ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
January 30, 2004
1:10 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Jim Holm
Representative Dan Ogg

COMMITTEE CALENDAR

HOUSE BILL NO. 348
"An Act relating to the rights of certain victims of crime to receive information about the office of victims' rights."

- MOVED CSHB 348(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 398
"An Act relating to domestic violence fatality review teams."

- MOVED CSHB 398(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 357
"An Act relating to restitution; and providing for an effective date."

- MOVED CSHB 357(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 397
"An Act relating to defense contacts with and recordings of statements of victims or witnesses; and amending Rule 16, Alaska Rules of Criminal Procedure."

- HEARD AND HELD

HOUSE BILL NO. 334
"An Act relating to unlawful exploitation of a minor."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 348
SHORT TITLE:NOTICE RE OFFICE OF VICTIMS RIGHTS
SPONSOR(S): REPRESENTATIVE(s) STOLTZE, DAHLSTROM, SAMUELS, MCGUIRE

Jrn-Date	Jrn-Page		Action
01/12/04	2287	(H)	PREFILE RELEASED 1/2/04
01/12/04	2287	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	2287	(H)	JUD
01/12/04	2287	(H)	REFERRED TO JUDICIARY
01/26/04		(H)	JUD AT 2:00 PM CAPITOL 120
01/26/04		(H)	Heard & Held
01/26/04		(H)	MINUTE(JUD)
01/30/04		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 398
SHORT TITLE:DOMESTIC VIOLENCE FATALITY REVIEW TEAM
SPONSOR(S): REPRESENTATIVE(s) DAHLSTROM

Jrn-Date	Jrn-Page		Action
01/23/04	2376	(H)	READ THE FIRST TIME - REFERRALS
01/23/04	2376	(H)	JUD
01/23/04	2376	(H)	REFERRED TO JUDICIARY
01/26/04		(H)	JUD AT 2:00 PM CAPITOL 120
01/26/04		(H)	Scheduled But Not Heard
01/28/04		(H)	JUD AT 1:00 PM CAPITOL 120
01/28/04		(H)	Heard & Held MINUTE(JUD)
01/30/04		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 357
SHORT TITLE:RESTITUTION
SPONSOR(S): REPRESENTATIVE(s) SAMUELS, STOLTZE, MCGUIRE, DAHLSTROM

Jrn-Date	Jrn-Page		Action
01/12/04	2289	(H)	PREFILE RELEASED 1/2/04
01/12/04	2289	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	2289	(H)	JUD
01/12/04	2289	(H)	REFERRED TO JUDICIARY

01/26/04	(H)	JUD AT 2:00 PM CAPITOL 120
01/26/04	(H)	Heard & Held
01/26/04	(H)	MINUTE(JUD)
01/26/04	(H)	MINUTE(JUD)
01/30/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 397
SHORT TITLE:DEFENSE CONTACTS WITH VICTIMS & WITNESSES
SPONSOR(S): REPRESENTATIVE(s) MCGUIRE

Jrn-Date	Jrn-Page		Action
01/23/04	2375	(H)	READ THE FIRST TIME - REFERRALS
01/23/04	2375	(H)	JUD
01/23/04	2375	(H)	REFERRED TO JUDICIARY
01/26/04		(H)	JUD AT 2:00 PM CAPITOL 120
01/26/04		(H)	Scheduled But Not Heard
01/30/04		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as one of the prime sponsors of HB 348.

REX SHATTUCK, Staff
to Representative Nancy Dahlstrom
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Offered to respond to questions on HB 398 on behalf Representative Dahlstrom, sponsor.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 398, testified to the changes made in the proposed committee substitute (CS); assisted Representative McGuire, sponsor, with the presentation of HB 397.

ALLEN STOREY, Lieutenant
Central Office
Division of Alaska State Troopers

Department of Public Safety (DPS)
Anchorage, Alaska
POSITION STATEMENT: Testified on proposed amendments to HB 398.

SARA NIELSEN, Staff
to Representative Ralph Samuels
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Responded to questions on HB 357 on behalf of Representative Samuels, one of the prime sponsors.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 357.

LINDA WILSON, Deputy Director
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 357 and suggested a change; Provided comments during discussion of HB 397.

STEPHEN BRANCHFLOWER, Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 397.

ACTION NARRATIVE

TAPE 04-7, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives McGuire, Anderson, Samuels, Gara, and Gruenberg were present at the call to order.

HB 348 - NOTICE RE OFFICE OF VICTIMS RIGHTS

Number 0093

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 348, "An Act relating to the rights of certain victims of crime to receive information about the office of victims' rights." House Bill 348 has four prime sponsors: Representatives Stoltze, Dahlstrom, Samuels, and McGuire.

Number 0193

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 348, Version 23-LS1320\Q, Luckhaupt, 1/28/04, as the working document. There being no objection, Version Q was before the committee.

Number 0207

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, one of the prime sponsors of HB 348, noted that Version Q has a positive change, and that Representative Gara had suggested adding some extra information [regarding the Violent Crimes Compensation Board (VCCB)] to the Office of Victims' Rights' brochure and putting such language in the bill in the form of a message from the legislature to the Office of Victims' Rights (OVR). Representative Stoltze talked about staff's alternative suggestion to add a letter of intent.

REPRESENTATIVE GRUENBERG turned attention to page 3, line 14 of the bill, and said it seemed to him that if the victim is of an age in which he/she can read, the notice should be given to the victim as well as the parent or guardian. He suggested the following as an amendment:

Page 3, line 14, after "shall"
Insert "also"

REPRESENTATIVE GRUENBERG said this language would make it clear that the notice should go the victim and the parent.

REPRESENTATIVE STOLTZE said he did not have an opinion on the proposed amendment.

Number 0388

REPRESENTATIVE GRUENBERG moved to adopt the foregoing as Amendment 1.

Number 0411

REPRESENTATIVE GARA objected for purposes of discussion. He asked Representative Gruenberg to consider that the amendment may create an [additional step in the process] if either the parent or the victim are not at the same location.

REPRESENTATIVE GRUENBERG clarified that it is his intent that the notice be given to the person that is not present as soon as possible. He said the situation may arise anytime, for example, if the victim is unconscious. Representative Gruenberg said he thought common sense should be used.

REPRESENTATIVE GARA asked if [the amendment would require that both the parent and the victim be given the notice]. He suggested that notifying both the parent and the victim might be an administrative burden.

REPRESENTATIVE GRUENBERG said he was sure it could be dealt with if it became a problem. He said he believed it was very important that both the parent and the victim have the notice.

REPRESENTATIVE SAMUELS, one of the prime sponsors of HB 348, said a 15-year-old rape victim should know his/her rights regardless of whether the parents are present. He said he was in agreement with Representative Gruenberg that it would help a young victim to understand his/her rights.

CHAIR McGUIRE, one of the prime sponsors of HB 348, surmised that Amendment 1 would require that both the victim and the parent be given the notice. If either the victim or parent is not present during the process, the notice would be provided to the absent party through first class mail. She said the intention is not for the notification to be a burden, but the committee feels it is appropriate that both parties be notified.

REPRESENTATIVE GARA removed his objection.

Number 0572

CHAIR McGUIRE asked if there was any further objection to the motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0600

REPRESENTATIVE GARA moved to adopt Amendment 2, [23-LS1320\H.2, Luckhaupt, 1/30/04] which read:

Page 1, line 2, following "**rights**":
Insert "**and the Violent Crimes Compensation Board**"

Page 3, following line 17:
Insert new bill sections to read:
"*** Sec. 2.** AS 24.65.100 is amended by adding a new subsection to read:
(d) The victims' advocate shall provide written material to be given out to victims of crime as required by AS 12.61.010. The written material must contain a brief statement about compensation available from the Violent Crimes Compensation Board and contact information for that board.
*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:
APPLICABILITY OF SECTION 2 OF THIS ACT. Section 2 of this Act requires the victims' advocate to include within brochures or other written material to be given to certain crime victims information about compensation available from the Violent Crimes Compensation Board. This requirement applies only to brochures or other written material printed after the effective date of this Act. The victims' advocate may continue to supply brochures or other written material printed before the effective date of this Act until those brochures or materials are exhausted."

Number 0617

REPRESENTATIVE SAMUELS objected.

REPRESENTATIVE GARA said he wanted to include information in the OVR's brochure that specifies that there is also a Violent Crimes Compensation Board.

REPRESENTATIVE GARA suggested amending Amendment 2, as follows:

Line 9,
Delete "compensation available from"

[Although there was no further discussion on this point, this amendment to Amendment 2 was treated as adopted.]

REPRESENTATIVE GRUENBERG said he liked the idea of the language "compensation available from" because it is possible that certain crimes are compensable even if others are not.

REPRESENTATIVE GARA said that determining whether a crime was compensable would require a "legal call" by the person handing out the pamphlets and [it is not his intention] to make the person providing the information an expert in this area. He said he wanted to put as minimal a requirement as possible upon the OVR to include a very brief statement in its brochure that the VCCB exists and include the contact information. He said he crossed out the extra words because he didn't want to make the statement more than a couple of sentences if the [OVR] feels that is all that will fit in a brochure. Representative Gara expressed frustration about the length of Amendment 2, and said if the OVR wants to make the information more elaborate, that would be great, but he wanted to give the OVR that discretion. He noted that the reason that he wanted to add an amendment rather than a letter of intent is because with a letter of intent, the statements of purpose disappear very shortly after the law is passed. He indicated that the successor to the current director of the OVR might not see the [letter of intent].

REPRESENTATIVE GARA again moved to adopt Amendment 2 [as amended].

REPRESENTATIVE SAMUELS objected.

REPRESENTATIVE STOLTZE noted that compensation doesn't get discussed until there is an adjudication of guilt or innocence, and that's really far down the line. He said there is not a presumption that there is a compensation that early in the process.

Number 0860

CHAIR McGUIRE indicated her hope that just Section 2 [of Amendment 2] would remain; although, she added, Section 3 of Amendment 2 is needed to explain that there is no liability. She surmised that generally, applicability provisions do not show up in future statutes, and mentioned that the OVR might be reprinting its brochure in March anyway.

REPRESENTATIVE GARA agreed that Section 3 will disappear. He explained that the uncodified laws will show up in the session laws next year but will never show up in the statute books

afterward. He said he shared members' frustration because he thought the amendment could be a lot shorter than what came back from [the drafter].

REPRESENTATIVE GRUENBERG asked if Section 3 of Amendment 2 could be done as a letter of intent, adding that because the committee is doing a letter of intent anyway, if Representative Gara would remove Section 3 from Amendment 2, when the committee takes up the letter of intent, Section 3's language can be added to it.

CHAIR McGUIRE said Section 2 supercedes the letter of intent that the committee currently has, so the new letter of intent could actually be the concept contained in Section 3 [of Amendment 2].

Number 0955

REPRESENTATIVE GARA moved to amend Amendment 2 by deleting Section 3. There being no objection, it was so ordered.

CHAIR McGUIRE asked if there was objection [to the motion to adopt Amendment 2, as amended]. There being none, Amendment 2, as amended, was adopted.

Number 1011

REPRESENTATIVE GRUENBERG moved to report the proposed CS for HB 348 [Version 23-LS1320\Q, Luckhaupt, 1/28/04], as amended, out of committee [with individual recommendations and the accompanying zero fiscal notes]. There being no objection, CSHB 348(JUD) was reported from the House Judiciary Standing Committee.

CHAIR McGUIRE turned attention to the original letter of intent, which read [original punctuation provided]:

> It is the intent of the Alaska House of Representatives that the Office of Victim's Rights provide contact information for the Violent Crimes Compensation Board on their informational brochure offered to the public.

REPRESENTATIVE GRUENBERG explained that the new letter of intent would read:

> APPLICABILITY OF SECTION 2 OF THIS ACT. Section 2 of this Act requires the victims' advocate to include

within brochures or other written material to be given to certain crime victims information about compensation available from the Violent Crimes Compensation Board. This requirement applies only to brochures or other written material printed after the effective date of this Act. The victims' advocate may continue to supply brochures or other written material printed before the effective date of this Act until those brochures or materials are exhausted.

Number 1093

CHAIR McGUIRE asked if there was any objection to reporting the new letter of intent CSHB 348(JUD). There being no objection, the letter of intent for CSHB 348(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG suggested that the House Judiciary Standing Committee provide a zero fiscal note specifying the committee's intention that the state does not spend any money on HB 348.

CHAIR McGUIRE, in response, said the committee would [create a zero fiscal note].

[CSHB 348(JUD) was reported from the House Judiciary Standing Committee.]

HB 398 - DOMESTIC VIOLENCE FATALITY REVIEW TEAM

Number 1175

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 398, "An Act relating to domestic violence fatality review teams." [In members' packets was a proposed committee substitute (CS) for HB 398, Version 23-LS1321\I, Luckhaupt, 1/29/04.]

Number 1181

REX SHATTUCK, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, sponsor, offered to respond to questions on behalf of Representative Dahlstrom. He said the committee was thorough in looking at the bill during the previous meeting.

Number 1191

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, began discussion of the amendments adopted during the meeting on 1/28/04. Turning to Version I, she pointed out that inclusion of the language "or earlier" on page 1, line 10, creates sort of a discrepancy because it may be contradictory to specifying that a review team can only be started once a case has been completed or adjudicated.

MS. TONDINI explained that although one of the amendments adopted at the bill's prior meeting added a definition section for the purpose of defining domestic violence, this change does not appear in Version I because domestic violence as defined in AS 18.66.990 already applies.

MS. TONDINI turned attention to the page 2, lines 7-8, of Version I, and noted that it provides that "serious physical injury" has the meaning given in AS 11.81.900, so Version I does not contain a separate definitions section. She indicated that the other amendments adopted on 1/28/04 have been incorporated into Version I.

MS. TONDINI reminded members that at the meeting on 1/28/04, Representative Gruenberg posed a few technical questions to the drafters. She turned attention to page 3, line 2, of Version I, specifically the language "or" following "team", and said [the drafters] decided to leave the language as "or" and the sponsor agreed. Ms. Tondini, in conclusion, turned attention to page 3, line 13, of the original bill and explained that the language "damage" was changed to "damages".

Number 1381

REPRESENTATIVE SAMUELS moved to adopt the proposed CS for HB 398, Version 23-LS1321\I, Luckhaupt, 1/29/04, as the work draft. There being no objection, Version I was before the committee.

MR. SHATTUCK turned attention to page 1, line 10, and expressed concerns about the language "or earlier"; he said the sponsor would prefer to [delete the language] "or earlier" because it was felt that it would impact cases that perhaps were "in play".

REPRESENTATIVE GRUENBERG said it is his belief that it is a good idea to have "or earlier" included in the language because it gives discretion to the commissioner or the person in the municipality to do it earlier if he/she wanted to. He said he couldn't foresee a situation off hand that it would involve, but

his gut feeling is that there could be such a situation. He remarked, "It's a chicken soup amendment," and suggested that [law enforcement] obviously would not do anything to "screw up" the investigation. He said he thought it was very clear that [the committee] is not authorizing that. He also said he would hate to see [law enforcement] "hamstrung" from the investigation because [investigators] may think they may get a witness at some future date and technically it is not put in the closed files.

REPRESENTATIVE SAMUELS said he tends to agree with eliminating the language because, in an ongoing investigation, an investigator can't comment on the case at all. He said that in a high publicity case there may be political pressure on [officials] to convene [a domestic violence fatality review] team because of the facts of the crime, but [because the investigation is ongoing] the district attorney can't talk about the case. He remarked that although he understood Representative Gruenberg's point, he didn't want to run into situation in which somebody convenes [a domestic violence fatality review team] to look good but people can't be completely forthcoming.

REPRESENTATIVE GRUENBERG suggested that [law enforcement officials] are going to be bright, educated, sophisticated, very highly trained people, and he didn't want to see them prevented from doing something [involving] an old case. He explained that some murder [cases] can go on forever and never be solved, and those are the kinds of cases that have a problem which could be addressed via HB 398. Without "or earlier" remaining, he said, he is afraid that exactly the opposite will occur.

Number 1565

ALLEN STOREY, Lieutenant, Central Office, Division of Alaska State Troopers, Department of Public Safety (DPS), testified that if [the commissioner] wanted to [convene a domestic violence fatality review team] before final adjudication, then maybe such could be qualified via use of, "an earlier appropriate time" or something along that line. He said he could see that there may be an incident in which it would be necessary to review the process at an earlier time, but he could also see that it could create conflicts in the course of an investigation if done at an inappropriate time.

REPRESENTATIVE GRUENBERG said that suggestion would work for him.

MR. SHATTUCK said the sponsor would agree with that [suggestion].

REPRESENTATIVE GARA said he didn't want to lose sight of the purpose of the domestic violence fatality review team, which is to figure out how somebody ended up becoming a victim and where the system failed. He said once the information needed to review a case is [complete], the domestic violence fatality review team will act responsibly and indicate that it is the time to investigate it. He said sometimes there is the problem in that a case doesn't get adjudicated because an issue goes up on appeal, and one would not want to make the domestic violence fatality review team wait when it should just figure out what went wrong and why the victim became victimized. He said this is one of those statutes that no matter how it is written there would be unintended consequences one way or the other, and even though there might be that time when the domestic violence fatality review team would be improperly convened, he would be willing to take that risk. Representative Gara said the earlier suggested discretion is something that should be given to [the convening authority].

CHAIR McGUIRE surmised that the drafters are saying that adding, "or earlier" renders, "has been completed or adjudicated by law enforcement" irrelevant. She indicated a preference for not including "or earlier".

REPRESENTATIVE GRUENBERG said he thought, "or earlier" is important because normally one would want to wait until the investigation is completed.

CHAIR McGUIRE said it would be fine with her to do something along the lines of what Lieutenant Storey suggested, but didn't know who would determine when it would be appropriate and when it wouldn't.

Number 1719

REPRESENTATIVE SAMUELS suggested amending the language on page 1, line 10, to do exactly as Lieutenant Storey said by deleting the word "earlier", so it would read "or at an earlier appropriate time". He remarked, "Generally speaking, you'd wait until the adjudication was finished, but you could make determinations and not be willing to give the other ... folks some benefit of the doubt."

REPRESENTATIVE GRUENBERG said he thought the person to determine that point would be the convening authority. He stated that he was in support of the amendment.

Number 1759

REPRESENTATIVE SAMUELS moved to adopt Amendment 1, to make page 1, line 10, read as follows: "completed or adjudicated by law enforcement or at an earlier appropriate time, a domestic violence fatality". There being no objection, Amendment 1 was adopted.

Number 1774

REPRESENTATIVE SAMUELS moved to adopt Amendment 2, which read [original punctuation provided]:

> pg. 1, Line 7 after state Insert: <u>for which the Department of Public Safety has primary responsibility for providing police services</u>.

Number 1781

CHAIR McGUIRE objected for discussion purposes.

REPRESENTATIVE SAMUELS said Amendment 2 came from the sponsor's office. He explained that at the previous meeting the committee had discussed wanting to ensure that somebody had the authority without getting into a "turf battle" between a city or a municipality and DPS.

MR. SHATTUCK said the sponsor would prefer not to offer that amendment from [DPS] at this particular time.

Number 1803

REPRESENTATIVE SAMUELS withdrew Amendment 2.

Number 1809

REPRESENTATIVE SAMUELS moved to report the proposed CS for HB 398, [Version 23-LS1321\I, Luckhaupt, 1/29/04], as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 398(JUD) was reported from committee.

<u>HB 357 - RESTITUTION</u>

Number 1847

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 357, "An Act relating to restitution; and providing for an effective date." House Bill 357 has four prime sponsors: Representatives Stoltze, Dahlstrom, Samuels, and McGuire. [Before the committee was the proposed committee substitute (CS) for HB 357, Version 23-LS1384\D, Luckhaupt, 1/20/04, which was adopted as a work draft on 1/26/04.]

Number 1853

REPRESENTATIVE SAMUELS moved adopt the proposed CS for HB 357, labeled 23-LS1384\H, Luckhaupt, 1/29/04 as the work draft. There being no objection Version H was before the committee.

Number 1860

SARA NIELSEN, Staff to Representative Ralph Samuels, Alaska State Legislature, spoke on behalf of Representative Samuels, one of the prime sponsors of HB 357, regarding the changes incorporated into the CS. She explained that Section 5 of Version D was totally removed. This was the section that clarified that a minor should remain [accountable] for restitution past age 19. Because this is already the law, she remarked, Section 5 of Version D seemed to complicate the issue rather than clarify it, and so the language was removed.

MS. NIELSEN turned attention to page 1, line 4, and page 1, line 10, which now contain the language "unless the victim or other person expressly declines restitution"; this language is intended to address a scenario in which a victim simply doesn't want restitution for whatever reason, for example, if the victim would rather have the offender go to alcohol treatment instead of paying restitution. She turned attention to page 2, lines 15-19, and said this new Section 4 was added so that a defendant would be able to come forward at any time and pay his/her restitution. Thus, if that person had been ordered to pay restitution but was making a payment that was not part of the payment schedule, the court should still accept the money.

MS. NIELSEN turned attention to the fourth change, page 2, line 31 [through page 3, line 1], and she said the following language was added: "**The court may not reduce an order of restitution but may change the payment schedule.**" She said this is sort of a compromise to earlier versions' repeal of AS 12.55.045(f).

She noted that Representative Gruenberg was concerned that the court wasn't taking into consideration the ability to pay; this additional language simply gives a defendant [who is experiencing financial difficulties the opportunity to pay restitution at a later time].

MS. NIELSEN turned attention to page 3, lines 2-7, the delinquent minor section, which [mirrors] what was done in the adult section to allow the court to accept [a restitution] payment at anytime.

Number 1970

REPRESENTATIVE GRUENBERG said he supports the language on page 2, line 31, through page 3, line 1, which proposes to change Title 12. He pondered whether that kind of language could also be put in Title 47 regarding delinquency. He said the committee allowed the court to do a payment schedule for adults but it had not done that for juvenile delinquents. Representative Gruenberg said the two statutes track each other, one is for the adults and the other is for the delinquents, and there may be something already in the delinquency statute, but he wanted that to be investigated and, if appropriate, add that sentence.

REPRESENTATIVE SAMUELS turned attention to page 3, line 1, and suggested adding the words, "unless specifically requested by the victim" to address situations in which a victim requests that a restitution order be dropped.

REPRESENTATIVE GRUENBERG warned Representative Samuels to be careful that such language is properly drafted.

MS. NIELSEN, on the question of whether HB 357 could be challenged on a constitutional basis, said she had checked with the Department of Law (DOL), which relayed that there shouldn't be any such challenges].

Number 2115

REPRESENTATIVE SAMUELS moved to adopt [Amendment 1], which he said would stipulate that if the victim chooses, he/she would be able to drop the order of restitution.

Number 2125

REPRESENTATIVE GRUENBERG objected for purposes of discussion. He asked that Amendment 1 be clarified.

REPRESENTATIVE SAMUELS explained that Amendment 1 would be:

> Page 2, line 31, after "**restitution"**
> Insert ", unless specifically requested by the victim,"

REPRESENTATIVE GRUENBERG removed his objection.

REPRESENTATIVE SAMUELS asked if it is possible for a victim to be threatened or coerced into dropping a restitution order against his/her will.

Number 2174

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that she had never seen that situation arise, but could certainly imagine that scenario if a [defendant] is under a lot of stress with a high restitution payment and tries to put pressure on the victim.

REPRESENTATIVE GRUENBERG said that in domestic violence situations, a lot of times [an offender] will pressure the victim to drop the charge. He offered a hypothetical situation in which a victim is given the choice by her abusive ex-husband of either dropping the restitution order against him or having to fight him for custody of their child.

Number 2240

REPRESENTATIVE SAMUELS withdrew Amendment 1.

REPRESENTATIVE GRUENBERG asked if there is other language in the bill similar to that in Amendment 1.

REPRESENTATIVE SAMUELS indicated that there is.

REPRESENTATIVE GRUENBERG asked Representative Samuels if he wanted to remove such language from the bill.

REPRESENTATIVE SAMUELS said no, because there might be situations in which the victim does not want restitution.

CHAIR McGUIRE, one of the prime sponsors of HB 357, indicated that if the language is removed it might [create unintended consequences.

REPRESENTATIVE GARA said it can be very expensive and time consuming to prove restitution. He said sometimes there are victims who do not want to be involved in the court process, so there will be certainly be cases in which the court, prosecutor, and defense attorney spend time calculating and ordering a full restitution amount when the victim really doesn't care. He explained that [language] on page 1 requires restitution to be ordered unless the victim expressly declines. However, he said it doesn't address the circumstance in which the case doesn't go to trial, the victim never shows up, and the victim never expresses whether he/she wants restitution, but the bill is requiring a full hearing and litigation over the restitution amount. He said maybe it is not a bad thing that a victim get restitution even if he/she doesn't want it or care, but he expressed concern about spending the money to require the scarce resources of the judicial system to create the restitution order if the victim doesn't care.

REPRESENTATIVE SAMUELS said he would assume that if there is money involved, then most victims are going to want it if they've suffered a financial loss. He acknowledged, though, that there may be a small number of victims that aren't going to follow through at least a little bit on the issue of restitution. He offered the scenario in which a kid goes through a neighborhood and shoots out 40 car windows, and said that even if the [victim] doesn't want to go to court, all it takes is a phone call from the district attorney to tell that victim that he/she has restitution coming. He opined that even though the victim might not have cared, he/she would still take the restitution. Representative Samuels said that to him it is about fairness, and that is the [purpose] of the bill - to try to make people responsible for their actions.

TAPE 04-7, SIDE B
Number 2394

MS. CARPENETI relayed that victims are contacted and asked for evidence of restitution.

REPRESENTATIVE GARA asked whether, if there was a court order that asked the victim for receipts, but the victim hadn't handed them in or told what the damages are, the bill says a full restitution hearing must be made even without evidence of restitution. He asked if the court is obligated to figure out the restitution without the victim's help.

MS. CARPENETI said that practically, that's not how it would work. She surmised that there would be a restitution hearing and the court would ask for evidence of restitution, but if there isn't evidence, the court would say the victim has a right to restitution, but does not have to exercise that right.

REPRESENTATIVE GARA pointed out, however, that [proposed AS 12.55.045(a)(1)] says the court shall, unless the victim expressly says no, order restitution. He said the court would be in violation of the law if it ignored the language in the bill.

MS. CARPENETI speculated that the court would simply say that the restitution had been expressly declined.

REPRESENTATIVE GARA suggested changing the wording of [proposed AS 12.55.045(a)(1), lines 4-5, to read, "The court shall, if presented with competent evidence, order restitution".

REPRESENTATIVE SAMUELS gave an example of a broken windshield, and asked whether, if there is no receipt given, there is no restitution.

Number 2301

MS. CARPENETI agreed that if there are no claims or receipts presented by the victim, then there is no restitution ordered.

REPRESENTATIVE SAMUELS objected [to the suggested change].

REPRESENTATIVE GARA said he disagrees with Representative Samuels and Ms. Carpeneti, opining that if the law says the court has to order restitution, then the court has to order restitution, whether it is practical or not.

CHAIR McGUIRE said she did not like the word, "competent," but agreed with the rest of the wording of the amendment.

REPRESENTATIVE SAMUELS said he did not want to put a further burden on the victim by using the term, "competent evidence."

REPRESENTATIVE GRUENBERG suggested using, "If presented with sufficient evidence."

CHAIR McGUIRE suggested just using "evidence", not "sufficient" or "competent."

MS. CARPENETI said she thought that using just "evidence" would be fine.

Number 2196

CHAIR McGUIRE moved to adopt Conceptual Amendment 2, as follows:

> Page 1, line 4
> After **shall**
> Insert "when presented with evidence"

CHAIR McGUIRE noted that there are other areas of the bill that would need conforming amendments; for example, page 1, line 9. She indicated that the intent of Conceptual Amendment 2 is to allow the drafter to make the necessary conforming changes.

Number 2163

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 2. There being none, Conceptual Amendment 2 was adopted.

Number 2150

REPRESENTATIVE SAMUELS spoke about Conceptual Amendment 3 which reads [original punctuation provided]:

> Sec. 47.12.120 Judgments and orders
>
> (4) order the minor and minor's parent to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection; under this paragraph,
>
> (A) except as provided in (B) of this paragraph, the court may not refuse to make an order of restitution to benefit the victim of the act of the minor that is the basis of the delinquency adjudication;...
>
> **New section:**
>
> **The court may take into consideration the delinquent minor's ability to pay past age 19, or the age in which the court retains jurisdiction over the minor, when determining the amount of the order of restitution.**

REPRESENTATIVE SAMUELS explained Conceptual Amendment 3 would allow the court to take into consideration [the dependant's] ability to pay when between the ages of 17 and 19. It states that the court may look at [a minor's] ability to pay [restitution] later on in life. He emphasized that Conceptual Amendment 3 contains the word "may", thus the court would not be mandated to [consider this point].

Number 2082

REPRESENTATIVE SAMUELS moved to adopt Conceptual Amendment 3.

Number 2078

REPRESENTATIVE GRUENBERG objected for discussion purposes. He said he does not want to limit the age to 19. Rather, he wants to give the court the discretion to spread the payments out, regardless of the age of the juvenile.

REPRESENTATIVE SAMUELS said his intent is to get rid of the artificial barrier of age, and referred the language labeled "**New Section**", which says, "past age 19." He said sometimes the jurisdiction of the court goes to age 21, and agreed that there should be a payment schedule.

REPRESENTATIVE GRUENBERG said he supported the idea [of removing age restrictions], but gave an example of a 13 year-old who has caused $1,000 worth of damage. The court may say to make payments which might end before the minor is 19. He said he would like to see that situation addressed as well.

REPRESENTATIVE SAMUELS said if the payment schedule was included, the problem would be addressed. The reason it says, "may" is for just such cases involving younger kids.

REPRESENTATIVE GRUENBERG said he understood the meaning to be, "it can be a series of payments, and it can extend past the age of majority." He indicated that he wanted to see the bill with the inclusion of Conceptual Amendment 3 before moving it from committee. He then withdrew his objection.

Number 1987

CHAIR McGUIRE asked if there were any further objections to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

REPRESENTATIVE GARA requested Ms. Carpeneti respond to constitutional issues. He said he wants see that the bill orders as much restitution as possible, without being unconstitutional. He asked if a violation of a restitution order counted as a violation of probation.

MS. CARPENETI replied that it did.

REPRESENTATIVE GARA stated that if probation is violated, [the defendant] can be put in jail for the remainder of the original sentence. He asked if that statement is correct.

MS. CARPENETI replied that it is.

REPRESENTATIVE GARA said, then, that there could be a circumstance where a person was recklessly driving, had no insurance, and injured a family causing $1,000,000 worth of damages. He said there is no likelihood that the defendant could come up with that amount. Therefore, if restitution of the full amount is ordered by the court, and the defendant gets out of jail and is unable to make all of the payments, he/she will be thrown in jail because of a violation of the restitution order. He asked if there was a possible due process problem in that situation.

MS. CARPENETI replied that there is no debtor's prison in the U.S., but noted that AS 12.55.051(a) specifically addresses the problem. If a probation violation is only because of a lack of payment of restitution and the defendant shows that he/she cannot pay, they cannot be imprisoned.

Number 1872

REPRESENTATIVE GARA said he was comforted by [the statute] but wanted to make sure that HB 357 would not conflict with it.

MS. CARPENETI asked if he is worried about the language, "shall pay restitution."

REPRESENTATIVE GARA said he is worried that if [the bill] were passed, that it would conflict with [a statute] on the books.

MS. CARPENETI said she did not see a conflict because the constitution says a victim has the right to restitution and this bill says [the victim] has the right to the order of restitution.

REPRESENTATIVE GARA mentioned Southerland Statutory Construction, which he described as a legal treatise that deals with conflicting statutes. He cautioned that the committee stay within this treatise's rules, adding that sometimes when there are two conflicting statutes, the later one supercedes the earlier one, which is invalidated. He surmised that such is not the bill's intention, and suggested that this idea should be stated somewhere [in the bill], and asked Ms. Carpeneti whether she agreed.

MS. CARPENETI replied that stating the intent in this public hearing, which is being recorded, is probably [sufficient].

REPRESENTATIVE GARA said he didn't think that people would rely on what is said in this hearing.

MS. CARPENETI stated again that she did not see a problem. She said she thought it was clear [in the bill] that a procedure needed to be followed; whatever is ordered.

REPRESENTATIVE SAMUELS pointed out that the victim has the constitutional right to restitution.

Number 1718

REPRESENTATIVE GRUENBERG said that when the legislature passes a law and doesn't specifically affect other statutes, the court will construe them harmoniously and will find that the prior statute survives. He said he agrees with Ms. Carpeneti's interpretation.

CHAIR McGUIRE opined that there has been sufficient discussion on the record regarding this issue to show that this bill does not mean to supercede AS 12.55.501(a). She pointed out that Representative Samuels is correct [regarding the right to restitution]; Article I, Section 24, of the Alaska State Constitution says that crime victims have the right to restitution from the accused.

REPRESENTATIVE GRUENBERG turned to Section 3, page 2, lines 12-14, and noted that the court may order a payment schedule. He asked if it is correct that in considering the payment schedule, the court could consider the defendant's ability to pay.

REPRESENTATIVE SAMUELS said that is the intent.

REPRESENTATIVE GRUENBERG said that with that clarification he would decline to offer an amendment.

REPRESENTATIVE GARA said he was going to vote for the bill, but added that most attorneys do not look up legislative history, especially in criminal cases.

Number 1587

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration (DOA), thanked the sponsors of the bill for the changes to it. She then suggested additional wording, "at the request of the victim," to show that the victims are exercising their right to the restitution. She said she really appreciates the removal of the section that applied to juvenile court jurisdiction. She explained that when a petition to revoke probation is filed, and the person comes into court and demonstrates that the inability to pay was not wilful because he/she could not make the payments, then they get put back on probation and are put on a more doable payment schedule.. Her point, however, is that a whole new hearing has to be scheduled because of not considering in the first place the defendant's ability to pay. In conclusion, she opined that the amendments have been a big improvement to the bill.

REPRESENTATIVE GRUENBERG asked if Ms. Wilson had any other changes to suggest that hadn't been discussed yet.

MS. WILSON suggested that on page 1, line 4, instead of saying, "unless the victim or other person expressly declines restitution," replace it with, "shall at the request of the victim,".

REPRESENTATIVE SAMUELS said he was not in favor of that [change] because of the burden it puts on the victim to appear in court.

REPRESENTATIVE GRUENBERG said he wasn't suggesting that the victim go to court, but rather that he/she simply signs a piece of paper.

REPRESENTATIVE SAMUELS indicated that he still objects to the suggested change.

CHAIR McGUIRE asked whether there was further discussion on the bill. Hearing none, she asked for a motion.

Number 1343

REPRESENTATIVE GRUENBERG moved [to adopt the proposed committee substitute (CS) for HB 357, Version 23-LS1384\H, Luckhaupt, 1/29/04, as amended, from committee with individual recommendations and the accompanying fiscal notes]. There being no objection, CSHB 357(JUD) was reported from the House Judiciary Standing Committee.

HB 397 - DEFENSE CONTACTS WITH VICTIMS & WITNESSES

Number 1306

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 397, "An Act relating to defense contacts with and recordings of statements of victims or witnesses; and amending Rule 16, Alaska Rules of Criminal Procedure."

CHAIR McGUIRE, speaking sponsor of HB 397, explained that she was contacted by a constituent whose 16-year-old daughter was raped. The girl told her parents, the investigation was begun, and charges were filed. While home alone, the girl received a phone call from the perpetrator's defense attorney who asked if she would be willing to talk to him. Agreeing to drive down to the public defender's office before her parents got home, the girl believed that she would be learning about case developments during the meeting and wanted to give her side of the story. Although her parents were not included, nor asked to participate, the public defender recorded the girl's statements, some of which were ultimately used against her. Later, when her parents found out about this, they filed a claim against the Public Defender Agency (PDA) because it was their understanding that there had to be parental consent before questioning.

CHAIR McGUIRE said she thought there was a loophole, in that recorded statements are treated differently than unrecorded statements. She said that HB 397 would change the law to require parental consent before a minor speaks with a defense investigator or defense attorney. It allows a parent or guardian to obtain a transcript of the recorded statements made by the minor victim or witness. She said the bill has an important exemption in that if the victim's parent or guardian is the defendant, the victim would not have to obtain parental consent.

CHAIR McGUIRE noted that one draft version of the bill addressed only the [aforementioned] "loophole." However, while working on the bill, the drafters noticed inconsistencies in [other]

sections of statute, so HB 397 now also deals with those inconsistencies. Mentioning that there may not be enough votes in the Senate to pass the bill's proposed court rule change, she indicated that at the very least, she wants to get the bill's intent into law.

Number 0943

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, relayed, on behalf of Chair McGuire, sponsor, that HB 397 amends AS 12.61.120(b), AS 12.61.120(c), AS 12.61.120(d), and AS 12.61.120(e). She pointed out that in almost all other areas of the law where minors' rights are an issue, a juvenile is normally deemed not competent to waive those rights. She said the changes to [AS 12.61.120] are consistent with Alaska's laws and policies. Upon adding the additional step that the defense team would have to go through in order to contact the minor victim or witness, the drafters felt that an indirect court rule amendment should be included in the bill as a safeguard. She remarked that the intent of the bill's current language is to make all sections pertaining to this issue conforming.

REPRESENTATIVE GARA opined that what Chair McGuire is calling a loophole is simply a policy choice. He suggested that the reason why current law says that if the statement is recorded then parental consent is not needed, is to avoid the circumstance where someone tricks a minor into [testifying], and there is no tape or record of it. A prior legislature said that if there is a recording, it is possible to tell whether there is any untoward conduct going on. He explained, if parental consent is required, the defense investigator has to go back two or three times to be [present] at the same place that the parent and victim are together. He said HB 397 is going to require more investigative work [on the defense's part], adding that he wants the playing field to be level. He asked whether a different rule was being adopted for the defense than for the prosecution, or whether the rule would be the same. In other words, if the investigator for the defense now has to get consent from the parent, does the same rule apply for the prosecution.

MS. TONDINI opined that the current policy and purpose behind these statutes assumes that victims and witnesses are at risk of harassment, intimidation, and invasion of privacy when they are unwillingly thrust into the legal system. These potential harms increase drastically when the victim is a minor, she said. She

went on to say that AS 12.61.120(b) deals with situations where the defendant is proceeding without counsel and is deemed to be dangerous and poses a threat to the victim or witness. The court will protect the address and telephone number [of the victim or witness] by providing it to a third party who acts as the defendant's representative in contacting the victim or witness. If the victim or witness is a minor, [the representative] must go through the parent.

MS. TONDINI noted that Section 3 specifies that if the victim or witness is a minor, [the defendant or defending attorney] must also obtain permission from the parent to contact the victim or witness. Notification of the rights of the victim or witness must also be given to the parents. She said that proposed AS 12.61.120(d) changes the requirement that if the statement is being recorded, parental consent is required. The bill says, in proposed AS 12.61.120(e), the parent or guardian may obtain the transcript of the recording. She explained that Section 6 states that if the defendant is the parent or guardian, the defendant doesn't have the appropriate authority to provide the consent.

Number 0378

LINDA WILSON, Deputy Director, Public Defender Agency (PDA), Department of Administration (DOA), said there is a constitutional provision that says to treat all witnesses with fairness and dignity. She said that the question of fairness toward criminal defense investigators needs to be looked at because this bill does not apply to police investigators, who are not required to get the consent of a parent before they interrogate or question a minor witness or alleged victim, nor is a civil investigator required to do so. The bill is singling out criminal defense investigators and would impair legitimate investigative efforts. She said those efforts go to providing the defendant with his/her constitutionally mandated right of effective assistance from counsel.

MS. WILSON noted that the statute requiring written authorization for a non-recorded statement is in AS 12.61.125, which is not mentioned in HB 397 at all. That section's specific purpose is related to victims and witnesses of sexual offenses, and the example that Chair McGuire gave was a case of an alleged sexual offense, Ms. Wilson said, adding that AS 12.61.120 says nothing, currently, about requiring a non-recorded statement to have parental consent.

MS. WILSON explained that when one has a defense investigator doing a legitimate investigative effort, it is another search for the truth. When good work is done by the defense team, it often results in flushing out relevant facts in a case. Those facts can ultimately resolve the case, short of trial, either because all of the problems have been resolved, or possible defenses have been found. There may be a situation where, the first time the witness is allowed to be questioned by the defense team, is at trial. More cases may go to trial if there are less opportunities and more barriers to the ability of the defense investigators to do the work they need to do.

MS. WILSON said the focus of the bill seems to be from the perspective of the sex offense case, so it is possible that this could be limited to simply changing AS 12.61.125. It would be an easy fix to apply the requirement for written authorization from the victim or witness, whether [the testimony is] recorded or not recorded, she said, adding that it could be expanded to every case dealing with witnesses. There are concerns with older teens getting written or specific consent from a parent. There is going to be more investigative evidence required by the defense. The bill is singling out the criminal investigators, she said, noting that it this does not just say "notify", it says, "get their consent".

TAPE 04-8, SIDE A
Number 0001

MS. WILSON concluded by remarking that under HB 397, police still wouldn't have to get the consent of the parents even though the defense would. She said she is not sure that that's very fair.

CHAIR McGUIRE explained that although the aforementioned sexual assault case was what prompted her to look at the current statutes regarding parental notification, the intent was to have HB 397 apply to more than just sexual assault cases.

Number 0058

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, turned to some of the issues raised earlier in the discussion. Regarding the phrase, the search for the truth, he suggested that the meaning of that phrase could be debated at length because what the truth is to the defense is oftentimes far different than what the truth is to [the prosecution]. He elaborated:

I've heard judges ... [remark that] the criminal justice machine does not provide a level playing field. And I agree with that, but I have to qualify that by saying that the reason it's not a level playing field is [that] in many respects, the criminal justice system favors the defendant against the state. So it's not level; not because the state has the advantage, ... [but] because the defense has the advantage. Let me give you some examples. ... In response to Representative Gara's inquiry about whether or not we had ... different standards for police and defendants, the answer is yes, of course we do.

But that's not a bad thing; there are many areas in the law that involve different standards. For example, the defense starts out with ... a clean slate, as the judge instructs the jury, and has the presumption of innocence. That's something the state has to overcome, so the scales of justice don't start off equally balanced. The defendant has a Fifth Amendment right not to be called upon, which includes - and it has been interpreted to include - not to require him to share the discovery. A few years ago, the legislature promulgated a reciprocal discovery statute in an effort to level the playing field, so that if the defendant wanted discovery, he would have to provide discovery to the state to avoid surprises. And that was declared unconstitutional.

Number 0201

MR. BRANCHFLOWER continued:

So yes, there are different standards, but ... each different standard, I believe, serves ... legitimate public policy. Now, it's true that the defense has the right to conduct their own investigation in a criminal case, and this bill does not impair that. But the truth of the matter is that the investigation that the defense does is not anything like the investigation the police do, because the police start off at ground zero. They start out in the dark; they don't know what the facts are, they don't know who the responsible person is. By the time the defendant is charged, after they determine who's responsible and

after the ... state gets involved, the public defender has the benefit, through [the Alaska Rules of Criminal Procedure] Rule 16, of all that discovery. They get copies of the lab reports, ... all the police reports, the statements, et cetera.

So when they go out to conduct an investigation, as they did in [the Brooke] case, they are not starting out from ground zero to find out what happened; they are ... not necessarily trying to find, quote, "the truth." ... [What] they're trying to do is sustain the burden that they have, which is the burden of creating reasonable doubt. It's not proving the case beyond a reasonable doubt; it's creating doubt. And the way they do that is by obtaining a statement, preferably recorded, ... in order to impeach witnesses at trial in an effort to undermine the state's case. And when that happens, when mid-trial impeachment occurs, witnesses lose credibility, and it makes it very difficult for 12 jurors to agree beyond a reasonable doubt. Oftentimes the state is surprised, and that can prejudice the case.

MR. BRANCHFLOWER concluded:

Now, the bill that you have before you, all it does is it requires parental input when the defendant or the defense attorney wishes to obtain a recorded statement. And that brings up to a level ... the status quo regarding when the public defender or defense investigator wishes to obtain a non-recorded or written interview from a minor. It just extends the same protection to the same class of ... people, which are the minors. I think it also serves another interest, which is, it helps parents and guardians learn about what's going on in their children's lives, and it helps them make smart decisions, it helps them make decisions that hopefully avoid bad decisions that will have lifelong lasting effect. So yes, we do have different standards, but I think that there are legitimate public policies that underlie those different standards - on both sides. Thank you.

Number 0430

MS. TONDINI, turning to an issue raised by Ms. Wilson, explained that AS 12.61.120 was amended because AS 12.61.125(2)(A) reads

as follows: "if the statement is taken as a recording, the recording is taken in compliance with AS 12.61.120" and thus refers back to AS 12.61.120. Therefore, AS 12.61.120 is amended in HB 397. She further explained that the only reason the addition was made in this section is because the procedures with which the recording needs to comply are extensively specified in AS 12.61.120. The desire was to ensure that those recording procedures were also followed in cases dealing with sexual offenses. "If what we're saying is parental consent is inherently required because these minors aren't legally competent to waive these rights, then we should make it clear in the statutes and be uniform and make sure it applies both to recorded and nonrecorded statements for sexual offenses and all offenses," she clarified.

REPRESENTATIVE GARA acknowledged that he and Mr. Branchflower disagree on this matter and remarked that the rules can't be constructed under the assumption that all people who are charged are guilty. He pointed out that sometimes when things are made easier to convict guilty people, it also makes it easier to convict innocent people. The aforementioned is the struggle [before the legislature]. Representative Gara posed a situation in which there is a defendant who is being wrongly charged with a crime, who's being threatened that he/she will go to jail for something that individual didn't do. Assuming the aforementioned case, Representative Gara questioned why it's being made easier for the prosecution to prove the case against the innocent person than is being made for the defense team to prove that the person is innocent. He emphasized that it seems the rules should be consistent. Therefore, if the investigator for one side [is required to] obtain parental consent, so should the other side.

REPRESENTATIVE GARA suggested developing a role that protects people in the greatest manner possible and perhaps to protect victims and minors, parental consent should always be required. He said that he didn't have a problem with the aforementioned, although he did have a problem if one side is tilted such that one side has an easier time proving their case than the other side. He acknowledged that the playing field is tilted in favor of one side in that the defendant starts with the presumption of innocence, which he viewed as a good rule that he didn't want to eliminate. However, he said he didn't believe it's a good rule to tilt it here. If there is a possibility that a defense investigator will act in an abusive manner toward a minor, then wouldn't it also be possible that an investigator for the prosecution will investigate the case in an abusive way toward a

minor as well. Shouldn't one be concerned about that as well, he asked.

MR. BRANCHFLOWER related that most cases involving legally innocent people are screened out, although he acknowledged that from time to time juries do return not guilty verdicts. In the cases with which Mr. Branchflower is familiar, he said those verdicts represented a failure of proof rather than a not guilty individual. Mr. Branchflower opined that it is neither workable nor necessary to impose the same requirements on police with regard to contacting parents because the police most often have the same best interest of the witnesses, including minor witnesses, as the parents do. The interests of the parents, the victims, and the police are all in sync because all desire holding the culpable person accountable. A police officer isn't looking for inconsistent statements to impeach an individual on trial. Therefore, society, through the police, has an interest in sustaining the burden in order to hold offenders accountable. Society's duty to protect victims is mandated in the constitution, he highlighted. Mr. Branchflower pointed out that the legislature has an obligation to protect its citizens from undue influence, which is exactly what the statute does, especially with regard to minors.

Number 0934

REPRESENTATIVE GRUENBERG pointed out that a [minor female] has the right to privacy of her own body with respect to an abortion, and therefore doesn't have to obtain parental consent. However, [this legislation] won't let a minor individual talk to the defense without parental consent. Therefore, he questioned whether the witness has a constitutional right to talk to whomever they want.

[HB 397 was held over.]

ADJOURNMENT

Number 0978

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.