

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 18, 2003

8:01 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 4

Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session.

- HEARD AND HELD

HOUSE BILL NO. 88

"An Act relating to prohibiting the use of cellular telephones when operating a motor vehicle; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 92

"An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect."

- MOVED CSHB 92(STA) OUT OF COMMITTEE

HOUSE BILL NO. 109

"An Act relating to the limitation on payment of state treasury warrants; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HJR 4

SHORT TITLE:CONST AM: 90 DAY LEGISLATIVE SESSION

SPONSOR(S): REPRESENTATIVE(S)SAMUELS, ROKEBERG

Jrn-Date	Jrn-Page		Action
01/21/03	0025	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0025	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0025	(H)	STA, JUD, FIN
01/21/03	0025	(H)	REFERRED TO STATE AFFAIRS
03/11/03		(H)	STA AT 8:00 AM CAPITOL 102
03/11/03		(H)	Scheduled But Not Heard
03/17/03	0566	(H)	COSPONSOR(S): CROFT
03/18/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 88

SHORT TITLE:PROHIBIT CELL PHONE USE WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S)WOLF

Jrn-Date	Jrn-Page		Action
02/10/03	0169	(H)	READ THE FIRST TIME - REFERRALS
02/10/03	0169	(H)	STA, TRA, JUD
02/10/03	0169	(H)	REFERRED TO STATE AFFAIRS
03/13/03		(H)	STA AT 8:00 AM CAPITOL 102
03/13/03		(H)	Scheduled But Not Heard
03/18/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 92

SHORT TITLE:CLERGY TO REPORT CHILD ABUSE

SPONSOR(S): REPRESENTATIVE(S)LYNN

Jrn-Date	Jrn-Page		Action
02/12/03	0186	(H)	READ THE FIRST TIME - REFERRALS
02/12/03	0186	(H)	STA, HES
02/19/03	0257	(H)	COSPONSOR(S): KERTTULA
03/06/03		(H)	STA AT 8:00 AM CAPITOL 102
03/06/03		(H)	Heard & Held MINUTE(STA)
03/18/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE RALPH SAMUELS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HJR 4.

REPRESENTATIVE KELLY WOLF
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 88.

RICHARD BLOCK, Christian Science Committee on Publication
for Alaska
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 92, said Version I is acceptable.

W.M. THOMAS MOFFATT, Rev., Staff
to Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor of HB 92, explained the new language in Version I and answered questions.

CHIP WAGONER, Lobbyist
for the Alaska Catholic Conference
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 92 and answered questions.

JOANNE GIBBENS, Program Administrator
Division of Family & Youth Services (DFYS)
Department of Health & Social Services
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 92, testified regarding the issue of neglect as it pertains to mandatory reporting.

BRADLEY BRINKMAN, Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified on the statutory definition of abuse and neglect as it pertains to HB 92; answered questions.

ACTION NARRATIVE

TAPE 03-27, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Holm, Seaton, Dahlstrom, Lynn, Berkowitz, Gruenberg, and Weyhrauch were present at the call to order.

HJR 4-CONST AM: 90 DAY LEGISLATIVE SESSION

Number 0068

CHAIR WEYHRAUCH announced that the first order of business was HOUSE JOINT RESOLUTION NO. 4, Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session.

Number 0109

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, sponsor, told the committee HJR 4 would limit the legislative session from 120 to 90 days and would be placed before voters in 2004, the year of the next statewide general election. He said he feels strongly that 90 days is more than enough time in which the legislature can finish its business. He said limiting the session would also promote more citizen [legislators], which Alaskans want; with a shorter session, more people can participate. Representative Samuels said although the fiscal note shows a savings of approximately \$1 million, he thinks it would [save] more than that. He said having more laws isn't necessarily a better thing.

REPRESENTATIVE SAMUELS noted one argument against [HJR 4]: it would give the executive branch more power. He said he thinks that is true, but suggested that "we're talking about nuances." If the executive branch does something that the legislative branch finds reprehensible, the legislative branch can call itself back into session. He indicated that other arguments against the resolution are with regard to rule changes, statutory changes, the starting date, and the timeframe for giving notice of a committee hearing, for example. He said all of those can be taken care of if the voters pass the resolution.

Number 0342

REPRESENTATIVE SAMUELS mentioned an amendment he hoped Representative Holm would offer to make the First Regular Session of the Twenty-Fourth Legislature be 120 days and the

Second Regular Session be 90 days, with 90 days [for each session thereafter]. This would allow new [legislators] to "get their feet wet."

REPRESENTATIVE SAMUELS referred to a page ["Alaska State Legislature Session Length And Percentage Of Days With Floor Sessions, 1981-2000," in the committee packet]; in response to a question by Chair Weyhrauch, he confirmed that it shows the actual number of days [the legislature] is in session.

CHAIR WEYHRAUCH asked how many times a resolution like HJR 4 has been introduced before.

REPRESENTATIVE SAMUELS answered probably five or six times; one attempt may have moved through the House.

Number 0460

REPRESENTATIVE HOLM observed that the legislature used to have a 90-day session.

REPRESENTATIVE SAMUELS remarked that it used to have an unlimited session.

CHAIR WEYHRAUCH concurred with Representative Holm that the legislature used to meet for fewer than 120 days.

REPRESENTATIVE HOLM recalled that his father never spent 120 days [in a session while in the legislature]. He mentioned looking back into the history to the 1960s and 1970s.

REPRESENTATIVE SAMUELS pointed out that the numbers on the handout go back to the early 1980s.

CHAIR WEYHRAUCH noted that the legislature met in June and July in the early 1980s.

REPRESENTATIVE GRUENBERG, in response to questions from Chair Weyhrauch and Representative Samuels, said he did not meet for an unlimited session [when he was a legislator previously]. He added, "There was no constitutional limit prior to that time, but the actual sessions may well have been limited."

REPRESENTATIVE SAMUELS, in response to a remark from Chair Weyhrauch, said he thinks the legislature can do a lot more with its time.

CHAIR WEYHRAUCH commented that it seems he's busier on the days when the legislature isn't in session because of committee meetings, constituents, and [special] interest groups, for example.

Number 0719

REPRESENTATIVE SAMUELS replied that if Chair Weyhrauch "went for 300 days, then he would have 300 days of that." He said he thinks it's inherent within the system that the posturing and positioning takes place at the end, whether it's a 60-day or a 300-day session. The budget will not be addressed until the last two weeks, regardless of the length of session. However, Representative Samuels noted that advantages of HJR 4 would be saving cash "right up front" and increasing the pool of people who can run, for example.

REPRESENTATIVE GRUENBERG said term limits were in fashion for a while, but he did not support them; subsequent studies have shown they've seriously upset the balance of power in those states that enacted them. He said the balance of power is difficult to measure prospectively. He said he knows that some states have significantly shorter session limitations, whereas some states have [biennial] sessions.

REPRESENTATIVE GRUENBERG referred to a group called the Institute of Governmental Studies (IGS) at the University of California State Berkley (UCSB). He said he wonders if research has been done on the effect of shorter legislative sessions and the balance of power in states that have enacted it. He said he has serious reservations and that the 120-day limit has turned out to be okay. He posited that the question is what is needed at this time.

REPRESENTATIVE SAMUELS noted that the National Conference of State Legislatures (NCSL) has some reports.

REPRESENTATIVE GRUENBERG said he'd like to see them and to see if the IGS has done any [studies].

Number 0888

REPRESENTATIVE HOLM requested that [Representative Samuels] look further back historically than just the early 1980s. He said he doesn't know if restricting [the length of session] is a bad idea because he said he suspects that "work will fill all

voids." He said he shares [Representative Samuels'] concern regarding how long the legislature runs.

Number 0960

REPRESENTATIVE SEATON referred to an e-mail that showed how many bills had been introduced and how many had passed. He asked Representative Samuels if he was saying that fewer bills should be considered.

REPRESENTATIVE SAMUELS responded that there will likely be 600-700 bills by the time the legislature is through, although perhaps 80 or 90 will pass; some will be "feel-good bills," rather than big policy changes. He reiterated that having more laws isn't necessarily a good thing. Representative Samuels said, "We're asking every department in the State of Alaska to do a little bit better job with their time and their money, and we ought to look at ourselves and ask the exact same question." He said many of the bills that get introduced are so somebody can have a press conference, with no intention of moving the bill. He said he has no issue with that being part of the nature of politics; however, he doesn't "count that in the big scheme of things as being important public policy."

Number 1103

REPRESENTATIVE SEATON remarked that unless the legislature drastically changes the way bills go through the process, he thinks a 90-day session might mean that bills wouldn't actually be passed until the second session.

REPRESENTATIVE SAMUELS said he thinks some bills would move faster, while others would take longer. He said if he could leave earlier, he would be willing to do it much differently than now. He mentioned night meetings.

REPRESENTATIVE GRUENBERG said things have gotten a lot more complicated [in the legislature].

REPRESENTATIVE HOLM, in response to a question from Representative Gruenberg, said he thinks the budget in 1972 was \$294 million during; only 36 people worked for the legislature in those days, but now there are over 460. He said, "I think what Representative Samuels is trying to say is that there may be some economies of scale here, but we need to look at getting them, rather than what we're doing."

REPRESENTATIVE GRUENBERG said it used to be the policy that almost all bills were referred to at least two committees in each house. He added, "Frankly, that was a check on the majority, because most bills that move are majority bills." He also said it was in vogue for a while to consider a unicameral legislature.

Number 1287

REPRESENTATIVE HOLM moved to adopt Amendment 1, labeled 23-LS0178\A.1, Cook, 3/10/03, which read:

Page 1, line 1:
Delete "**an amendment**"
Insert "**amendments**"

Page 1, following line 14:
Insert a new resolution section to read:
"*** Sec. 2.** Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:
Section 30. Transition; Regular Legislative Session Duration. The 2004 amendment to Section 8 of Article II first applies to the Second Regular Session of the Twenty-Fourth Legislature and applies thereafter. During the First Regular Session of the Twenty-Fourth Legislature, Section 8 of Article II applies as it read on January 1, 2004."

Renumber the following resolution section accordingly.

Page 1, line 15:
Delete "amendment"
Insert "amendments"

REPRESENTATIVE SAMUELS suggested that members could consider [other numbers less than 120] if they didn't like the 90 days.

REPRESENTATIVE GRUENBERG referred to [language proposed to be deleted on page 1] line 9, which read, "[FROM THE DATE IT CONVENES]". He explained that because of the word "FROM", the session is actually 121 days, rather than 120 days; therefore, HJR 4 would shorten it by 31 days, rather than 30.

Number 1510

CHAIR WEYHRAUCH asked if there was any objection to adopting Amendment 1 [text provided previously]. There being no objection, it was so ordered.

Number 1548

REPRESENTATIVE SEATON noted that he has been busy and thinks the 90-day session would be difficult. Notwithstanding that, he agreed that maybe some reduction would be a good thing.

REPRESENTATIVE SAMUELS maintained that if session were 300 days, legislators would still be busy every day.

REPRESENTATIVE GRUENBERG noted that the second session is a lot different from the first. He said the current session is unusual because there is largely a new legislative body as well as a new governor, and because of "the unusual fiscal situation we find ourselves in." He said he thinks things are moving much more slowly this year than in his recollection.

Number 1675

REPRESENTATIVE SAMUELS, in response to a question from Chair Weyhrauch, referred to a handout showing the limits on legislative session length in other states. He read random samples showing that some states meet for a different number of days in odd years than in even years, for example. He said Alaska isn't out of the norm, but isn't on the low end.

CHAIR WEYHRAUCH noted that a publication called "Alaska Legislature Roster of Members 1913-2002" lists the dates that the legislature has convened and adjourned.

Number 1824

REPRESENTATIVE GRUENBERG said he'd like to get a copy of the portion of the [Alaska] Constitutional Convention minutes where the issue was considered of whether to impose a state constitutional legislative session limit. He said he'd also like the legislative history of the current constitutional amendment.

REPRESENTATIVE SAMUELS responded, "We did read the minutes [from] when they limited the session from unlimited to 120 days." He said he thinks HJR 4 is good public policy.

REPRESENTATIVE SEATON said he is trying to figure out the previous philosophy. He surmised that the number of legislative days excludes weekends.

REPRESENTATIVE SAMUELS related his belief that if the legislature doesn't meet in floor session, it isn't counted as a legislative day.

Number 1949

REPRESENTATIVE GRUENBERG noted that he was in the Fourteenth, Fifteenth, Sixteenth, and Seventeenth [Alaska] State Legislatures. He said there was a significant difference in the number of days that the bodies met; the Senate had a policy, which the House didn't have, that on many days it would gavel itself in and then out again, and that would count as a day in session. Thus [the Senate] didn't have to get permission to not meet, for example. [HJR 4 was held over.]

The committee took an at-ease from 8:29 a.m. to 8:33 a.m.

HB 88-PROHIBIT CELL PHONE USE WHEN DRIVING

Number 2047

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 88, "An Act relating to prohibiting the use of cellular telephones when operating a motor vehicle; and providing for an effective date."

Number 2060

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, sponsor of HB 88, told the committee the intent of the bill is to limit the use of cell phones while people are operating an automobile. He indicated perhaps a friendly amendment would be offered to change "motor vehicle" to "automobile". He explained that "motor vehicle" would restrict cell phone use in just about anything that has a motor, including airplanes and boats. Noting that a similar bill had been before a previous legislature, he said he'd picked the bill back up because of contacts from constituents who lost loved ones due to accidents caused by cell phone use.

REPRESENTATIVE WOLF revealed that most of the arguments against a bill such as HB 88 state that using a cell phone while driving is no more dangerous than eating a hamburger, adjusting the

radio, or putting on makeup or nylons while driving, for example. He said his own son asked him if he would get a ticket [if HB 88 passed], and he admitted that he himself is just as guilty as anybody [of using a cell phone while driving].

REPRESENTATIVE WOLF said cell phone use while driving disengages the brain from [necessary] activities. He noted that Alaska has some of the most adverse driving conditions in the country. He said he believes in HB 88 because people are responsible for their actions. He explained that the concern is that [a person using a cell phone while driving] puts other people at risk. He said he has a responsibility to protect his family [which extends to driving].

REPRESENTATIVE WOLF noted that currently in Alaska all bus drivers who carry a CDL [commercial driver's license] are prohibited from using a cell phone. In response to questions from Chair Weyhrauch, he clarified that although HB 88 would allow for the use of hands-free cell phones in automobiles, the law presently doesn't allow the use of either hands-free or handheld cell phones by CDL drivers who drive buses with a capacity of 15 or more passengers.

Number 2307

CHAIR WEYHRAUCH asked how this differs from helmet laws.

REPRESENTATIVE WOLF noted that a motorcycle rider usually rides solitarily or with one other person. He revealed that he rode a motorcycle in the past, and a helmet is the reason that he is here today. He indicated he doesn't believe a motorcycle is the same weight and category as a vehicle. In further response, he confirmed that taxi drivers don't carry a CDL and therefore would be included under HB 88.

Number 2368

REPRESENTATIVE HOLM referred to a study conducted in North Carolina, dated May 8, 2001, which found that drivers are most often distracted by the following: 29.4 percent by something outside of their vehicle; 11.4 percent by adjusting a radio or compact disk [CD] player; 10.9 percent by talking to other occupants in the car; 2.8 percent by adjusting vehicle or climate controls; 1.7 percent by eating or drinking; 1.5 percent by using a cell phone; and 0.9 percent by smoking. He asked, "Wherein do we respect or request that people use good judgment, rather than making it a law that they use good judgment?"

REPRESENTATIVE WOLF responded that Representative Holm brings up some good points, and he said he'd take a look at that study. One of the intents of HB 88, he explained, is to bring up discussion about the concerns. He proffered that a distraction in Alaska could be a 1,200-pound moose stepping in the roadway. Cell phone use is an additional distraction, albeit a small one [physically].

Number 2523

REPRESENTATIVE BERKOWITZ referred to the North Carolina study and said he'd be curious to know if it means 1.5 percent of all drivers or 1.5 percent of drivers who are using cell phones, because that would be a huge difference in the impact.

REPRESENTATIVE BERKOWITZ questioned the use of the word "operating". He recalled that people can be convicted of driving while under the influence for operating a vehicle if they are standing on the side of the road with the ignition on, for example. He suggested that poses a problem [in HB 88] because he surmised that the intent of the bill is to have people pull over to the side of the road to use their cell phones.

CHAIR WEYHRAUCH suggested that Representative Wolf ask Legislative Legal and Research Services, because he said there are at least two court of appeals decisions regarding the example given by Representative Berkowitz.

Number 2570

REPRESENTATIVE WOLF confirmed that the intent of the proposed legislation is to have people pull over to the side of the road to use their cell phones, and he concurred with asking Legislative Legal and Research Services to adjust the bill's wording in that regard.

Number 2585

REPRESENTATIVE BERKOWITZ remarked that he didn't see a fiscal note from either Department of Public Safety (DPS) or the courts. He said he thinks both would be appropriate, since DPS would be enforcing the law and the courts would have to deal with their end of it. He added that this would seem to apply to police officers. Inquiring whether Representative Wolf had held any discussions with insurance companies regarding the bill, he

asked, "If we pass this law, will insurance rates come down in the state?"

REPRESENTATIVE WOLF replied that he has not discussed that with insurance companies and agreed it is something to look into.

Number 2625

REPRESENTATIVE SEATON asked if anything in the literature that establishes that people in motor homes, for example, who are talking on CB [citizens band] radios are less distracted than someone talking on a cell phone.

REPRESENTATIVE WOLF answered no, but said it is worth looking into.

Number 2661

REPRESENTATIVE GRUENBERG recalled that there have been a number of cases that define "operating" a motor vehicle; in one case, the person was drunk and asleep and had the radio on. He opined that anything that can be done to lower accident rates is worth considering, and said he appreciated Representative Wolf's introducing HB 88. He pointed out that HB 88 only applies to motor vehicles, and only on highways. He noted that the bill doesn't apply to people using a headset, and yet they may not be able to hear a siren, for example. He remarked that people using headsets would have their hands free, but might have their minds distracted. He mentioned a young person he knew who died in a tragic accident that didn't involve a cell phone, but involved "something similar."

REPRESENTATIVE WOLF reiterated that his office would be making an amendment changing "motor vehicles" to "automobiles" in order to focus on motor vehicles on the road system.

Number 2761

REPRESENTATIVE BERKOWITZ expressed concern about duplicating existing statutes in the criminal code. He explained, "I've always thought that the reckless driving and the negligent driving covered this behavior." He asked Representative Wolf if he is aware of any cases that have been charged involving reckless or negligent driving and cell phone use.

REPRESENTATIVE WOLF answered no.

REPRESENTATIVE BERKOWITZ asked if anyone from the Department of Law or the DPS was scheduled to testify.

CHAIR WEYHRAUCH said no one had signed up to testify. He surmised that Representative Wolf wanted to get a sense of what the questions are and then bring the bill back before the committee.

Number 2799

REPRESENTATIVE WOLF said he believes the legal portions of HB 88 will be [fleshed] out in the House Judiciary Standing Committee.

REPRESENTATIVE BERKOWITZ asked Representative Wolf to do the research and check with DPS, which keeps fairly exhaustive records, or with [the Department of Law]. He said, "If it is a problem in prosecution, then there might need to be a particular fix, which may or may not fit in with what your bill's doing. It's better to have the facts."

REPRESENTATIVE WOLF agreed to do that.

Number 2836

REPRESENTATIVE HOLM asked Representative Wolf if there are any statistics reporting how many people are [using cell phones while driving]. He questioned whether the legislature should make laws that would affect that many people at one time. He added, "Are we going to tell everybody that they're illegal?" He compared it to the seatbelt law or the motorcycle helmet law. He remarked that the motorcycle helmet law is for the benefit of those who get in the crash, not for the benefit of the public. He opined that there is a problem with where the benefits derive and what kind of costs there will be. He noted that there is a zero fiscal note attached to the bill; however, it comes from the Department of Law, not DPS. He asked, "If we don't know how many we're going to affect, can we get a decent fiscal note, and will it come from [DPS], as well?"

Number 1900

REPRESENTATIVE WOLF said he could contact DPS and doesn't know the statistics on how many people use a cell phone in general or while driving, specifically. He commented that its use is becoming more common, as a safety line for many; for example, he knows many people who have crashed planes while flying in Alaska and whose cell phones were a lifeline. He included boating as

an activity for which a cell phone has been lifesaving. Saying cell phone use is expanding beyond landline use, he referred to a study which reported that by the time all the fiber optics are laid throughout the nation, they will be made obsolete by the cell phone.

CHAIR WEYHRAUCH said he is torn over the issue because he uses his own cell phone during his 20-minute one-way commute to work in order to return calls and check his voice mail.

TAPE 03-27, SIDE B

Number 3002

CHAIR WEYHRAUCH opined that the worst of cell phone use is the distraction of punching in the numbers in heavy traffic. He said he knows of cases when people have been found negligent and had to pay damages because of cell phone use and operating motor vehicles negligently. He commented that the previously stated question regarding insurance companies was probably a good one because they are probably having to pay coverage on some of those accidents.

Number 2957

REPRESENTATIVE GRUENBERG related that some close friends of his were killed by a young man who was driving and leaned down to pick up a soda from the floor of his truck.

CHAIR WEYHRAUCH concluded, "So, whatever we can do to make life safer is great; it's just this tension between making it safer and interference with personal liberties and individual responsibility." He described it as the classic policy call.

Number 2919

REPRESENTATIVE WOLF said he is the last person who'd want to stand before the committee and deny freedom of speech or freedom of movement. He said the encouragement of HB 88 is to attempt to direct people to use a hands-free unit or to pull off the side of the road. He indicated a correlation between hands-free cell phones and responsible driving. He noted that some cell phone units are even voice-activated.

CHAIR WEYHRAUCH announced that HB 88 would be held over.

HB 92-CLERGY TO REPORT CHILD ABUSE

Number 2828

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 92, "An Act relating to reports by members of the clergy and custodians of clerical records who have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect."

Number 2810

REPRESENTATIVE HOLM moved to adopt the proposed committee substitute (CS), Version 23-LS0257\I, Lauterbach, 3/12/03, as a work draft.

CHAIR WEYHRAUCH said he wanted to hear from Richard Block.

Number 2761

RICHARD BLOCK, Christian Science Committee on Publication for Alaska, noted that he'd testified at the [March 6, 2003] hearing on HB 92, at which time he'd indicated his organization didn't take a position on HB 92 in general, but recognized the important problem it attempts to address. Mentioning a proposed CS from the prior hearing [Version D, adopted March 6, 2003], he pointed out that an important provision in the original bill had been removed; however, he'd spoken with Representative Lynn's staff, who [added] language in Version I. He said [the Christian Science Committee on Publication for Alaska] finds Version I acceptable.

Number 2690

CHAIR WEYHRAUCH announced that without objection, Version I was before the committee for discussion.

Number 2685

REPRESENTATIVE LYNN, sponsor of HB 92, thanked members for their constructive questions and concerns expressed at the previous hearing. He said the whole purpose of HB 92 is to help protect children and all the various faith communities. He told the committee that he thinks they will like the changes [in Version I]. He deferred to his staff to address those questions.

Number 2628

W.M. THOMAS MOFFATT, Rev., Staff to Representative Bob Lynn, Alaska State Legislature, began by noting that Chair Weyhrauch had expressed concern previously regarding abuse of elders. Father Thomas said, "I think, when we talked with your office, that's covered in another section of the bill under 'abuse of the vulnerable', where, parenthetically, 15 categories of individuals who are required to report - number 10 of which is the clergy. Here, of course, in this bill, we're seeking to add clergy as [paragraph (9)]."

FATHER THOMAS referred to the concerns stated by Representatives Holm and Seaton with respect to the reporting of neglect as well as abuse. He explained that the language in Version I was changed so that the clergy would only be required to report abuse. He referred to page 2, beginning on line 10, which read:

a clergy member is not required to report a reasonable suspicion of harm to a child if the clergy member believes that the harm comes only from neglect.

FATHER THOMAS noted that because of a query by Representative Berkowitz during the previous hearings asking for the definition of a "recognized religious community", [the sponsor] had removed the word "recognized". He said Representative Gruenberg had brought up a question regarding the "look-back" provision in the original bill that would only apply to the clergy. Father Thomas said that provision was removed "to place the clergy on an even keel with the other eight categories required to report."

FATHER THOMAS reported that at "bishop" was added at the request of Representative Dahlstrom's office on [page 3, line 1] of Version I; "Christian Science practitioner" was added at the behest of a representative of the Christian Science Church; "pastor" was added in response to testimony from "the evangelical community"; and the phrase "or person in a similar leadership position" was added as a "catch-all." Father Thomas opined that the changes make HB 92 a much better bill.

REPRESENTATIVE GRUENBERG and REPRESENTATIVE BERKOWITZ commended Representative Lynn and Father Thomas for their efforts.

Number 2369

REPRESENTATIVE BERKOWITZ said he is a strong believer in the separation of church and state; one reason is that it protects churches from the state. Expressing concern that the definition

of "clergy" singles out a particular faith, he referred to the definition of penitential communication in Section 2 [page 2, lines 17-23], which read:

In this subsection, "penitential communication" means a communication intended to be in confidence, including a sacramental confession made to a clergy member, who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline, tenets, customs, or practices of the church, denomination, or organization, has a duty to keep those communications secret.

REPRESENTATIVE BERKOWITZ said [the definition] in some ways makes those disciplines, tenets, and customs elements of proof at a trial and thus puts a judge or a jury in a position of determining whether these are disciplines, tenets, or customs, which seems to cross the barrier between church and state. He explained that he is just looking for a preferable way of defining what "penitential communication" means, because one other problem he has with [Section 2, text stated previously] is that it doesn't describe whom [the communication] is between. It could be between people who are repeating hearsay and gossip, for example.

REPRESENTATIVE BERKOWITZ therefore suggested adding "between clergy member" after the word confidence [on line 18], followed perhaps by "and a penitent". He said he doesn't think it needs to be any broader, and that "getting into" [the subject of lines 19-23] is incredibly problematic.

Number 2210

REPRESENTATIVE GRUENBERG referred to part of [Section 1, paragraph (9), page 2, lines 9-12], which read:

(9) clergy members, except as provided in AS 47.17.021 and except that, notwithstanding other provisions of this section or this chapter, a clergy member is not required to report a reasonable suspicion of harm to a child if the clergy member believes that the harm comes only from neglect.

REPRESENTATIVE GRUENBERG suggested that rather than "discipline, tenets, customs, or practices", the focus could be on whether

the clergy member believed he/she had a duty to keep the communication secret. Furthermore, regarding line 12, he asked whether that belief should be subjective or objective. He explained, "When you say 'if somebody believes,' that's ... subjective whether this person actually believed." He defined "objective" as whether it was a reasonable belief - "whether the person reasonably believed ... they had a duty to keep the communications secret, on the one hand, and on the other, reasonably believed that the harm came only from neglect."

Number 2155

REPRESENTATIVE GRUENBERG said he thinks the word "penitent" comes from the word "repent." He added, "I don't know you want to leave it to only people who are repenting." He said he thinks the priest-penitent privilege is the broadest evidentiary privilege in the law. He related his belief that clergy should be absolutely protected in their ability to communicate with anyone who comes to them in a confidential manner, not just with members of their congregation.

Number 2095

REPRESENTATIVE SEATON referred to Rule 506 of the [Rules of Evidence, handed out by Representative Gruenberg during the previous hearing on HB 92]. He said he supports the intent of the bill, but asked if [the issues being discussed by the committee] would modify the [Rules of Evidence].

CHAIR WEYHRAUCH said no. In response to a follow-up question, he said, "There's absolutely no modification of a court rule or evidence rule in this. It may have influenced its application or interpretation or provide nuance, but ... specifically to this bill, there's no court or evidentiary rule amendment."

Number 1999

REPRESENTATIVE BERKOWITZ asked, "The same men that added a subsequent trial - the penitent or the individual - could assert the privilege in evidentiary fashion, which would preclude admission of a confession?"

REPRESENTATIVE GRUENBERG observed that Chip Wagoner was shaking his head and appeared to want to say something.

REPRESENTATIVE LYNN noted that Bob Flint, an attorney, was also available for comment.

Number 1945

CHIP WAGONER, Lobbyist for the Alaska Catholic Conference, said that conference is the entity that the Roman Catholic bishops of Alaska use to speak on public policy matters. He noted that the exception to the evidentiary rules is very limited in that it only applies to the proceedings and actions that are before the court.

MR. WAGONER mentioned an Alaska case in which a man who was a clergy member, pastor, and psychologist counseled a member of his congregation; during that session, the member brought up the fact that he'd sexually abused a child, and the clergyman reported it. The case went to court, and the court held that the [exception in the evidentiary rules] didn't apply because there was no case, action, or proceeding at the time of the reporting. Therefore, Mr. Wagoner said he didn't think the [Rules of Evidence] exception would "apply to this issue of reporting, at this time."

Number 1814

REPRESENTATIVE SEATON responded, "I appreciate this. I just wanted to make sure that it was brought out and that we figured out whether we had a problem before we forward this."

Number 1803

REPRESENTATIVE GRUENBERG said he thinks the relevance of Mr. Wagoner's testimony to Representative Seaton's question is that the [evidentiary rule] only applies to a person who is testifying in court. He asked, "Am I right?"

MR. WAGONER replied that the issue is that the [evidentiary rule] did not apply in the aforementioned case because there was no action preceding the case at the time of the reporting. He said he was absolutely sure that this is what that case said.

REPRESENTATIVE BERKOWITZ suggested the issue might be discussed in the House Judiciary Standing Committee.

CHAIR WEYHRAUCH said the current committee must decide if it believes it's in the state's interest to have information of child abuse reported that was obtained in a "religious forum."

Number 1625

REPRESENTATIVE GRUENBERG asked, "If a person gets a communication and then reports it, does that basically waive the privilege, in some manner, in a subsequent court proceeding?"

MR. WAGONER said yes, according to the way he'd read the aforementioned case.

REPRESENTATIVE SEATON said he wanted to flag [this issue] for the House Judiciary Standing Committee. He added that he is "happy enough with where the bill is."

Number 1531

MR. BLOCK referred to Representative Berkowitz's previous comment about the definition of "clergy member" and including reference to a specific religion; Mr. Block surmised that Representative Berkowitz was referring to the Christian Science practitioner. Mr. Block explained that any reference to that was removed in the first proposed CS. He mentioned a past discussion with Father Thomas and a request for the language - he said he thinks it was "religious practitioner" - to be put back in. He said he thinks the concern was that the language wasn't clearly defined. At the time of that discussion, Mr. Block said, [Father Thomas] asked if using the term "Christian Science practitioner" wouldn't be more specific and more acceptable. Mr. Block said he agreed with Father Thomas at that time, which is "how that term got in there."

MR. BLOCK noted that the term "religious healing practitioner" is currently used in statute and is "somewhat more generic, but also sufficiently specific." He said, "We would accept that language, as well, if that would tend to make it less denominational, but preserve the intent of both our concerns and the objectives of the bill."

Number 1410

MR. BLOCK referred to discussion regarding the definition of "penitential communication" as being between the penitent and the clergy. Noting that he isn't sure what that means without a definition of who the penitent is, Mr. Block pointed out that somebody coming to a religious healing practitioner could be the alleged perpetrator seeking healing and how to change his/her own course of action; however, it could be the victim seeking healing of the impact that such an event had. He added, "That communication, as well, under the tenets and bylaws of our

church, [is] required to be kept confidential. And, certainly, we would want to see those communications protected as well." Mr. Block said [the Christian Science Committee on Publication for Alaska] thinks the current language in subsection (a) is appropriate and sufficiently specific, and that it is appropriate to move forward with the bill.

CHAIR WEYHRAUCH said, "I'm not sure he had your intent down, Representative Berkowitz. I didn't pick that up from your line of questioning."

Number 1298

JOANNE GIBBENS, Program Administrator, Division of Family & Youth Services (DFYS), Department of Health & Social Services, said she wanted to share some information regarding to the issue of neglect as it pertains to mandatory reporting. She reminded the committee that all "current mandated reporters" are required to report if they have reasonable cause to suspect that a child has suffered harm as a result of neglect. She suggested it is important to look at the issue of neglect as it pertains to the actual child-in-need-of-aid (CINA) statutes in AS 47.10, which govern legal issues regarding the department's taking custody of a child; that happens when the court determines a child could be a child in need of aid. Citing AS 47.10.014 and AS 47.10.019, she told members:

Receiving a call reporting neglect does not automatically mean that a social worker comes to the door and takes custody of a child. Very often, by receiving a call concerning neglect, the division is able to assess the situation and provide help that the family may not have been able to receive, had we not been called. Often, we are able to arrange for assistance to families with things like protective daycare, which they would not have access to without our intervention.

In other situations, a call concerning neglect may uncover more serious issues in the home, for example, substance or physical abuse. Responding to concerns of neglect often helps us to assist families before situations get worse. Sometimes the stresses in families can escalate to situations where children are more severely abused. And responding before those things happen may protect children and help families.

I guess the point I'm making here is that just because a family is poor is not reason, in and of itself, to call DFYS for a concern of neglect. I would also like to add that should members of the clergy become mandated reporters, the division would work with the clergy on providing education and training being a mandated reporter, like we do for others.

Number 1042

REPRESENTATIVE GRUENBERG recalled that a number of years ago the legislature amended perhaps AS 47.17 to include emotional harm [as an abuse] that must be reported. He asked where the citation of statute is that says what people must report.

MS. GIBBENS responded that AS 47.17.020 lists persons required to report, and AS 47.17.290 gives the definition.

REPRESENTATIVE GRUENBERG referred to the definition of child abuse or neglect in AS 47.17.290. He said, "My recollection is, it was required under federal law. And that's already in the law, and I think that whether or not we add neglect in this bill, that's what you have to report under current law, right?"

MS. GIBBENS answered yes. She added that she is not certain that the way the current version of the bill is written would, potentially, alter that.

REPRESENTATIVE GRUENBERG said he thinks this law should be absolutely congruent with the rest of the law. Otherwise, federal funding might be jeopardized, for example.

MS. GIBBENS said she wasn't sure it would jeopardize federal funding.

REPRESENTATIVE GRUENBERG recalled that the legislature specifically had to put that language in to comply with federal law. He said he doesn't want to violate federal law.

Number 0794

REPRESENTATIVE SEATON said his sole concern regarding the bill is that the committee may be putting the clergy "in a spot" of reporting something that may [result] in violating statute and being guilty of a misdemeanor for every case when they have a suspicion that there may be neglect.

Number 0580

REPRESENTATIVE BERKOWITZ suggested that the previously stated intent of DFYS to help members of the clergy should be reflected in a positive fiscal note.

[Ms. Gibbens nodded in agreement.]

Number 0524

REPRESENTATIVE BERKOWITZ noted that [HB 92] has a subsequent referral to the House Health, Education and Social Services Standing Committee. He opined that it would be more appropriate that it go to the House Judiciary Standing Committee.

REPRESENTATIVE LYNN concurred.

Number 0512

REPRESENTATIVE GRUENBERG said he supports Representative Seaton's previous remarks. He pointed out that [Ms. Gibbens'] initial discussion of the definition of neglect came from a different part of Title 47. He explained that this doesn't deal with [AS] 47.10, but [AS] 47.17. "And the definitions you were using do not apply," he said, offering his belief that the definitions in AS 47.17 apply to this bill, and that there is a definition of what has to be reported already in [AS] 47.17, which he'd just read. He sought a legal opinion on whether using a definition that excludes neglect might possibly not be in compliance with federal law.

MS. GIBBENS deferred to Mr. Brinkman, who she said hears the civil DFYS cases.

Number 0339

BRADLEY BRINKMAN, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law, told the committee he is one of two attorneys who does the day-to-day CINA cases for Southeast Alaska. Referring to Representative Gruenberg's question, he said he didn't know. Mentioning the mandates required by the domestic violence laws that went into effect in the last five years and the monies that have flowed through the state with regard to that, he suggested Ms. Gibbens might know that.

MR. BRINKMAN highlighted that AS 47.17 mirrors many of the requirements in AS 47.10. The mandatory reporting laws are made to address neglect and abuse that a child may suffer and to stop that abuse before it becomes severe or before removal from the home is necessary. He said abuse and neglect have always been consistent throughout both sides of the statute, and to carve out an exception in one-half of the statute, for one out of nine categories [of reporters], may lead to confusion later. For example, those in the other eight categories may say they only want to report neglect or only want to report abuse.

MR. BRINKMAN said he understands Representative Seaton's concern regarding interference with the relationship between a pastor or priest and his congregation, but the bottom line is this: the end result of neglect is the same for the child as it is with sexual abuse. He said a parent, because of an addiction like gambling, for example, may be neglecting a child by not providing that child with food, which could result in malnutrition or starvation, or [not providing the home with] fuel oil, which might result in pneumonia. He said, "We think that that should apply equally in the mandatory reporting requirements, just as abuse, because the ultimate result - the harm to the child - would be ... the same."

TAPE 03-28, SIDE A

Number 0001

REPRESENTATIVE SEATON said all the other [categories currently required to report] are required to "have some kind of a state license," but clergy are not. He said he thinks "we" are expanding the state's reach too far into the matter of the clergy by requiring that clergy members, who are not licensed by the state, report anyone to the police who they suspect fails to provide necessary food, care, clothing, shelter, or medical attention for a child.

Number 0172

CHAIR WEYHRAUCH noted that both the original bill and the proposed CS [Version I] have received broad ecclesiastical support. He said he thinks clergy would be the ones to bring forward concern or opposition, and he has heard none.

REPRESENTATIVE SEATON noted that there had been response from clergy which indicated they had looked at the bill from the aspect of child abuse, not from the aspect of neglect.

Number 0289

REPRESENTATIVE LYNN said he supports the language of Version I. He said [Representative Seaton's concerns] may be included in future legislation, but are "beyond the scope of what we're trying to do here."

REPRESENTATIVE SEATON explained that the idea behind his concern came from a witness's testimony during a previous hearing that, in part, neglect is based on a community standard. Representative Seaton said his reading of the law showed that is not the case, however; every clergy [member], whether in a rural or urban area, would be required to report. The reporting is in state statute; it is not a community standard. He reiterated that this is his problem with the bill "if it goes back the other way."

Number 0443

CHAIR WEYHRAUCH, referring to the neglect issue, community standard, and a previous statement by Representative Berkowitz, said the definition is this: "You know it when you see it, and you don't know it until a jury defines what negligence and neglect was." A jury of peers defines the community standard [as it relates to neglect], he suggested.

REPRESENTATIVE SEATON responded that the bill doesn't ask the clergy to define a community standard, but asks them to report, based on a statute.

CHAIR WEYHRAUCH remarked, "Except from the law, except for neglect. I understand that."

Number 0515

REPRESENTATIVE HOLM noted that the committee is making policy for the whole state, not for Anchorage or Fairbanks, but for many [rural] places that will have a different idea of how to parent. He suggested that perhaps what the committee is addressing is the tolerance of society for aberrant behavior or for what is called "antisocial" behavior - behavior that does not meet the norms. He said he has a problem with clergy's having to subscribe to the confines of the state's definition of what neglect is. He said it is a difficult situation. He said "none of us sitting here" wants children to be neglected. He related that his wife, as a teacher, sees many children with different ranges of parental care. He opined that it would be a

good thing if people had to pass a test to become parents, although he admitted society can't do that. He said [the committee] obviously has to consider policy for the whole state that allows some flexibility.

REPRESENTATIVE HOLM told the committee that he grew up on a homestead with nothing. He said people today in Anchorage or Fairbanks could say that his parents abused him because he didn't have a lot of things. He said he was not abused; he didn't know any better. He said there are no definitive terms for what neglect really is and that he doesn't want to make crooks out of the clergy.

Number 0727

MR. BRINKMAN, regarding the other eight categories [required to report abuse], noted that paid employees of crisis intervention programs, for example, do not have licenses. Furthermore, he noted that although childcare providers do have licenses, they probably have a lot less training than clergy members have.

MR. BRINKMAN explained, "All this simply does is say, ... when you have a ... reasonable suspicion that this child may not be getting fed, may not be getting medical care, ... may be suffering from pneumonia because the parents used the monies to go out to play bingo, to drink, or whatever, you report." He said DFYS then looks at the report, but may do nothing because it might not agree with the standard of the person reporting. He said, "This just gets an early intervention, an early look the majority of the time, without removing the children from the home." In fact, he stated, [the reporting] sometimes helps in putting in services such as fuel oil assistance or food stamps.

MR. BRINKMAN said, "So, from the division's standpoint and the department's standpoint, neglect can end up in as serious a situation as sexual abuse." He added, "And if we are attempting to provide for the safety of the child, we are simply asking that the same statutory matters apply to the clergy as to the other eight ... categories."

Number 0930

REPRESENTATIVE HOLM suggested to Mr. Brinkman "It's different than saying you're 'simply' just reporting. You're simply having a misdemeanor if you don't report." He said he thinks the situation is different; that, in essence, is where his problem [with the issue] lies.

MR. BRINKMAN concurred. He said, "We have put that, as a society, on school aides, daycare providers, policemen, domestic violence folks, nurses." He agreed that it is a policy call.

REPRESENTATIVE HOLM opined that all who work those [jobs Mr. Brinkman listed] are paid to do what they do.

MR. BRINKMAN responded that some aren't paid, but work voluntarily.

REPRESENTATIVE HOLM replied, "Most are." He said he and Mr. Brinkman could "go round and round with this" without changing each other's minds, and stated his appreciation.

MR. BRINKMAN asked that the committee consider the department's position with regard to this matter.

CHAIR WEYHRAUCH said the questions being asked are an indication of the committee's concern for [the issue].

Number 1017

REPRESENTATIVE GRUENBERG stated, "I don't believe, in this area of the law, it's a community standard. I think it's a statewide standard." He suggested that these issues generally arise in CINA cases and are something the judge interprets as a statutory standard.

MR. BRINKMAN responded that there is some community standard put into place. He explained, "Neglect may be different in a village with the ability to get medical care from a physician to address a problem, as opposed to a health aide."

REPRESENTATIVE GRUENBERG said, "But it's not like the statute for medical malpractice or something like that."

MR. BRINKMAN said no.

REPRESENTATIVE GRUENBERG said he sees potential for at least four amendments.

CHAIR WEYHRAUCH stated his intention to ask for the next committee of referral to be switched from the House Health, Education and Social Services Standing Committee to the House Judiciary Standing Committee so that the latter can address the legal issues.

Number 1156

REPRESENTATIVE GRUENBERG offered Amendment 1: On page 3, line 2 [of Version I], between "rabbi" and "practitioner", delete "Christian Science" and add "religious healing".

REPRESENTATIVE LYNN said he would have no problem with that.

CHAIR WEYHRAUCH announced that there being no objection, Amendment 1 was adopted.

Number 1285

REPRESENTATIVE GRUENBERG offered Conceptual Amendment 2, as follows: On page 2, line 18, in between "intended" and "to", add "by the penitent" or whatever the correct term would be.

REPRESENTATIVE GRUENBERG explained that he wanted to clarify that ["communication intended to be in confidence"] does not mean that the clergy "intended". In response to a request for further clarification, he mentioned the evidentiary rule and said the privilege belongs to the penitent, not to the clergy.

Number 1330

REPRESENTATIVE LYNN asked Mr. Wagoner to address the proposed amendment.

MR. WAGONER said that without doing research, he doesn't think the privilege in the Rules of Evidence applies to the penitent. He added, "I think that may also apply to the clergy member, also."

REPRESENTATIVE GRUENBERG said the commentary, subsection (c), "Who May Claim the Privilege" from the [Rules of Evidence] makes clear that the privilege belongs to the communicating person. He suggested that "communicating person" could be used, rather than "penitent". He continued:

However, a prima facie authority on the part of the clergyman to claim the privilege on behalf of the person is recognized. The discipline of the particular church and the discreetness of the clergyman are believed to constitute sufficient safeguards for the absent communicating person.

REPRESENTATIVE GRUENBERG said he wants it clear that "we" are tracking the evidence rule in this respect. He said he would change the amendment from "penitent" to "communicating person".

Number 1458

MR. BLOCK said if any changes are to be made, the one suggested by Representative Gruenberg is the right one because "by the communicating person" could include both the victim and the wrongdoer. He said it is important for both to be encouraged to communicate with the clergy.

CHAIR WEYHRAUCH clarified that Conceptual Amendment 2, page 2, lines 17-18, would read: "a communication intended by the communicating person to be in confidence".

REPRESENTATIVE LYNN said he had no objection.

Number 1512

REPRESENTATIVE BERKOWITZ suggested the following:

Just to be clear on this, then it would seem to me, ... "a communication by a communicating person to be held in confidence to a clergy member". And then I think you can have a period after "the clergy member", and the subsequent portion of that paragraph is not necessary.

MR. WAGONER stated the preference of keeping the additional clause in the language because "sacramental confession" is extremely important to [the Roman Catholic] Church.

REPRESENTATIVE BERKOWITZ told Mr. Wagoner that "sacramental confession" may have a particular application for [the Roman Catholic] Church, but he doesn't think it's the state's business to determine what a sacramental confession is. He opined that it is particularly critical, from the church's perspective, to determine on its own what a sacramental confession is.

MR. WAGONER responded:

As long as the intent of this committee in deleting that language is that the church's sacramental confession is an exception to the reporting, because if you take the language out and you don't say anything about that, then the court could look into

the legislative history, and would say, "Oh, they took it out." That's my concern.

Number 1612

REPRESENTATIVE BERKOWITZ said he thinks the evidence would support his understanding that a sacramental confession the Catholic Church is intended to be held in confidence. In response to a question from Mr. Wagoner, he added, "Even without this language." He continued as follows:

But I just don't think that the church ever wants to be in the position of going into a court and trying to prove that, a) it is a sacramental confession, and b) that it should be held in confidence. That's not something, from the church's perspective, I think you'd ever want to have happen.

MR. WAGONER commented that he doesn't think his church would ever have a problem if it had to go to court and define what its sacramental confession is.

Number 1649

REPRESENTATIVE GRUENBERG restated Conceptual Amendment 2, page 2, beginning on line 17, as follows:

In this subsection, "penitential communication" means a communication to a member of the clergy intended by the communicating person to be in confidence to the clergy member.

He added, "And we strike the remainder of that paragraph."

Number 1826

MR. BLOCK said, since the definition of "clergy" has been expanded, it would cover most situations; however, the value of including the language [on page 2, lines 19-23] does add scope for those clergy who are part of a religious denomination where a penitential communication or sacramental confession isn't part of its rites. He indicated the language makes it clear that even though some churches don't have those rites, they are still protected. In response to a question from Representative Gruenberg, he clarified that the aforementioned amendment to the language [on lines 17-18] defines "penitential communication" in a limited way, which technically is probably adequate; however,

he did appreciate the inclusion of the language [on lines 19-23] "because it does then, specifically, include in its scope, our situation."

Number 1952

REPRESENTATIVE GRUENBERG noted that in Title 1 of the general statutes the word "including" is defined to mean "including but not limited to"; therefore, he concurred with Mr. Block.

CHAIR WEYHRAUCH suggested the language, per Mr. Block's and Representative Gruenberg's discussion, should be as follows [on page 2, lines 17-23]:

In this subsection, "penitential communication" means a communication to a member of the clergy intended by the communicating person to be in confidence to the clergy member who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline, tenets, customs, or practices of the church, denomination, or organization, has a duty to keep those communications secret.

REPRESENTATIVE BERKOWITZ [and an unidentified committee member] objected. He said the language needs to be broader and explained:

When we put the ... disciplines, tenets, customs, or practices of any church denomination or organization before a trier of fact, that's an encroachment on freedom of religion, and I am loath to go there. I think the salient feature of what we're trying to do in this bill is require reporting. We're not putting the religion itself on trial. It's a different thing to put the belief of the clergy member and the belief of the communicating individual on trial about the confidence. But when you put the tenets, customs, and principles in front of a jury, that's something altogether different, and I think we ought not go there.

REPRESENTATIVE GRUENBERG said, "I don't want to limit it to those people; I want to say they are included along with other people, as well." He offered his estimation that the foregoing is the committee's intent here.

REPRESENTATIVE GRUENBERG suggested a possible conceptual amendment on line 21: "and including communication to clergy people who, under the discipline, et cetera, have a duty to keep the communication secret." He added, "So, it would be including language that'd be exemplary, but it wouldn't be limited to those people." He asked how that would be.

Number 2085

REPRESENTATIVE BERKOWITZ responded:

You're adding elements of proof here, in the "including" section. And this might be tedious for people who are paying attention who don't actually have to prove things in court, but I think it's a very critical distinction. You're changing the focus ... of what we're trying to do here. The focus should be very narrow. We are trying to focus on penitential communication being the ... communication that's held in confidence.

When we bring in the tenets and principles and customs and practices of a religious entity, that's something separate. And I don't think that those customs and practices should ever, ever come before a court or a trier of fact.

Number 2134

CHAIR WEYHRAUCH reiterated that the people testifying as representatives of churches haven't said they have a problem with the language. Regarding the broader context and separation of church and state, he noted that the committee is currently dealing with "church" in the bill, so it can't be ignored. He said he appreciates [Representative Berkowitz's] concern, but suggested the issue may be one for the House Judiciary Standing Committee to address.

CHAIR WEYHRAUCH announced that he would like to act on Representative Gruenberg's specific amendment, "leaving that language in there," to accommodate the concerns expressed by Mr. Wagoner and Mr. Block. With regard to the philosophical notion of the discipline, tenet, custom, and practice, he suggested that needs to be worked on.

REPRESENTATIVE GRUENBERG said he would commit to work on this in the House Judiciary Standing Committee with the sponsor and Representative Berkowitz.

CHAIR WEYHRAUCH asked whether there was any objection to [Conceptual Amendment 2, as amended], as previously read. He clarified that it would be: "for communication to a member of the clergy intended by the communicating person to be in confidence to the clergy member".

REPRESENTATIVE LYNN added, "Comma, 'including'."

CHAIR WEYHRAUCH said the [other] language would stay the same.

[No objection was stated, and Conceptual Amendment 2, as amended, was treated as adopted.]

Number 2120

REPRESENTATIVE BERKOWITZ moved to report CSHB 92, Version 23-LS0257\I, Lauterbach, 3/12/03, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 92(STA) was reported from the House State Affairs Standing Committee.

ADJOURNMENT

Number 2158

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:13 a.m.