperative in the state that allocates a portion of the fish to fishermen. The intent is to generate information in order to make recommendations to the Board of Fish to establish public policy. The other cooperatives are not allocative and Chignik is the first cooperative to be studied.

Representative Hawker commented that the UFA supports HCR 28 overall.

Representative Foster MOVED to report CS HCR28(FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HCR28(FIN) was REPORTED out of Committee with a DO PASS recommendation and two zero fiscal impact notes.

#HB546

HOUSE BILL NO. 546

An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date.

ERNESTA BALLARD, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC), explained that Governor Murkowski has discussed permit streamlining. The Governor envisions efficient and effective resource development while maintaining the State's environmental goals. This bill would help to ensure achievement of those goals.

Commissioner Ballard informed the Committee that the National Permit Discharge Elimination System (NPDES) program is designed in the Clean Water Act for delegation to the states. Forty-five states have delegation, but Alaska is one of the five states without it. The Clean Water Act intends that permitting be done at the state level where a state regulatory agency can be in contact with industry and municipal dischargers to make the important risk-based decisions effective in protecting a state's waters.

Commissioner Ballard pointed out that the key parts of the Clean Water Act fall under Sections 402 and 401. Section 402 allows the permit to be written and issued, while 401 is the "heart" of the program that requires the state to certify that the permit will protect the state's waters. The DEC issues the 401 certification and currently the Environmental Protection Agency (EPA) issues the 402 permit, which requires a state applicant to get two permits. In the 45 states with delegation, only one permitting action is necessary because the state issues the 402 permit and the 401 certification. Both of these water protection actions are based on a state's water quality standards.

Commissioner Ballard explained that the DEC is seeking primacy for only a portion of the industries that receive permits in the State because the Department is not ready for the other industry segments to submit a full primacy package. The timber industry requested partial primacy to give them the services it needs from the DEC. She noted that this would allow other industries to observe how a regulatory package comes together. The Department intends to use this as a pilot project and to seek full primacy in the future.

Commissioner Ballard referred to the fiscal note, and pointed out that it is "frontloaded" with the first two years requiring a more concentrated effort by the DEC to write regulations and negotiate with the EPA. The bill has a relatively small fiscal impact in future years because the timber industry is currently small.

Representative Chenault referred to the fiscal note reflecting in the Analysis Continuation one full-time position from FY 2005 to FY 2010 and one permanent position. He questioned the two long-term non-permanent positions under Contractual, noting the change from \$300 thousand to \$56 thousand for those two positions.

Commissioner Ballard explained that during the first two years, FY 05 and FY 06, the contractual positions would write regulations and would not remain part of the staff. The permanent position would work with the regulation writers and stay on with the Department.

DAN EASTON, DIRECTOR, DIVISION OF FACILITY CONSTRUCTION AND OPERATION, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, thought that the Committee might not have an accurate fiscal note. Representative Chenault said that the fiscal note in his packet was dated 3-9-04, and Commissioner Ballard clarified that it was the fiscal note she was discussing.

Commissioner Ballard continued explaining that the frontloading expense would allow contractors to complete the regulatory package under the Department's supervision. The remaining staff position is a permanent state employee. In response to a question by Representative Chenault, Commissioner Ballard explained that \$56 thousand is in the Department's budget as an RSA to the Department of Law for on-going legal expenses.

RON WOLFE, CORPORATE FORESTER, SEALASKA CORPORATION, spoke in support of HB 546 that would allow timber primacy for the NPDES program. The Corporation believes that the action would help a struggling industry whose survival is important to Alaska's healthy economy. He pointed out that the timber industry is also important to the Native communities who receive revenues under ANCSA in the form of dividends. State primacy would give local access to the regulators on permit issues rather than the EPA in Seattle. Mr. Wolfe said that the Sealaska Corporation's NPDES permits for log transfer facilities were completed three years ago and amended last year.

Co-Chair Harris asked if it would be possible to change the \$177 thousand in General Funds for this year's budget to Receipt Supported Services on the fiscal note. Commissioner Ballard explained that it would be difficult to charge for the services of writing regulations. In future years, the Department would propose a fee structure as it has done for other permit programs.

Co-Chair Harris pointed out on the fiscal note that only \$30 thousand is indicated in later years. Commissioner Ballard said that the DEC would propose to the Legislature a modified fee structure similar to its other permitting programs that have a "slightly stronger contribution" made by the permit holder.

Representative Croft asked if there would continue to be a significant General Fund component and the DEC would not be fee-based. Commissioner Ballard commented on balancing the

General Fund subsidy of a permit program having the public effect of protecting the state's resources but also the direct effect of benefiting a municipal or industrial discharger. She pointed out that the DEC has General Fund support of all its permit programs, and said that the Legislature's intent would be some continuing level of General Fund support for the Department's permitting programs. Future administrations would discuss the issue, she said.

Representative Foster MOVED to report CSHB 546(JUD) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 546(JUD) was REPORTED out of Committee with individual recommendations and one previously published fiscal impact note.

#HB552
HOUSE BILL NO. 552

An Act relating to gambling and gaming.

Co-Chair Harris MOVED to ADOPT Committee Substitute Work Draft Version I dated 4-20-04 as the version of legislation before the Committee. There being NO OBJECTION, it was so ordered.

TOM WRIGHT, STAFF TO REPRESENTATIVE HARRIS, explained the differences between the original bill and Work Draft Version I.

Mr. Wright stated that Version I deleted the following:

- all references to the Alaska Gaming Commission and its supervision of charitable gaming found in, or related to, AS 05.15;
- Section 2 from the original bill that gave authority to the Alaska Gaming Commission to suspend a license or permit for a violation of AS 05.15;
- Section 3 from the original bill that gave authority to the Alaska Gaming Commission to administer the provisions of AS 05.15;
- Section 4 from the original bill that provided a definition of the Alaska Gaming Commission under AS 05.15.

Mr. Wright stated that Work Draft Version I also made the following changes:

- on page 2, line 21, provided a definition of a public officer of the State and gave it the same definition found in AS 39.52.960;

- on page 3, line 2, further defined the grounds for removal of a commissioner. This includes the failure of a commissioner to attend at least 50% of the meetings in any 12-month period;
- on page 5, line 27, provided an appeals process which allows a person to seek judicial review of a final administrative order of the commission as defined in AS 44.62.560 and 44.62.570 (judicial review under the Administrative Procedures Act);

Mr. Wright continued explaining that Version I also:

- deleted subsection 10 on page 10 of the original bill that required a person applying for an owner's or supplier's license to provide information of the amount, date and method of payment of political contributions, loans, donations or other payments to a candidate or office holder for the previous five years before the date the person applied for a license;
- on page 11, line 13, added subsection (i). Requires an applicant for a license to submit to the commission, fingerprints and fees required by the Department of Public Safety for criminal justice information and a national criminal history record check. The commission is then required to forward fingerprints and fees to the department for a report of criminal justice information under AS 12.62 (Criminal Justice Information Systems Security and Privacy) and a national criminal history record check. The results will be used to then evaluate applicants.

Mr. Wright emphasized that the change adding subsection (i) must be included for the department to get permission to request this information.

Mr. Wright noted the following changes in Version I:

- on page 16, line 5, clarified language that any income earned on the principal of a cash or negotiated securities bond will be paid to the benefit of the licensee;
- on page 16, line 25, rewrote subsection (h) for clarity purposes;
- on page 30, line 22, added security and surveillance services and supplies and money counting services and supplies to the definition of supplier's license; and
- deleted Sections 10 and 11 from the original bill. Section 10 repealed the definition of department (Department of Revenue) since the commission was to provide supervision of charitable gaming activities. Section 11 instructed the revisor to change references to the commissioner and department in AS 05.15 to commission.

Representative Stoltze asked if he had looked into the ramifications of the Indian gaming issues. Mr. Wright said that he was in contact with the Department of Law, and the request is under review. Mr. Barnhill could address it.

Representative Stoltze asked if it is the intent to have a sole source contract, and whether there is expertise on Indian gaming within the Department of Law and Legislative Legal Services. Mr. Wright deferred to Mr. Barnhill.

Co-Chair Harris concurred with Representative Stoltze's concerns. He thought that there might be a lack of expertise in that area because gaming is not a major part of Alaska's economy.

MIKE BARNHILL, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (DOL), agreed that Representative Stoltze's concerns are valid. As with any unclear issue of law, the decision falls to the courts. While the DOL can provide its best analysis and evaluation of legal questions, it cannot predict with certainty what a court would decide. Mr. Barnhill said that he and experts in Indian gaming and law discuss these issues.

Representative Stoltze asked if it should be a legitimate concern of the policymakers on this Committee that with passage of the bill, the sole source contract in Anchorage could provide a legal remedy for Native gaming in other communities and other sites in Anchorage. Mr. Barnhill replied that passage of the bill would allow Indian gaming.

Representative Joule asked if the State has a concern that Indian gaming could result from this bill. Mr. Barnhill said that the DOL declines to express views on policy issues. He was unaware of the Department having a concern.

Representative Croft asked if it would be possible to get a ruling or declaratory judgment on the status of the tribes and their lands. Mr. Barnhill had spoken with the Solicitor's Office in the Department of the Interior and he noted that most of the requests for declaration of Indian land were turned down. Indian lands may have a different set of facts pertinent to the regulation of each particular parcel. He doubted the possibility of getting a declaratory judgment because it's on a case-by-case basis. Only a few of the seven or more Alaskan cases before the National Indian Gaming Commission (NIGC) succeeded in obtaining a decision of being Indian lands: Metlakatla, Kake and Klawock.

In response to a question by Representative Croft, Mr. Barnhill explained that these were requests by the tribe for an Indian land declaration from the NIGC rather than lawsuits. The Department intervened in the Barrow case, and

attempted to intervene in the Kake and Akiachak cases but was unsuccessful.

SUSAN BURKE, ATTORNEY, JUNEAU, stated that she was asked by Mr. Green to look into the Indian gaming issues relating to the bill.

Representative Croft asked if there is a procedure to determine the status of Alaska lands under the Indian Gaming Act before enacting this legislation.

Ms. Burke responded that village lands are not subject to any alienation restrictions and explained that the only lands held with federal restrictions on alienation are individual Native allotments. It would be difficult for any tribal entity to persuade the Indian Gaming Commission or a court that it exercised governmental authority over the allotment of land. She pointed out that the courts don't issue advisory opinions.

Ms. Burke said that she did not see the bill as a major threat to the proliferation of gaming in Alaska for two reasons. The Alaska Gaming Commission would have the authority to determine the games authorized in the Anchorage casino. In the Ninth Circuit, the State is required to negotiate with an Indian tribe only over specific games authorized by law or regulation. She stressed that it is an economic issue and she thought that Metlakatla, Kake and Klawock are so isolated that it would be difficult to come up with an economically feasible proposal.

In response to a question by Representative Croft, Ms. Burke said that Eklutna had applied in the past for authority from the Indian Gaming Commission.

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Ms. Burke continued discussing Eklutna. She thought that Eklutna would be unable to meet the governmental jurisdiction aspect of Indian lands. She didn't know if there was a Native allotment within the general Eklutna area.

Representative Croft pointed out that the two issues involved in the Indian Gaming Regulatory Act (IGRA) are the lands issue and governmental authority by the tribe. He asked if Native allotments would be considered Indian land and not Indian Country.

Ms. Burke answered that Indian Country is not irrelevant in relation to the reservations, and after the Venetie Decision, people argued the issues of Indian lands or Indian Country. The ANCSA settlement lands are not Indian Country and were deeded to the regional and village corporations

without any alienation or restriction. The IGRA definition of lands would not include the ANCSA lands.

Representative Croft asked if the Venetie and IGRA definitions are identical. Ms. Burke said that Indian Country and Indian land are distinct definitions. The definition of Indian lands must be considered under the IGRA and these include reservations, e.g. Metlakatla. Under the IGRA definition, Indian lands also are lands held in trust with restrictions on alienation imposed by the federal government.

Representative Croft asked what it takes to change tribal governance status. He pointed out that President Clinton changed some of the authority given to tribes, allowing them to operate nonprofit organizations. Ms. Burke said that Congress has the authority to change tribal governance, but not the President.

Representative Croft noted that Congress didn't declare the Venetie Decision Indian Country yet. Ms. Burke affirmed, and reiterated that Congress has authority over Indian issues involving lands or powers.

Representative Hawker asked if passage of the bill would expose the State to the intrusion of [indisc]. Mr. Barnhill affirmed, and clarified that he said "yes" in relation to Metlakatla. If Class 3 gaming were permitted in Anchorage, Metlakatla would be able to conduct the same kind of gaming. Outside of the known exceptions of Metlakatla, Kake, and Klawock, he thought the odds were low that another parcel of land could qualify as Indian lands because there must be tribal governance over the land. He guessed there are relatively few parcels with tribal governing power, while noting that no one has done an exhaustive survey of all of the potential parcels.

Representative Fate asked if Indian lands held in trust by the Bureau of Indian Affairs (BIA) would become available. Ms. Burke said that all village lands are subject to no restrictions on alienation, and she was unaware of any village land qualifying as Indian lands under IGRA.

Co-Chair Williams commented that Congress passed the 1991 Amendments involving a different type of trust similar to a land bank wherein nothing can be done on village corporation land. The land can't be taxed or worked. Ms. Burke affirmed that it applies to regional corporation land.

In response to a question by Representative Stoltze, Ms. Burk said no one knows how Eklutna's application would have fared before the Indian Gaming Commission because they withdrew it once the Legislature repealed the "Monte Carlo Nights." She was not sure if the Legislature's concerns

were reasonable or unwarranted, or if Indian Gaming was the only reason prompting the repeal of the Monte Carlo Nights. In her view, Eklutna would have hard time persuading the Commission that it exercises policing and taxing powers and other governmental authority over its lands to qualify as Indian lands under the definition. Lawyers always dispute these issues, she said.

Representative Croft brought up page 4 of 6 on Fiscal Note Component 2476, expressing surprise at how little revenue would derive from tourists visiting the Anchorage casino. He asked the source of the participation rates.

LARRY MEYERS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, replied that the participation rates were based on Oregon's 8 casinos and Washington's 17 casinos. Two percent of the tourist population would visit the Anchorage casino.

In response to a question by Representative Croft, Mr. Meyers clarified that the \$50 million in revenue is the "after prize receipts:" not total money circulated, but the profit to the industry.

Representative Hawker referred to the same chart on page 4 of 6 of the fiscal note, asking if Total Tourists includes both domestic and international tourists. Mr. Meyers replied that the figure is derived from Northern Economics, and reflects only the total domestic tourists statewide.

At Ease: 2:58 P.M.
Reconvene: 3:02 P.M.

Representative Foster MOVED to report CSHB 552(FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 552(FIN) was REPORTED out of Committee with individual recommendations and two new indeterminate fiscal impact notes.

#HB244
HOUSE BILL NO. 244

An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure,

and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date.

SUSAN PARKES, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW (DOL), introduced the omnibus crime bill. She noted that many concerns were raised in various committees, and this bill is very different than last year's crime bill after the House Judiciary Committee's work on the new Committee Substitute. The bill covers both procedure and substantive criminal law.

Ms. Parkes provided a detailed explanation of the sectional analysis. She pointed out that the first six sections of CSHB 244(2ndJUD) concern enforcement of bootlegging, which is a priority of the current Administration. It would empower communities to limit alcohol, and allow by statute the recognition and enforcement by state troopers and prosecutors of lower levels of alcohol in the communities. Currently four communities have chosen to allow only lower limits of possession of alcohol than the state statutes provide for. These provisions also allow for better forfeiture. Currently, money is not included in the bootlegging forfeiture statutes. This would allow money as well as snow machines and boats in the forfeiture and bring it into compliance with the drug statutes. It also provides that unless a village has opted out of this provision, providing liquor to a minor in a local option community would become a C felony rather than an A misdemeanor.

Ms. Parkes said that Section 8 is a conforming section to another provision. Section 9 amends the felony murder statute. Current law provides that if a group commits a serious offense and one member kills a non-participant, everyone is guilty of murder. The House Judiciary amendment states that if a participant is killed in the commission of a felony, the other participants could be held liable for murder unless the death results from the felony conduct of a non-participant.

Representative Chenault asked for further clarification of the forfeiture of money. Ms. Parkes explained that it involves money that can be tied to the crime, as in money changing hands in a drug deal. There must be a nexus between the money and the crime, and the DOL can't sweep an individual's bank account. She said the forfeiture of money often happens in drug deals, but this provision would add it under the bootlegging forfeiture.

Representative Chenault asked if currently all participants in a group could be charged with murder. Ms. Parkes affirmed, and explained that the theory behind felony murder is that the conduct of people participating in dangerous activities could result in a death.

Ms. Parkes spoke to Section 10, which changes the assault statutes. It closes a loophole and gives the Department the ability to prosecute cases of assault where there is criminal negligence and serious physical injury from a dangerous instrument.

Ms. Parkes continued. Sections 11 and 12 relate to the sexual abuse of a minor statute, making penetration offenses a felony while contact offenses remain a misdemeanor. Section 13 creates a new crime called "violation of a third party custodian." Currently judges, as part of the bail condition, release people to a third party custodian who agrees to report any violations of bail. Many people do not take the job seriously, and this creates a misdemeanor offense instead of holding the third party custodian in contempt for not immediately reporting violations.

Ms. Parkes explained that Sections 14 and 15 extensively amend the self-defense statutes, in response to "the sweeping proposal" that created concern last session. A court must find at least some plausible evidence of self-defense. It also addresses gunfights between drug dealers and gangs in Anchorage and Fairbanks, providing that if the force used resulted from a weapon brought to a felony drug deal or a felony gang activity, the violator can't hide behind the shield of self-defense.

Ms. Parkes noted that Section 16 is an amendment added in House Judiciary Committee. Under current statute, if a person is arrested and voluntarily agrees to talk to the police, an attorney can interrupt the interview. This recognizes that the Constitutional right to remain silent belongs to the individual and if the individual has waived that right, someone else can't later invoke it on his or her behalf.

Representative Chenault questioned if a parent could decide to end the interview of a minor. Ms. Parkes answered that officers must ask minors if they want to have their parents present. She maintained that there are safeguards to protect individuals needing protection. Representative Chenault argued that there are cases of intimidation, which would result in a minor waiving their right. He spoke against allowing minors to be interviewed without the presence of their parents.

Ms. Parkes explained that Section 17 conforms the statutes. Section 18 was added to require a written or oral finding when a third-party custodian is required as part of bail.

Ms. Parkes continued. Sections 19-21 address immunity. Section 19 conforms immunity to the interpretation of the Supreme Court, which allows transactional immunity. Sections 20 and 21 set up a process to handle these

situations by the court. If a witness is subpoenaed, the judge will appoint an attorney and hold a private hearing to decide if there is a valid claim of Fifth Amendment privilege. She discussed the provisions.

Ms. Parkes noted that Section 22 is a conforming statute. Section 23 relates to consecutive terms of imprisonment, and it is identical to last year's bill. It mandates that in serious crimes, judges be required to impose some consecutive term of imprisonment. In the interpretation of current statute by the courts, judges have not recognized multiple victims or multiple crimes in their sentencing. This would require mandatory time for each victim and each offense.

Ms. Parkes noted that Sections 24 and 25 are conforming language. Section 26 applies to driving under the influence. Currently, the third DUI within 10 years becomes a felony, but because of the way the ten-year "look-back" works, another DUI within 2 or 3 years might be a misdemeanor. This provision would recognize another DUI within 20 years as a felony once a person has a felony DUI.

In response to a question by Representative Chenault, Ms. Parkes clarified that another bill addresses the "look-back" at past DUI activity, but this provision addresses the future.

Representative Fate questioned why drugs are not addressed in the bill, considering their endemic existence in rural Alaska. Ms. Parkes responded that the bill includes provisions to address the gaps in the bootlegging statutes, and the self-defense provision addresses the violence related to drugs and alcohol.

Representative Fate reiterated his concern.

Representative Joule acknowledged that there are laws in place to address drug use, but he pointed out that the laws are not successful without enforcement. He noted the lack of funding for enforcement.

Ms. Parkes stated that Section 27 addresses the "big gulp" defense. Current statute allows a defendant to argue that he consumed a large amount of alcohol just before his departure in a vehicle, the alcohol was not in his blood stream at the time he was stopped by the police, but he was over the legal limit an hour later when given the blood alcohol test. This would foreclose that defense and make the defendant responsible for his alcohol consumption.

Ms. Parkes noted that Section 28 relates to the DUI and the 20-year look forward. Sections 30 and 31 are conforming statutes. Section 32 would allow public disclosure by the

Department of Health & Social Services about juvenile offenders when it is necessary to protect the safety of the public. Regulations would be created to address this concern.

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Representative Joule expressed concern regarding the bootlegging provisions and questioned whether the State would have the resources to handle the increased offenses. He observed that part of the intent in moving from a class A misdemeanor to a class A felon is to allow greater supervision by probation officers. Ms. Parkes offered to address the issue later.

CINDY CASHEN, MOTHERS AGAINST DRUNK DRIVING, JUNEAU, testified in support of the legislation. She read from written testimony, paraphrasing the following:

"Mothers Against Drunk Driving (MADD) supports CS for House Bill 244.

MADD supports consecutive jail time for each death in a drunk driving crash in order for restorative justice to take place within our communities.

As a victim in the State v. Glaser case, I cannot begin to explain the unnecessary bitterness and frustration our families struggle with because of the court decision which refused to consider the multiple deaths in the drunk driving tragedy. Currently in Alaska, a loved one's life is less valuable than a stolen automobile in a felony case; this sends a dangerous message out to all Alaskans. Each life torn from us by drunk driving is certainly worth taking into individual consideration; to do otherwise would create additional heartache and trauma for victims of this violent crime.

MADD also supports the right for communities to adopt lower limits of alcohol possession and importation in order to increase the health and safety of their people.

MADD supports stricter drunk driving sanctions for high risk drivers. Habitual drunk drivers who have repeatedly chosen to endanger themselves and everyone else who shares their road system must be held accountable for their crimes.

About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.

MADD supports increased penalties for those whose choice to drink and drive results in the serious injury of an innocent

victim or victims.

People who drink and drive are unable to determine if they are sober before arriving at their destination. If a person chooses to drink and drive then that person has committed a crime and should be held accountable for his/her actions.

MADD supports the recommended changes in CS for House Bill 224 as a way of deterring further drunk driving tragedies and improving Alaska's restorative justice system."

Ms. Cashen recounted an incident in Hoonah. She spoke in support of third party custodian provisions. She asked that the amendment deleting the manslaughter charge and allowing it to become concurrent sentencing not be adopted. She discussed the pain that it caused two families when the judge changed his decision from consecutive to concurrent sentencing for the accident causing the deaths of her own father and Martin Richard. In essence, the drunk driver was punished for causing one death instead of two. Ms. Cashen concluded that this issue concerns restorative justice and the victims of the drunk driver.

HB 244 was heard and HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 3:42 P.M.