

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 8, 2004

1:00 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 217(JUD)
"An Act relating to genetic privacy."

- MOVED CSSB 217(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 364(HES)(efd fld)
"An Act relating to liability for expenses of placement in certain mental health facilities; and relating to the mental health treatment assistance program."

- MOVED HCS CSSB 364(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 224(STA)
"An Act relating to a minor operating a vehicle after consuming alcohol, to a minor refusing to submit to chemical tests, and to driving during the 24 hours after being cited for one of those offenses; and providing for an effective date."

- MOVED CSSB 224(STA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 269(CRA)
"An Act relating to access to library records, including access to the library records of a child by a parent or guardian."

- SCHEDULED BUT NOT HEARD

CS FOR SENATE BILL NO. 306(FIN) am
"An Act relating to the practice of naturopathic medicine; and
providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 217

SHORT TITLE: GENETIC PRIVACY

SPONSOR(S): SENATOR(S) OLSON

05/09/03	(S)	READ THE FIRST TIME - REFERRALS
05/09/03	(S)	HES, JUD
01/28/04	(S)	HES AT 1:30 PM BUTROVICH 205
01/28/04	(S)	Moved CSSB 217 (HES) Out of Committee
01/28/04	(S)	MINUTE(HES)
01/30/04	(S)	HES RPT CS 1DP 1NR 2AM NEW TITLE
01/30/04	(S)	DP: DYSON; NR: GUESS;
01/30/04	(S)	AM: GREEN, WILKEN
02/06/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/06/04	(S)	Heard & Held
02/06/04	(S)	MINUTE(JUD)
02/18/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/18/04	(S)	Scheduled But Not Heard
02/25/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/25/04	(S)	Heard & Held
02/25/04	(S)	MINUTE(JUD)
03/03/04	(S)	JUD AT 8:00 AM BUTROVICH 205
03/03/04	(S)	Moved CSSB 217(JUD) Out of Committee
03/03/04	(S)	MINUTE(JUD)
03/04/04	(S)	JUD RPT CS 1DP 3NR NEW TITLE
03/04/04	(S)	LETTER OF INTENT WITH JUD REPORT
03/04/04	(S)	NR: SEEKINS, THERRIault, OGAN;
03/04/04	(S)	DP: FRENCH
05/03/04	(S)	TRANSMITTED TO (H)
05/03/04	(S)	VERSION: CSSB 217(JUD)
05/04/04	(H)	READ THE FIRST TIME - REFERRALS
05/04/04	(H)	JUD
05/05/04	(H)	JUD AT 1:00 PM CAPITOL 120
05/05/04	(H)	Scheduled But Not Heard
05/06/04	(H)	JUD AT 3:00 PM CAPITOL 120
05/06/04	(H)	Scheduled But Not Heard
05/07/04	(H)	JUD AT 6:15 PM CAPITOL 120
05/07/04	(H)	Heard & Held
05/07/04	(H)	MINUTE(JUD)
05/08/04	(H)	JUD AT 11:00 AM CAPITOL 120

BILL: SB 364

SHORT TITLE: LIMIT STATE AID FOR MENTAL HEALTH CARE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/08/04 (S) READ THE FIRST TIME - REFERRALS
03/08/04 (S) HES, FIN
03/19/04 (S) HES AT 1:30 PM BUTROVICH 205
03/19/04 (S) -- Meeting Canceled --
03/22/04 (S) HES AT 1:30 PM BUTROVICH 205
03/22/04 (S) Heard & Held
03/22/04 (S) MINUTE(HES)
03/24/04 (S) HES AT 1:30 PM BUTROVICH 205
03/24/04 (S) Heard & Held
03/24/04 (S) MINUTE(HES)
04/02/04 (S) HES AT 1:30 PM BUTROVICH 205
04/02/04 (S) Moved CSSB 364(HES) Out of Committee
04/02/04 (S) MINUTE(HES)
04/05/04 (S) HES RPT CS 3DP 1DNP 1AM SAME TITLE
04/05/04 (S) LETTER OF INTENT WITH HES REPORT
04/05/04 (S) DP: DYSON, GREEN, WILKEN; DNP: DAVIS;
04/05/04 (S) AM: GUESS
04/23/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/23/04 (S) Bill Hearing Postponed
04/26/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/26/04 (S) Heard & Held
04/26/04 (S) MINUTE(FIN)
04/27/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/27/04 (S) Moved CSSB 364(HES) Out of Committee
04/27/04 (S) MINUTE(FIN)
04/27/04 (S) FIN RPT CS(HES) 4DP 1DNP 1NR 1AM
04/27/04 (S) DP: GREEN, WILKEN, BUNDE, STEVENS B;
04/27/04 (S) DNP: HOFFMAN; NR: DYSON; AM: OLSON
04/27/04 (S) HES LETTER OF INTENT WITH FIN REPORT
05/06/04 (S) TRANSMITTED TO (H)
05/06/04 (S) VERSION: CSSB 364(HES)(EFD FLD)
05/07/04 (H) READ THE FIRST TIME - REFERRALS
05/07/04 (H) JUD, FIN
05/07/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
05/07/04 (H) -- Meeting Canceled --
05/08/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519
05/08/04 (H) -- Meeting Postponed --
05/08/04 (H) JUD AT 11:00 AM CAPITOL 120

BILL: SB 224

SHORT TITLE: LOWER DWI FOR MINORS TO .02

SPONSOR(S): SENATOR(S) COWDERY

05/14/03 (S) READ THE FIRST TIME - REFERRALS
 05/14/03 (S) TRA, STA
 05/17/03 (S) TRA AT 11:00 AM BUTROVICH 205
 05/17/03 (S) Heard & Held
 05/17/03 (S) MINUTE(TRA)
 02/24/04 (H) TRA AT 1:30 PM CAPITOL 17
 02/24/04 (S) Moved Out of Committee
 02/24/04 (S) MINUTE(TRA)
 02/25/04 (S) TRA RPT 2DP 2NR
 02/25/04 (S) DP: COWDERY, WAGONER; NR: THERRIAULT,
 02/25/04 (S) LINCOLN
 02/25/04 (S) FIN REFERRAL ADDED AFTER STA
 03/23/04 (S) STA AT 3:30 PM BELTZ 211
 03/23/04 (S) Heard & Held
 03/23/04 (S) MINUTE(STA)
 04/13/04 (S) STA AT 0:00 AM BELTZ 211
 04/13/04 (S) -- Meeting Canceled --
 04/20/04 (S) STA AT 3:30 PM BELTZ 211
 04/20/04 (S) Scheduled But Not Heard
 04/27/04 (S) STA AT 3:30 PM BELTZ 211
 04/27/04 (S) Moved CSSB 224(STA) Out of Committee
 04/27/04 (S) MINUTE(STA)
 04/28/04 (S) STA RPT CS 2DP 2NR NEW TITLE
 04/28/04 (S) DP: STEVENS G, COWDERY;
 04/28/04 (S) NR: STEDMAN, GUESS
 05/04/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 05/04/04 (S) Moved CSSB 224(STA) Out of Committee
 05/04/04 (S) MINUTE(FIN)
 05/04/04 (S) FIN RPT CS(STA) 5DP 2NR
 05/04/04 (S) DP: WILKEN, DYSON, HOFFMAN, BUNDE,
 05/04/04 (S) STEVENS B; NR: GREEN, OLSON
 05/06/04 (S) TRANSMITTED TO (H)
 05/06/04 (S) VERSION: CSSB 224(STA)
 05/07/04 (H) READ THE FIRST TIME - REFERRALS
 05/07/04 (H) JUD, FIN
 05/08/04 (H) JUD AT 11:00 AM CAPITOL 120

WITNESS REGISTER

JOHN L. GEORGE, Lobbyist
 for American Council of Life Insurers (ACLI)
 Juneau, Alaska
 POSITION STATEMENT: Provided comments and responded to
 questions during discussion of SB 217.

DAVID GRAY, Staff

to Senator Donny Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion
of SB 217 on behalf of the sponsor, Senator Olson.

BILL HOGAN, Director
Central Office
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: On behalf of the administration, responded
to questions during discussion of SB 364.

RICHARD SCHMITZ, Staff
to Senator John Cowdery
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 244 on behalf of the sponsor,
Senator Cowdery.

CINDY CASHEN, Executive Director
Juneau Chapter
Mothers Against Drunk Driving (MADD)
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of SB 224 by
responding to questions.

ACTION NARRATIVE

TAPE 04-81, SIDE A
Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing
Committee meeting to order at 1:00 p.m. Representatives
McGuire, Ogg, Samuels, and Gara were present at the call to
order. Representatives Holm and Gruenberg arrived as the
meeting was in progress.

SB 217 - GENETIC PRIVACY

Number 0050

CHAIR MCGUIRE announced that the first order of business would
be CS FOR SENATE BILL NO. 217(JUD), "An Act relating to genetic
privacy."

Number 0055

JOHN L. GEORGE, Lobbyist for American Council of Life Insurers (ACLI), said that the life insurance industry believes that genetic information ought to be protected. However, should genetic information be protected more than health information? The ACLI is of the opinion that it should not; instead, there ought to be really strong safeguards on both types of information, but not for one more than the other. By the very nature of disability and long-term-care insurance, insurers have personal and confidential relationships with policyholders. He surmised that most members have probably applied for a life insurance policy and so know that questions are asked regarding family history of blood disease and cancer; that information is genetic information, but the bill does not precluded insurers from asking those types of questions.

MR. GEORGE noted that additionally, if one is applying for a large policy, an insurer may require a physical examination including blood tests; this allows insurers to categorize people with similar risks and charge an "appropriate" premium. He characterized the bill's definition of genetic information as fairly broad, so broad that [information about] any disease might be considered genetic [information]. The ACLI, however, believes that there is a crossover between "normal" health information and genetic information. Insurance companies like things that are pretty standard and pretty inexpensive, and so will not spend \$500 to do a [genetic] test; instead, the tests required by insurers are fairly simple and are used for underwriting purposes.

MR. GEORGE said that the ACLI is strongly committed to the principle that individuals have a legitimate interest in the proper collection and handling of their personal information and that insurers have a responsibility to keep that information confidential and secure. He offered his belief, however, that insurers must be able to obtain, use responsibly, and share information; these functions are essential in order for insurers to write and service insurance policies.

REPRESENTATIVE GARA pointed out, though, that if the bill only addresses DNA (deoxyribonucleic acid), then the bill won't interfere with anything the insurance industry wants to do except to the extent that it wants to use somebody's DNA for some reason.

Number 0377

MR. GEORGE acknowledged that point, but suggested that the definition of what constitutes DNA information needs work. For example, if one were to find out through a DNA test that he/she has high blood pressure, the insurance company ought to be able to get that information. He mentioned that there are a number of tests that could fall under "that" classification, and indicated that the insurance industry is not interested in doing extensive DNA testing and analysis.

REPRESENTATIVE GARA pointed out, however, that the bill only makes DNA information private and specifies that a DNA analysis doesn't include regular, more broadly used diagnostic testing.

MR. GEORGE suggested that his client's concerns could be addressed by changing the definition of DNA. As an alternative, perhaps written authorization from the individual to obtain and share genetic information could be required of the insurance industry. But if insurers are unable to share information or keep underwriting information intact, they would be forced to cancel policies. Because the bill specifies that a person can retract permission to use his/her genetic information, if a person elects to do that, an insurance company would be forced to redact that person's file. "Once we get the information, we need to be able to hold on to it and use it for ... limited purposes; failing that, we would have to cancel the policy because we can't appropriately service the policy," he added.

MR. GEORGE assured the committee that the Division of Insurance has regulations governing the protection of health information, as does the federal government via Health Insurance Portability and Accountability Act (HIPAA) regulations. There really is adequate protection, he opined. He then turned attention to a proposed amendment, which read [original punctuation provided]:

Page 2 line 30. Add a new section to chapter 18.13 as follows:

The requirements of this chapter do not apply to a "covered entity" as defined by and subject to the federal health insurance portability and accountability privacy rules (45 CFR Parts 160 and 164) or to licensees subject to regulations adopted under AS 21.36.162.

MR. GEORGE said this proposed amendment offers an exemption to those entities that are subject to HIPAA regulations and

Division of Insurance regulations as they apply to licensees. He suggested that a consent form pertaining to all information could be created by the Division of Insurance.

REPRESENTATIVE OGG asked whether there is anything in the bill that stops an insurer from entering into a contractual relationship with a person.

Number 0808

MR. GEORGE said yes. Before a policy is written, the person provides certain information to the insurer, and as long as the insurer has that information and can use it as described in the contract, everything is fine. But since the bill allows the person to retract his/her permission to use the information, the insurer would have to redact the file and this could affect whether the insurer is able to reinsure the person, sell the company, or be able to provide full information for examination by the Division of Insurance. "As long as you don't ever withdraw your permission once you've given it, that's not a problem; it's when you pull that back that it creates the [difficulty]," he added.

REPRESENTATIVE OGG pointed out, however, that the contract could simply stipulate that withdrawal of permission to use/share DNA information will result in the policy being canceled; that stipulation could be part of the contractual relationship. He indicated that he did not see where the bill causes a problem with regard to entering into contractual agreements.

MR. GEORGE acknowledged that such a stipulation could be part of a contract, but questioned whether canceling policies is really in the public's best interest.

REPRESENTATIVE GARA surmised that they might not be able to agree on this issue. He asked whether DNA is currently being used without its owner's consent.

MR. GEORGE said that since the ACLI considers DNA information to be health information, consent is still required. The bill, however, creates a private property right.

CHAIR McGUIRE asked how the insurance industry currently uses DNA information.

MR. GEORGE offered that the results of certain blood tests could be considered genetic information.

CHAIR MCGUIRE said she is concerned that if genetic information reveals whether a person has traits or tendencies towards cancer, for example, or other hereditary diseases, then the insurance industry will use that information to deny a person health or life insurance.

Number 1138

REPRESENTATIVE HOLM offered his understanding that there are a number of illnesses and disabilities that can be seen via the genetic code. It is a difficult fence to straddle, he remarked, because the legislature wants to be able to protect people's rights without interfering with an insurance company's ability to write policies. He echoed some of Representative Ogg's comments regarding changes in contractual agreements, and predicted that the legislature will want to err on the side of people's personal freedoms. He said SB 217 appears to be the right kind of bill at this point in time, though things could change as new scientific advancements are made. He suggested that the insurance industry accept the changes proposed via SB 217, see if any problems arise and, if they do, then come back to the legislature and request assistance. It's to no one's benefit to drive the insurance industry away, he concluded.

MR. GEORGE noted that insurance companies make money by writing insurance, not by denying insurance. There is a proper rate for everyone, he remarked, and suggested that the question comes down to whether there ought to be cross subsidy - those that live a long time pay a little more so that those that won't live a long time pay a little less. He noted that statistically, women live longer than men, and Caucasians live longer than African Americans. Ought there to be a different rate for those that statistically live longer? The state of Massachusetts decided that there shouldn't be a difference based on sex, and the insurance industry decided, as a policy decision, that there shouldn't be a difference based on race. Therefore, some groups do subsidize others.

CHAIR MCGUIRE, after thanking Mr. George for coming and remarking that he has provided the committee with food for thought, suggested that the committee consider the issue of possible amendments.

The committee took an at-ease from 1:25 p.m. to 1:26 p.m.

Number 1433

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 1, a handwritten amendment with corrections that read [original punctuation provided]:

page 2 line 10. After "section" insert:
"Any written consent must clearly inform the person of the nature of the genetic testing requested and the right of privacy that is being waived."

REPRESENTATIVE GRUENBERG suggested that Amendment 1 be treated as a conceptual amendment.

CHAIR MCGUIRE indicated that she likes [Conceptual] Amendment 1.

Number 1480

REPRESENTATIVE SAMUELS objected. He expressed concern that amending the bill might cause it to fail due to a lack of time.

Number 1483

DAVID GRAY, Staff to Senator Donny Olson, Alaska State Legislature, sponsor, on behalf of Senator Olson, said that if the committee wishes to amend SB 217, it has the right to do so, and that doing so will give the House a bit of ownership in the bill.

REPRESENTATIVE GARA said that after reading the section that [Conceptual] Amendment 1 proposes to change, he believes his concern is addressed by the fact that a separate form will be required.

Number 1551

REPRESENTATIVE GRUENBERG withdrew [Conceptual] Amendment 1.

MR. GEORGE expressed a preference for just having one consent form, created by the Division of Insurance, that encompasses all information.

CHAIR MCGUIRE noted that page 2, lines 10-12, read in part, "The Department of Health and Social Services may by regulation adopt a uniform informed and written consent form to assist persons in meeting the requirements of this section".

Number 1597

REPRESENTATIVE SAMUELS moved to report CSSB 217(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 217(JUD) was reported from the House Judiciary Standing Committee.

Number 1627

REPRESENTATIVE HOLM moved to report the Senate Judiciary Standing Committee's letter of intent out of committee along with the bill.

REPRESENTATIVE GRUENBERG expressed a preference for including an intent section in the bill itself, rather than just having a letter of intent.

Number 1649

CHAIR McGUIRE asked whether there were any objections to reporting the letter of intent along with the bill. There being none, the letter of intent was also reported from the House Judiciary Standing Committee.

[CSSB 217(JUD) was reported from committee.]

Number 1661

CHAIR McGUIRE recessed the meeting at 1:32 p.m. to a call of the chair.

CHAIR McGUIRE called the House Judiciary Standing Committee back to order at 10:30 p.m. Representatives McGuire, Anderson, Samuels, Ogg, and Gruenberg were present at the call back to order. Representative Gara arrived as the meeting was in progress.

SB 364 - LIMIT STATE AID FOR MENTAL HEALTH CARE

[Contains mention that the proposed House committee substitute mirrors the latest House version of the bill, CSHB 535(JUD), which was reported from committee on 5/6/04.]

Number 1670

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 364(HES)(efd fld), "An Act relating to liability for expenses of placement in certain mental health

facilities; and relating to the mental health treatment assistance program."

CHAIR MCGUIRE stated that public testimony on SB 364 is closed, and mentioned that the proposed House committee substitute (HCS) in members' packets mirrors the latest House version of the bill, [CSHB 535(JUD), which was reported from committee on 5/6/04].

Number 1708

REPRESENTATIVE ANDERSON moved to adopt the proposed HCS for SB 364, Version 23-GS2080\I, Mischel, 5/7/04, as the work draft. There being no objection, Version I was before the committee.

REPRESENTATIVE OGG directed attention to page 1, line 11, and noted that it says that the patient's parent will pay if the patient is under 18 years of age. He asked how that would apply when the patient is an emancipated minor. Would the patient's parent still be obligated to pay?

REPRESENTATIVE GRUENBERG pointed out that that language is part of current law. He offered his belief that the intent of the language is that it apply only to unemancipated minors; once a minor is emancipated, then the parent, as a matter of law, is no longer responsible. He characterized the language being used as standard language that automatically doesn't apply to emancipated minors.

Number 1824

BILL HOGAN, Director, Central Office, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), concurred that once a minor is emancipated, he/she is considered an adult. He relayed that the number of children being served by this program is less than 3 percent of the total being served; so in a year where the average number of individuals being served by this program is about 250, only 6 or 7 of them are children.

REPRESENTATIVE OGG pointed out, however, that the language does not specify that it pertains only to unemancipated minors.

REPRESENTATIVE GRUENBERG suggested changing the language such that it does specify an unemancipated minor.

Number 1873

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to change page 1, lines 6-7 and 18, such that "under 18 years of age" is replaced with "an unemancipated minor". There being no objection, Amendment 1 was adopted.

Number 1906

REPRESENTATIVE ANDERSON moved to report the proposed HCS for SB 364, Version 23-GS2080\I, Mischel, 5/7/04, as amended, out of committee with individual recommendations and the accompanying fiscal note.

Number 1919

REPRESENTATIVE GRUENBERG noted that there is language on page 2, line 4, similar to that which was changed via Amendment 1.

CHAIR MCGUIRE [made a motion to adopt] Amendment 2, to change page 2 [lines 4-5] such that "under 18 years of age" is replaced with "an unemancipated minor".

REPRESENTATIVE GRUENBERG suggested asking the drafter to make a similar change wherever the phrase, "under 18 years of age" occurs.

Number 1931

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

MR. HOGAN noted that that phrase is also used on page 4 [line 12].

CHAIR MCGUIRE referred to that [possible change] as Amendment 3, and prompted Representative Gruenberg.

Number 1969

REPRESENTATIVE GRUENBERG said, "Okay; 'under 18 years of age' should be 'an unemancipated minor'". [Although no formal motion was made, Amendment 3 was treated as moved and adopted] He then asked whether the phrase "under 18 years of age" is used elsewhere in AS 47.31.

MR. HOGAN offered his belief that it is.

REPRESENTATIVE GRUENBERG asked Mr. Hogan to provide him with a list of instances where it is used, for the purpose of possibly making conforming amendments at another time.

Number 1996

REPRESENTATIVE ANDERSON again made the motion to report the proposed HCS for SB 364, Version 23-GS2080\I, Mischel, 5/7/04, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS CSSB 364(JUD) was reported from the House Judiciary Standing Committee.

Number 2021

REPRESENTATIVE OGG moved to report the Senate Health, Education and Social Services Standing Committee's letter of intent out of committee along with the bill. There being no objection, the letter of intent was also reported from the House Judiciary Standing Committee.

[HCS CSSB 364(JUD) was reported from committee.]

SB 224 - LOWER DWI FOR MINORS TO .02

Number 2030

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 224(STA), "An Act relating to a minor operating a vehicle after consuming alcohol, to a minor refusing to submit to chemical tests, and to driving during the 24 hours after being cited for one of those offenses; and providing for an effective date."

Number 2044

RICHARD SCHMITZ, Staff to Senator John Cowdery, Alaska State Legislature, sponsor, presented SB 244 on behalf of Senator Cowdery. He said the purpose of SB 244 is to provide stiffer penalties to those who, while under the legal drinking age, consume alcohol and drive. Currently, such a person would be charged with minor consuming and/or minor operating a vehicle after consuming, both of which result in an infraction. The bill proposes zero tolerance for minors who consume and drive, and imposes a series of mandatory fines that escalate for repeat violations: \$500 for a first offense, \$1,000 for a second offense, and \$1,500 for additional offenses. In addition,

mandatory community work service (CWS) will also be imposed: 20-40 hours for a first offense, 40-60 hours for a second offense, and 60-80 hours for additional offenses. He noted that the behavior would still be an infraction under the current version of the bill.

REPRESENTATIVE OGG questioned whether people under 18 years of age would be treated differently than people who are 18 to 20 years of age, and, if so, why.

Number 2147

CINDY CASHEN, Executive Director, Juneau Chapter, Mothers Against Drunk Driving (MADD), said that anyone under the age of 21 who is caught drinking alcohol is charged with minor consuming, though a person who is between the ages of 18 and 20 can represent himself/herself in court.

REPRESENTATIVE OGG offered his belief that a minor is legally defined as being under the age of 18.

REPRESENTATIVE SAMUELS asked Representative Ogg if he is suggesting that they replace the term "minor" with language that would reflect that what is meant is someone under the age of 21.

REPRESENTATIVE OGG remarked that if that is the goal of the bill, then the language should be clarified.

MR. SCHMITZ said such a change would be fine. He posited, however, that with regard to alcohol consumption, "minor" is probably the term of art that the drafters use to refer to anyone under the age of 21 who is consuming alcohol illegally.

CHAIR McGUIRE surmised, then, that the drafters have indicated that the legal term "minor" means something different when used with regard to alcohol.

MS. CASHEN concurred.

MR. SCHMITZ said he would be willing to consult with the drafters on this issue before the bill is heard in the House Finance Committee.

REPRESENTATIVE GARA noted that statistics provided in members' packets indicate that 14 percent of all alcohol-related fatalities are caused by drivers between the ages of 15 and 20.

He questioned how having a blood alcohol concentration (BAC) of .02 fits within those statistics.

MR. SCHMITZ suggested that adoption of the bill will provide an incentive to those under the age of 21 to not drive if they have been consuming. He likened creating this different standard to creating different standards for behavior around school zones and work zones.

CHAIR McGUIRE noted that there must be a nexus between minor consuming and driving. She read a portion of AS 28.35.280 as currently written:

Minor operating a vehicle after consuming alcohol.

(a) A person who is at least 14 years of age but not yet 21 years of age commits the offense of minor operating a vehicle after consuming alcohol if the person operates or drives a motor vehicle ...

(b) ... A person who is 18 years of age or older shall be released on the person's own recognizance. A person who is under the age of 18 shall be released to a parent, guardian, or legal custodian.

TAPE 04-81, SIDE B

2393

REPRESENTATIVE GARA directed attention to Section 3, subsection (b), which proposes to change AS 28.35.290 and which read in part:

Operating a motor vehicle during the 24 hours after being cited for minor operating a vehicle after consuming alcohol or for minor's refusal to submit to a chemical test is, an infraction and if the minor

REPRESENTATIVE GARA offered his belief that this language presumes that such a person would no longer have a driver's license.

CHAIR McGUIRE read the language currently in AS 28.35.290(a):

(a) A person who has been cited for minor operating a vehicle after consuming alcohol under AS 28.35.280 or for refusal to submit to a chemical test of breath under AS 28.35.285 may not operate a motor vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

CHAIR McGUIRE surmised that this language doesn't mean that a person has had his/her driver's license suspended; instead it just means that a person may not drive for 24 hours after being issued a citation for minor consuming.

MR. SCHMITZ concurred, and reiterated that the goal of the bill is to provide those under the age of 21 with an extra incentive to not drink and drive.

REPRESENTATIVE GRUENBERG directed attention to Section 4, which proposes to repeal Sections 14-16 and 23 of Chapter 143, SLA 1996. He expressed a desire to know what language is actually being repealed by Section 4.

MR. SCHMITZ relayed that he would be willing to work with Representative Gruenberg on that issue.

MS. CASHEN mentioned that the bill has been studied by Anne Carpeneti - Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL) - and others in the administration, and the bill has "met their seal of approval."

Number 2249

REPRESENTATIVE GARA and GRUENBERG moved to report CSSB 224(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 224(STA) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 2237

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 10:50 p.m.