

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2004

8:04 a.m.

TAPE(S) 04-23, 24

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Hollis French

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 348(JUD)

"An Act relating to the rights of certain victims of crime to receive information about the office of victims' rights and the Violent Crimes Compensation Board."

MOVED CSHB 348(JUD) OUT OF COMMITTEE AND ADOPTED HOUSE JUDICIARY LETTER OF INTENT

CS FOR HOUSE BILL NO. 349(JUD) am

"An Act amending Rule 412, Alaska Rules of Evidence."

HEARD AND HELD

CS FOR HOUSE BILL NO. 357(JUD)

"An Act relating to restitution; and providing for an effective date."

MOVED SCS CSHB 357(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 397(JUD)

"An Act relating to defense contacts with and recordings of statements of victims and witnesses of sexual offenses."

MOVED SCS CSHB 397(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 398(JUD) am

"An Act relating to domestic violence fatality review teams."

MOVED SCS CSHB 398(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 348

SHORT TITLE: NOTICE TO CRIME VICTIMS

SPONSOR(s): REPRESENTATIVE(s) STOLTZE, DAHLSTROM, SAMUELS,  
MCGUIRE

01/12/04 (H) PREFILE RELEASED 1/2/04  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) JUD  
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120  
01/26/04 (H) Heard & Held  
01/26/04 (H) MINUTE(JUD)  
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/04 (H) Moved CSHB 348(JUD) Out of Committee  
01/30/04 (H) MINUTE(JUD)  
02/12/04 (H) JUD RPT CS(JUD) NT 5DP  
02/12/04 (H) DP: GARA, SAMUELS, ANDERSON,  
02/12/04 (H) GRUENBERG, MCGUIRE  
02/12/04 (H) LETTER OF INTENT WITH JUD REPORT  
02/23/04 (H) TRANSMITTED TO (S)  
02/23/04 (H) VERSION: CSHB 348(JUD)  
02/25/04 (S) READ THE FIRST TIME - REFERRALS  
02/25/04 (S) JUD  
03/15/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/15/04 (S) -- Meeting Canceled --  
03/22/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 349

SHORT TITLE: ILLEGALLY OBTAINED EVIDENCE/EVID RULE 412

SPONSOR(s): REPRESENTATIVE(s) SAMUELS, MCGUIRE, STOLTZE,  
DAHLSTROM

01/12/04 (H) PREFILE RELEASED 1/2/04  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) JUD  
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120  
01/26/04 (H) Heard & Held  
01/26/04 (H) MINUTE(JUD)  
02/02/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/02/04 (H) Scheduled But Not Heard  
02/04/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/04 (H) -- Meeting Canceled --  
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/09/04 (H) Moved CSHB 349(JUD) Out of Committee  
02/09/04 (H) MINUTE(JUD)  
02/18/04 (H) JUD RPT CS(JUD) 3DP 1NR  
02/18/04 (H) DP: SAMUELS, HOLM, MCGUIRE; NR: GARA  
03/03/04 (H) TRANSMITTED TO (S)

03/03/04 (H) VERSION: CSHB 349(JUD) AM  
03/04/04 (S) READ THE FIRST TIME - REFERRALS  
03/04/04 (S) JUD  
03/15/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/15/04 (S) -- Meeting Canceled --  
03/22/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 357

SHORT TITLE: RESTITUTION

SPONSOR(s): REPRESENTATIVE(s) SAMUELS, STOLTZE, MCGUIRE,  
DAHLSTROM

01/12/04 (H) PREFILE RELEASED 1/2/04  
01/12/04 (H) READ THE FIRST TIME - REFERRALS  
01/12/04 (H) JUD  
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120  
01/26/04 (H) Heard & Held  
01/26/04 (H) MINUTE(JUD)  
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/04 (H) Moved CSHB 357(JUD) Out of Committee  
01/30/04 (H) MINUTE(JUD)  
02/04/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/04 (H) -- Meeting Canceled --  
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/09/04 (H) Moved New CSHB 357(JUD) Out of  
Committee  
02/09/04 (H) MINUTE(JUD)  
02/12/04 (H) JUD RPT CS(JUD) 3DP 1NR  
02/12/04 (H) DP: SAMUELS, GARA, MCGUIRE; NR: HOLM  
02/12/04 (H) FIN REFERRAL ADDED AFTER JUD  
02/24/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/24/04 (H) Moved CSHB 357(JUD) Out of Committee  
02/24/04 (H) MINUTE(FIN)  
02/26/04 (H) FIN RPT CS(JUD) 10DP  
02/26/04 (H) DP: MEYER, HAWKER, STOLTZE, JOULE,  
02/26/04 (H) CROFT, MOSES, FATE, FOSTER, HARRIS,  
02/26/04 (H) WILLIAMS  
03/01/04 (H) TRANSMITTED TO (S)  
03/01/04 (H) VERSION: CSHB 357(JUD)  
03/02/04 (S) READ THE FIRST TIME - REFERRALS  
03/02/04 (S) JUD, FIN  
03/15/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/15/04 (S) -- Meeting Canceled --  
03/22/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 397

SHORT TITLE: DEFENSE CONTACTS WITH VICTIMS & WITNESSES

SPONSOR(s): REPRESENTATIVE(s) MCGUIRE

01/23/04 (H) READ THE FIRST TIME - REFERRALS  
01/23/04 (H) JUD  
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120  
01/26/04 (H) Scheduled But Not Heard  
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/04 (H) Heard & Held  
01/30/04 (H) MINUTE(JUD)  
02/04/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/04 (H) -- Meeting Canceled --  
02/09/04 (H) JUD AT 1:00 PM CAPITOL 120  
02/09/04 (H) Moved CSHB 397(JUD) Out of Committee  
02/09/04 (H) MINUTE(JUD)  
02/12/04 (H) JUD RPT CS(JUD) NT 3DP 2NR  
02/12/04 (H) DP: SAMUELS, ANDERSON, MCGUIRE;  
02/12/04 (H) NR: HOLM, GARA  
02/23/04 (H) TRANSMITTED TO (S)  
02/23/04 (H) VERSION: CSHB 397(JUD)  
02/25/04 (S) READ THE FIRST TIME - REFERRALS  
02/25/04 (S) JUD  
03/05/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/05/04 (S) <Bill Hearing Postponed>  
03/15/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/15/04 (S) -- Meeting Canceled --  
03/22/04 (S) JUD AT 8:00 AM BUTROVICH 205

BILL: HB 398

SHORT TITLE: DOMESTIC VIOLENCE FATALITY REVIEW TEAM

SPONSOR(s): REPRESENTATIVE(s) DAHLSTROM

01/23/04 (H) READ THE FIRST TIME - REFERRALS  
01/23/04 (H) JUD  
01/26/04 (H) JUD AT 2:00 PM CAPITOL 120  
01/26/04 (H) Scheduled But Not Heard  
01/28/04 (H) JUD AT 1:00 PM CAPITOL 120  
01/28/04 (H) Heard & Held  
01/28/04 (H) MINUTE(JUD)  
01/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/04 (H) Moved CSHB 398(JUD) Out of Committee  
01/30/04 (H) MINUTE(JUD)  
02/12/04 (H) JUD RPT CS(JUD) 5DP  
02/12/04 (H) DP: GARA, SAMUELS, ANDERSON, GRUENBERG,  
02/12/04 (H) MCGUIRE  
02/23/04 (H) TRANSMITTED TO (S)  
02/23/04 (H) VERSION: CSHB 398(JUD) AM  
02/25/04 (S) READ THE FIRST TIME - REFERRALS

02/25/04 (S) JUD  
03/15/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/15/04 (S) -- Meeting Canceled --  
03/22/04 (S) JUD AT 8:00 AM BUTROVICH 205

**WITNESS REGISTER**

Ms. Kelly Huber  
Staff to Representative Stoltze  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented HB 348 for the sponsor

Mr. Steve Branchflower  
Office of Victims' Rights  
1007 West 3rd Avenue, Suite 205  
Anchorage, Alaska 99501-1936

**POSITION STATEMENT:** Supports HB 348

Lt. Al Storey  
Division of Alaska State Troopers  
Department of Public Safety  
3700 East Tudor Road  
Anchorage, Alaska 99507

**POSITION STATEMENT:** Supports HB 348

Representative Ralph Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 349

Mr. Bob Shavelson  
Homer, AK

**POSITION STATEMENT:** Concerned that HB 349 erodes Alaskans' civil liberties

Mr. Barbara Brink  
Office of Public Defender  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Opposed to HB 349, HB 357, and HB 397

Ms. Anne Carpeneti  
Assistant Attorney General  
Department of Law  
PO Box 110300

Juneau, AK 99811-0300

**POSITION STATEMENT:** Answered questions regarding the payment of restitution (HB 357)

Ms. Sara Nielsen  
Staff to Representative Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions about the payment of restitution (HB 357)

Ms. Vanessa Tondini  
Staff to Representative McGuire  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented HB 397 for the sponsor

Representative Nancy Dahlstrom  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Presented HB 398

#### **ACTION NARRATIVE**

#### **TAPE 04-23, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:04 a.m. Senators Ogan, French and Chair Seekins were present. The first order of business to come before the committee was HB 348.

#### **HB 348-NOTICE TO CRIME VICTIMS**

MS. KELLY HUBER, staff to Representative Bill Stoltze, sponsor of HB 348, told members that this legislation will require law enforcement officials and the prosecuting attorney to notify a victim, upon first contact, about the Office of Victim Rights' (OVR) ability to assist the victim with the legal process. HB 348 only applies to victims of felonies or class A misdemeanors that are domestic violence crimes against a person. The notification process is simple; it requires that the office name and contact information be provided, which could be on a business card or in a brochure. HB 348 is a straightforward bill that passed the House unanimously.

CHAIR SEEKINS questioned whether the victim would sign a receipt or statement proving that he or she was notified.

[SENATOR THERRIAULT arrived.]

MS. HUBER said the bill contains no enforcement provision but that this same process works well in similar situations. Law enforcement officials and the prosecuting attorney are already aware of the need to notify victims of the OVR. She added, "We're putting in a law to make sure that they know they need to do it but we believe that there's a good working relationship right now and it will be done."

CHAIR SEEKINS said he asked because, in the world of private business, when someone has a right to receive something, the business makes sure a receipt is on file. He wanted it on the record that the legislature is not expecting that an acknowledgement be kept in a permanent file.

SENATOR FRENCH maintained that it is easy to define when a police officer first contacts a victim, which is usually when an arrest takes place, but it is harder to define a prosecuting attorney's first contact. He asked Ms. Huber about the sponsor's intention and whether the other body discussed defining initial contact.

MS. HUBER replied:

...I think there was some of that thought given to it but that is why it's a simple contact information - you don't have to go into any great detail on the office or you can hand them a brochure. It can be as simple as that. We're not asking for them to explain the group or to define what they can do for a victim. It's just a quick passing of information and so...it can be as simple as handing this to them and that's it and I think that that's how they're trying to alleviate your concerns, it's just by the very basic information to be passed to the victim.

SENATOR FRENCH expressed concern that the prosecutor and victim often play phone tag; so exchanging information is not as simple as using e-mail or having face-to-face contact.

MS. HUBER agreed the bill could require person-to-person contact.

SENATOR FRENCH asked for time to give that some thought. He noted:

I think you guys are doing the right thing here. You're just trying to say look, early in the process you should give them that information but, from a prosecuting attorney's standpoint, I guess I have two concerns. One, I can see it actually falling off on a paralegal and two, frequently, the first time you have contact with a person, it may be something as simple as a note or a phone...."

MS. HUBER pointed out the language in the bill actually reads, "...and from the prosecuting attorney assigned to the defense." Therefore, it does not require that the notification be made at first contact.

CHAIR SEEKINS interjected that language elsewhere in the bill speaks to the requirement being satisfied if notification is given at first contact.

MS. HUBER indicated the law enforcement officer has probably already given notification.

SENATOR FRENCH asked if the requirement is either/or, regarding a law enforcement officer and prosecuting attorney.

CHAIR SEEKINS said it applies to both; therefore the language is redundant in that the requirement would be satisfied if the investigating officer and the prosecuting attorney each give the crime victim a brochure.

MS. HUBER indicated the notification can be given verbally. She felt the intent is to make sure the two people who are most prevalent in the case at the time notify the victim.

CHAIR SEEKINS suggested replacing "prosecuting attorney" with "prosecuting attorney's office" to address Senator French's concern.

SENATOR FRENCH indicated that the responsibility typically falls on the district attorney to provide notification but if a paralegal provides the notification, that's fine.

CHAIR SEEKINS said the intent is to make sure the victim is aware of the OVR. He then remarked, "I just worry there, in terms of construction, a little concerned, that we're saying they can do this orally but we're saying it's satisfied if they

receive two brochures. So, what else would it take to satisfy it?"

MS. HUBER responded that the bill also says "or written" and the written material could be on a business card if no brochure was available. She agreed the purpose of the legislation is to make sure the victim knows of the OVR so that the OVR can help the victim through the process. She added, "We're just trying to make sure that happens early on, and that's the key here is that sometimes they learn about it but they're too far into the process that it doesn't help them as much as it could have."

SENATOR FRENCH related:

Mr. Chairman, I think Ms. Huber is exactly right. This is basically trying to give them notification. There is no sort of remedy under the bill.... No one's going to get dinged for not doing it or they may get dinged in a personnel interview but you're not going to get called up in front of a judge and so I think the intent is clear behind the bill and it's probably written as clearly as you can write it given the vagaries of human conduct.

CHAIR SEEKINS took public testimony.

MR. STEVE BRANCHFLOWER, Director of the Office of Victims' Rights, stated support for HB 348 and said Ms. Huber outlined the bill well.

LT. AL STOREY, Alaska State Troopers, Department of Public Safety (DPS), told members that DPS supports the bill as written. DPS does not believe it will place an extra burden on officers as they already provide information on domestic violence and crimes compensation to victims that fall in those categories. If HB 348 is enacted, the new brochures will contain information about the Violent Crimes Compensation Act.

With no further participants, CHAIR SEEKINS closed public testimony.

SENATOR THERRIault moved HB 348 from committee with individual recommendations and its attached fiscal note.

CHAIR SEEKINS announced that without objection, the motion carried.

**CSHB 349(JUD)am-ILLEGALLY OBTAINED EVIDENCE/EVID RULE 412**

REPRESENTATIVE RALPH SAMUELS, sponsor of HB 349, told members that this measure will change Court Rule 412. He explained that in a recent case in Anchorage, a woman was found stabbed in the street. The police followed the trail of blood to a house, where they found a man who later confessed to the killing on tape but that statement was suppressed. When testifying, the killer "did a 180 on his story" and claimed self-defense. The prosecutor, judge, defense attorney, and court clerk knew the defendant changed his story but could do nothing. The jury did not know but convicted him on other evidence. HB 349 would do nothing to change what evidence is suppressed. However, if a defendant chooses to get on the witness stand and change his or her story substantially, the judge can rule that the evidence can come back in and the jury would decide which story it believes.

REPRESENTATIVE SAMUELS said HB 349 has some sideboards, "to make sure that we didn't get anything in court that we did not want. If the judge can rule that if it was coerced in any way, the evidence stays out in all circumstances, whether he changes his story or not." In addition, any non-voluntary evidence or a statement that should have been recorded but was not would stay out. HB 349 is his attempt to adopt the federal standard and the standard used in 30 other states. He noted that only 3 states use the same standard as Alaska. He read the following statement issued by the U.S. Supreme Court:

The shield provided by Miranda cannot be perverted into a license to use perjury by a way of defense free from the risk of confrontation with prior inconsistent utterances.

He said in reality, HB 349 will not affect very many people but it is very important for those it does affect. He noted he heard from the jury foreman in the Wallner case when he read the press release on HB 349. The jury foreman said the entire jury was furious when they found out that everyone else in the courtroom knew Mr. Wallner had confessed to the murder. He asked members to put themselves in the shoes of a victim of a crime that knew a person had confessed but changed his story and knew the jury could not be told of the confession. He said HB 349 adopts a more moderate, balanced standard.

SENATOR THERRIAULT asked why the confession was suppressed in the Wallner case.

REPRESENTATIVE SAMUELS thought it was because Mr. Wallner told the police he might need a lawyer when they arrived but he did not insist. However, once he mentioned a lawyer, the police probably should have waited until he got one.

SENATOR THERRIAULT asked if Mr. Wallner could have been charged with perjury after the trial.

REPRESENTATIVE SAMUELS said the evidence could be brought in for a perjury trial. He noted that Mr. Wallner's sentence [for murder] was 80 years; the maximum sentence for perjury is 6 years.

SENATOR FRENCH asked Representative Samuels to speak to the second portion of the bill, which addresses other evidence illegally obtained.

REPRESENTATIVE SAMUELS replied:

...the example would be in the Wallner case, had the knife not been stuck in her, had it been stuck somewhere else and Mr. Wallner had said yea, I left the knife in the woodpile or on the kitchen table or wherever he hid the knife, through the poisonous tree, once a statement is out anything that you found because of the statement is out and this would say if you change your story, if the statement's back in, then the knife is back in. The evidence is also back in. So you unpoison the tree - for the purposes of the impeachment only.

SENATOR FRENCH asked if that would go beyond the Miranda doctrine into Fourth Amendment issues so that evidence taken in violation of the Fourth Amendment could be used to impeach.

REPRESENTATIVE SAMUELS replied, "The way we've got it set up right now...only the statement to impeach what he said on the stand, any evidence, I mean if he changes his story, what's going to be allowed in is going to be very narrow to impeach what he said to change his story."

SENATOR FRENCH asked if that pertains to the defendant only or to any witness.

REPRESENTATIVE SAMUELS answered, "Just the defendant...co-defendant and former defendant." He said in a drug trial with four defendants, if one defendant gave a statement, you would

not want one person to get off or to get the whole group off. He said, in other words, if he made a statement and his evidence was thrown out, he could not get up and change his story in court, which could taint the jury on all four defendants.

SENATOR FRENCH asked, "So I'm wondering if the gun is seized in violation of the Fourth Amendment and a lying buddy gets on the stand and says that gun wasn't there that night, that gun was in my truck, he's not a defendant, he's just a lying buddy, an alibi witness - whether this bill covers that situation?"

REPRESENTATIVE SAMUELS deferred to Mr. Branchflower.

MR. STEVE BRANCHFLOWER, Director of the Office of Victims' Rights, said this bill could not be used to impeach the lying buddy because the bill only focuses on the defendant, the co-defendant or former defendant.

CHAIR SEEKINS assumed that would carry across if a police officer committed perjury as well.

MR. BRANCHFLOWER said that is correct.

8:30 a.m.

CHAIR SEEKINS took public testimony.

MR. BOB SHAVELSON, a resident of Homer, said he is concerned that HB 349 will erode Alaskans' civil liberties. Although he believes that protecting victims' rights is a laudable goal, he is concerned that emotion is driving policy. He pointed out the case referred to was a very damning indictment of the individual involved. He asked the committee to think carefully about intruding further on Alaskans' personal liberties.

MR. BRANCHFLOWER stated support for HB 349 and said it will not change Alaska laws regarding confessions or Miranda requirements. Those laws are constitutionally based and derived from the U.S. Supreme Court. HB 349 will apply narrowly to circumstances where the defendant has given a statement that is later suppressed by a judge, where the statement was supported and otherwise voluntary, [and under several other circumstances that were inaudible due to poor transmission].

SENATOR FRENCH asked Mr. Branchflower to imagine a case where a defendant's confession to police was suppressed simply because of a Miranda violation, and questioned whether it would be

possible for that person to testify at all without being impeached.

MR. BRANCHFLOWER said yes, because what triggers application of HB 349 is whether the testimony was contrary and inconsistent to the suppressed statement. It would not apply if a person testified consistently because the purpose of the bill is to impeach.

SENATOR FRENCH queried, "And what if the defendant simply avoided that area of questioning? Can you see a situation where he's more or less, on cross-examination, sort of drawn into that area or otherwise sort of somehow - I don't want to say trapped, but somehow baited or somehow forced to focus on the areas in question. Do you think there'd be a prior ruling maybe from the judge that that area would be precluded or what do you think?"

MR. BRANCHFLOWER said he would expect, if there is a question along those lines, the defense attorney to take it up outside the presence of the jury and seek guidance from the court in terms of the parameter of the anticipated cross-examination. He suspects the defense would make it clear that he does not plan to go into the prohibited areas. Under Alaska court rules, the scope of cross-examination must be limited to the scope of direct [examination]. He felt most prosecutors would not want to venture the risk of a reversal but the judge would ultimately make the decision in light of the facts presented.

CHAIR SEEKINS asked what constitutes a statement.

MR. BRANCHFLOWER explained a statement would be an utterance from a defendant and, in the great majority of cases, it is the oral statement made to police. Although rare, a statement could be a written account that could be suppressed.

CHAIR SEEKINS asked about the Alaska State Troopers' policy regarding recording contacts with individuals.

LT. AL STOREY, Alaska State Troopers, explained that if recorded capability exists, the Troopers record the interview. He pointed out that complies with case law. The person simply needs to know that they are speaking to police officers; they do not need to know the interview is being recorded or that the recording is admissible. Most troopers carry a tape recorder with them to record conversations with suspects.

CHAIR SEEKINS asked Mr. Branchflower if the tape recording of a suspect who was not advised of his Miranda rights could be used to impeach a later statement made under oath.

MR. BRANCHFLOWER replied:

It could be if the court determines before the fact that the statement was 'unlawfully seized' or illegally seized. Circumstances that dictate when a statement has to be recorded [are] established by our cases here in Alaska. Essentially our Supreme Court said that police must record a statement in its entirety from beginning to end, including the reading of the Miranda rights and the waiver. If the interview takes place under two circumstances - one, if the defendant is in custody or the suspect is in custody, and two, if that interview takes place at what is called a place of detention. Typically that means a police station. It can mean a police car. So those are the requirements and if a statement is taken in violation of those two requirements, the defense attorney may ask if the court may suppress the statement. And if the defendant takes the stand, why the application of the bill will come into play.

CHAIR SEEKINS responded:

I'm wondering if, by the use of electronic recording - a statement is an utterance, it's done at the scene of the crime, it's not done while the person is in detention of any sort, and their utterance, you know yea, I did it, whatever, is made on tape recording prior to the reading of any rights, and then if they take the stand and say they did not do it at a later date, then this pre-Miranda tape recording prior to detention then would be admissible if the judge allowed it in, if I'm correct, and could set up a whole new procedure for interviewing suspects, interview them prior to taking them into detention as much as possible to try to get a tape recorded statement, which could be later used to impeach. I'm just wondering if that wouldn't be an easier way for a law enforcement officer and for the state to be able to - I'm not saying that that would be necessarily - wouldn't be bad to get the guy off the street if he was a murderer but what are we doing in the area of rights?

MR. BRANCHFLOWER said the law regarding the taking of statements is well settled in Alaska. What Chair Seekins is referring to is a body of law that deals with "on-the-scene" questioning. Essentially, no requirement exists under Alaska, tribal or federal law to inform a person on the scene of his or her Miranda rights because the police are still trying to focus the investigation and determine who was responsible. However, once the police have a suspect in custody, the police are required to inform the suspect of his or her Miranda rights. If the Miranda rights are read at a place of detachment, the recording requirement applies. He repeated that it is police practice to go to a scene and have a tape recorder turned on to capture any admissions that might be made. Those recordings are routinely allowed into evidence.

SENATOR FRENCH affirmed that Mr. Branchflower's recount of how police investigations work is accurate.

CHAIR SEEKINS commented, "So, if I'm correct then, if a police officer walks up to someone and says what's going on here and somebody confesses, they're dead."

MR. BRANCHFLOWER explained that the definitions of a confession and an admission are well established. What Chair Seekins described would be an admission. That statement would be admissible. He noted that typically what happens is that the defense attorneys do not seek to suppress those statements. If the defendant says he did it, the defendant will be arrested within a short time and taken to the police station, where the interview will take place. That is where most of the benefits of HB 349 will come into play if a defendant later disputes on the stand what was said on the tape recording.

REPRESENTATIVE SAMUELS pointed out that less than 2 percent of cases actually go to trial. Of those, HB 349 would only take effect where a Miranda violation occurred and the defendant took the stand at trial and changed his or her story. HB 349 will not make a sweeping change to the system.

SENATOR THERRIAULT recapped that in those cases, the defendant does not have to take the stand but if the defendant does, he or she cannot lie.

CHAIR SEEKINS said that although he agrees with the concept of HB 349, he imagines the average person does not know that a statement made prior to being detained is admissible in court.

He wanted to hold the previous discussion to indicate that the committee is not trying to step on anyone's Miranda rights.

MS. BARBARA BRINK, Alaska Public Defender's Agency, presented the following points as "food for thought." First, the purpose of Miranda rights is to protect an individual's constitutional right to not incriminate oneself and the right to counsel. She expressed concern about dismissing something as simple as a Miranda violation because that denigrates the importance of the Miranda right. The U.S. Supreme Court issued the Miranda ruling because it found that subjecting a person to custodial interrogation is inherently coercive, and therefore should require that a person be informed of their right to remain silent and to have counsel. Any request or mention of the right to counsel is to be scrupulously honored. That did not happen in the Wallner case. Those rules are not complicated and difficult for police to follow. She believes if the police cannot follow those simple rules, they should not be entitled to use the evidence obtained. The point of suppressing statements is to encourage police to act lawfully. The Fourth Amendment is designed to protect one's right to privacy and protect people in their own homes. Under [HB 349], she does not see why the police would bother to uphold Miranda rights or the Fourth Amendment. They could feel free to ignore those requirements, especially under paragraph 2, in which any evidence illegally obtained could be admitted to impeach a criminal defendant.

MS. BRINK said no one condones perjury on the part of any witness, but she is more fearful of allowing the government to ignore all of one's constitutional rights in its desire to convict someone. She said she also appreciates the jury foreman being angry about not being given all of the available information in a case, but noted the rules of evidence in any trial often prevent both sides from introducing evidence they would like the jury to know. The judge's purpose is to limit the evidence to that which is relevant, non-prejudicial, and lawful. HB 349 removes the lawful requirement. She shares Mr. Shavelson's concern that one case is driving Alaska criminal justice policy, especially when those changes are unnecessary. She pointed out in the [Wallner] case that brought this situation to the legislature's attention, the defendant was convicted without the use of illegally obtained evidence. She cautioned the legislature against making sweeping changes in policy and sending the message to the police that unlawfully obtained evidence is acceptable.

CHAIR SEEKINS said he was not aware that state law could override Miranda.

MS. BRINK said HB 349 will allow the use of statements seized in violation of Miranda.

CHAIR SEEKINS asked if those Miranda rights will still be in effect.

MS. BRINK said the courts have enforced Miranda by excluding illegally seized evidence. The right is still in effect: the person has a right to be informed and have an attorney but what is being changed is the consequence for the police. If the police have no consequences, they should tell suspects of their right to an attorney but if they do not, there are no consequences.

CHAIR SEEKINS noted that HB 349 will align Alaska law with federal law. He questioned whether Ms. Brink is saying the federal law violates the principle of Miranda.

MS. BRINK said the rules have little meaning when they are not enforced and a right with no meaning has no remedy. She acknowledged that in the federal system, one can use illegally obtained evidence in these situations but she believes Alaska should have higher protections for its citizens.

REPRESENTATIVE SAMUELS maintained that the U.S. Supreme Court said the shield provided cannot be perverted from a license to use perjury in a way from defense. Only three states do it the way Alaska does.

SENATOR FRENCH asked Ms. Brink how many successful Miranda motions the public defender's agency brings every year.

MS. BRINK said her agency does not have the ability to keep those statistics but Alaska leads the nation in requiring law enforcement officers to tape record the advisement of Miranda, which caused a decrease in litigating motions on Miranda. From speaking with her colleagues elsewhere in the country, those motions are very time consuming and are engaged in on a daily basis. That does not happen in Alaska because a clear record is available.

With no further participants, CHAIR SEEKINS closed public testimony and asked for discussion by the members.

**TAPE 04-23, SIDE B**

SENATOR OGAN asked that HB 349 be held in committee until the next meeting because he feels that any legislation that pushes the envelope of the Bill of Rights deserves introspection.

CHAIR SEEKINS asked what vote is required on this bill.

REPRESENTATIVE SAMUELS replied that it requires a two-thirds vote of both bodies.

SENATOR FRENCH shared Senator Ogan's caution. He said he is generally supportive of HB 349 but would like more time to think over several of the points made, especially the point made by Ms. Brink about the disincentive it will create to provide Miranda rights. He said his sense is that the motives of the police will not change because they will still be much better off with a lawfully obtained confession.

CHAIR SEEKINS announced that he would hold HB 349 in committee.

REPRESENTATIVE SAMUELS asked members, as they mull the bill over, to consider it from the standpoint of the victim and the real life implications.

SENATOR FRENCH requested a copy of the federal analysis of this rule from Representative Samuels, who agreed to provide it.

9:00 a.m.

**HB 348-NOTICE TO CRIME VICTIMS**

CHAIR SEEKINS notified members that a letter of intent was attached to HB 348 and called a brief recess to give members a chance to review it.

Upon reconvening, CHAIR SEEKINS specified that the letter of intent was from the Chair of the House Judiciary Committee. He read from that letter:

Section 2 of this act requires a victim's advocate to include within brochures or other written material to be given to certain crime victims information about the Violent Crimes Compensation Board. It's the intent of the House Judiciary Committee that this requirement applies only to brochures or other written material printed after the effective date of this act. The victim's advocate may continue to supply brochures or

other material printed before the effective date of this act until those brochures or materials are exhausted.

CHAIR SEEKINS asked for a motion to include the letter of intent as part of the committee's record.

SENATOR THERRIAULT moved that the Senate Judiciary Committee adopt and recommend for consideration on the Senate floor the House letter of intent.

CHAIR SEEKINS noted that without objection, the motion carried.

### **HB 357-RESTITUTION**

REPRESENTATIVE RALPH SAMUELS, sponsor of HB 357, told members that HB 357 is a conforming statute to art. 1, sec. 24, of the Alaska Constitution. In 1994, the legislature approved and put on the ballot a victims' right amendment to the constitution, which was overwhelmingly approved by the voters. One of the rights was the right to restitution from the accused. HB 357 mandates the court to order restitution and allows the court to set up a payment schedule based on the offender's ability to pay. The bill contains one exception to the requirement, and that is at the express request of the victim. During the House committee process, discussion centered around the fact that sometimes victims of violent crimes never want to deal with those crimes again and decline restitution. He noted the Department of Law has drafted an amendment that deals with the technical aspects of collection and disbursement of restitution.

CHAIR SEEKINS noted that Version Q was before the committee. He indicated that the bill says the court may not reduce restitution but can change the payment schedule and asked if it could require an offender to pay \$1 per year until paid in full.

SENATOR FRENCH thought that would have the effect of reducing the award if the offender was only on probation for 5 years and the restitution award was \$500. He questioned what happens at the end of the probation period if a large portion of the restitution is unpaid.

REPRESENTATIVE SAMUELS explained that the bill does not change what occurs now. He added:

If something happens now, they're still on the hook for it. What the hammer is now - I couldn't talk to

the very specifics of that. As we went through the process researching this bill, the advice always given was take the time to go file a civil suit as the victim. We tried to get away from that. We're trying to make it - you know, here's the guy that had his windshield smashed in, he wants to get his money back without having to hire a lawyer. That was the point of doing this. The ins and outs and the technical aspects - we didn't change anything so whatever it is now, we didn't touch it.

SENATOR FRENCH said that is a very frustrating area of the law for the district attorneys, the victims, and even the defense attorneys because a criminal system gets caught up in what is, to a large degree, a civil process. He said he is glad Representative Samuels has introduced this legislation because this is a troublesome area of law.

REPRESENTATIVE SAMUELS said at one time he tried to address problems with juveniles and adults in civil court in the bill:

And we tried to tie it saying that automatically a civil suit would be filed and that didn't work either and as it grew and we couldn't manage it anymore, it got cut back to where we didn't change any other - we went from, on page 1 line 4, it said the court may, originally, and we changed it to shall and other than that we didn't change a lot of the substance of the way that the system works now so - you will order the restitution however long it takes the person - is the way we're headed. We tried to do more than that and make it easier but we seemed to be making it more difficult as we went down that road. I agree with Senator French, it's not easy.

CHAIR SEEKINS said as he reads it, the court will not be able to consider the defendant's ability to pay restitution and it must order full restitution. He asked if the hammer is that it must be paid before the offender is off probation.

MS. ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL), said that restitution, like fines, is considered to be a civil matter that the victim can pursue after the period of probation so it can go beyond the period of probation.

CHAIR SEEKINS said he was questioning if, at the time the restitution is ordered, a civil judgment is placed against the defendant in favor of the person to whom restitution is due.

MS. CARPENETI replied, "Generally the law provides, I think, in the area of restitution, like fines, that it's a civil judgment that the person can pursue." She said that maybe three or four years ago, the legislature gave to the DOL the authority to collect for victims. The department can do bank sweeps and executions against the permanent fund dividend.

CHAIR SEEKINS asked at what point that free collection service ends.

MS. CARPENETI believed the service continues until restitution is complete.

SENATOR OGAN expressed concern about taking away all discretion from the judge to consider the circumstances when ordering restitution.

CHAIR SEEKINS said he reads Sec. 12.55.051, Enforcement of Fines and Restitution, to mean the court can order restitution and non-payment can be used to cancel probation. After probation, or even if probation is not part of the sentence, the offender could be in contempt of court for non-payment of restitution. However, he believes the court has leeway if the offender can show he or she is unable to pay but is making good faith efforts and the court could even restructure the payment schedule. Therefore, the court would have some discretion to address the situation Senator Ogan described. He added that a defendant can actually request a hearing regarding inability to pay. He imagined the court would then examine whether the repayment schedule is bringing harm to other innocent people, such as the offender's family.

REPRESENTATIVE SAMUELS agreed with Chair Seekins and said a judge could postpone restitution from an 18 year old who cannot pay until that person turns 25. He repeated that restitution is required by the Constitution.

9:15 a.m.

SENATOR THERRIault referred to page 2, line 12, and asked why the reference to subsection (f) is being deleted.

MS. CARPENETI said it removes the provision that allows the court to consider the level of fines and reduce them under certain circumstances. She said she does not see this bill as changing the way the court determines the amount of restitution. She said she believes the court does take other factors into consideration, but once a judge arrives at an amount, it cannot be reduced, but the payment schedule can be changed.

SENATOR THERRIAULT asked for descriptions of the two subsections being deleted on page 3, section 7.

MS. CARPENETI said that AS 12.55.045(e) is a provision that specifically addresses restitution in vehicle theft cases, which will no longer be necessary since HB 349 orders restitution in all cases. The removal of AS 12.55.045(f) is conforming to the rest of the provision, which says restitution must be considered no matter what the length of sentence.

SENATOR THERRIAULT moved to adopt Amendment 1, which reads as follows.

**A M E N D M E N T 1**

OFFERED IN THE SENATE  
TO: CSHB 357(JUD)

Page 2, lines 16-19:

Delete all material and insert the following:

"(n) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time; and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days of the court's acceptance."

Page 3, lines 3-7:

Delete all material and insert the following:

"(f) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time; and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has

elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days of the court's acceptance.

AN UNIDENTIFIED MEMBER objected.

MS. CARPENETI explained when a victim asks DOL to collect on his or her behalf, a procedure is set up that requires DOL to keep track of what has been paid to the victim. Amendment 1 makes clear that even though DOL may be collecting on a judgment, a judge or a clerk of court may accept payment on that order of restitution because, in some circumstances, the defendant may pay at sentencing. The court needs to be able to take possession of the money right then. If the victim has chosen DOL to collect, that money must then go to the DOL for accounting purposes. She said Amendment 1 is primarily a housekeeping measure.

CHAIR SEEKINS announced that with no further objection, Amendment 1 was adopted. He then took public testimony.

MS. BARBARA BRINK, Alaska Public Defender's Agency, said she does not object to efforts to collect restitution on behalf of crime victims, but she is not convinced that removing all discretion from the judge is the best way to do that. She said the district attorneys do a very good job at making and documenting requests for restitution and providing evidence of what is owed. Frequently, defense attorneys and their clients agree, upon receiving that documentation, it should be a part of the court order. Under HB 357, the court will be forced to order restitution in cases where the victim is not involved at all and the evidence of the cost of restitution may be less than reliable. For example, a police officer is not likely to spend a lot of time estimating the cost of damage in a simple case of a person charged with reckless driving who engaged in a fender bender in a parking lot. It is likely the victim's insurance company will pay to repair the damages. Then, the court order will require restitution on the part of the defendant so the crime victim will get a windfall. Also, the police officer's estimate could be grossly wrong. She said the current procedure for ordering restitution is simple, less time consuming, and works well. She suggested that if restitution must be ordered in every single case, there will be many more situations in which defendants cannot pay the full amount before probation is over. Therefore, instead of doing a thoughtful fact finding process at the beginning of a person's sentence, hearings will have to be

held years later at the end of the defendant's probationary sentence.

SENATOR THERRIAULT said the language at the beginning of the bill says, "The court shall, when presented with evidence...." He asked if that satisfies Ms. Brink's concerns.

MS. BRINK replied the rules of evidence don't apply at a sentencing hearing so the question of whether or not the evidence is reliable would be "iffy." She maintained that her point was if the victim does not work with the prosecutor to document the loss, the court will be relying on a very brief investigation.

SENATOR THERRIAULT asked if putting a modifier on that phrase would alleviate Ms. Brink's concern. He suggested specifying that the evidence must be documented or substantiated.

MS. BRINK said it would.

SENATOR OGAN suggested using the word "reasonable."

CHAIR SEEKINS recounted a personal situation in which he had to provide the court with the cost of repairs to his vehicle to prove clear and convincing evidence of the loss. He said the court is aware of what constitutes evidence.

REPRESENTATIVE SAMUELS pointed out the phrase, "when presented with evidence," was added by the House Judiciary Committee. He was told by DOL afterward that it was redundant because a court would never order restitution without a receipt.

MS. SARA NIELSEN, staff to Representative Samuels, added that restitution is ordered after a person is convicted of a crime so the "fender-bender" argument would not hold.

SENATOR FRENCH noted that the "fender-bender" could have been caused by a person who was driving recklessly and added, "...now the issue is what do you pay to fix the car and her example is a rookie cop says looks like \$2,000 to me and maybe it's 5 - maybe it's 1 - and whether or not the rookie cop's estimation in the field on a busy day is sufficient to justify the restitution award that could eventually lead to the revocation of a person's probation if it's not satisfied."

MS. NIELSEN responded that according to DOL, the evidence must be documented.

MR. STEVE BRANCHFLOWER, Director of the Office of Victims' Rights, stated support for HB 357, particularly the provision that allows the court to take into account the offender's present ability to pay. At present, once an offender is sentenced to jail time, the court reduces restitution because that person's earning potential during the incarceration period is nominal. That reduction in restitution does not allow for a potential windfall or the possibility that the offender will get a job after being released. To the extent the restitution awards are reduced, that is inconsistent with a victim's right under art. 1, sec. 24, to get full restitution. As previously mentioned, the court has jurisdiction and discretion under AS 12.55.051 to make allowances where a defendant can show good faith efforts to pay restitution but is no longer able to. He agrees that adding a modifier to the word "evidence" on page 1, line 4, would be redundant because the courts never order restitution without evidence of the cost.

CHAIR SEEKINS announced that with no further participants, public testimony was closed.

SENATOR OGAN moved to add the word "reasonable" before the word "evidence" on page 1, line 10, and objected for the purpose of discussion [Amendment 1].

SENATOR THERRIault noted that previous testifiers have pointed out that language is unnecessary. He suggested deleting it instead of modifying it.

SENATOR FRENCH asked the sponsor if his desire is to have restitution ordered in every single case no matter what the defendant's ability to pay.

REPRESENTATIVE SAMUELS replied:

To me, you want to get away from the defendant's current ability to pay. As far as the language being in or out, what they said - it wasn't necessary but it certainly didn't hurt anything. So, I'll be perfectly honest, this is keeping peace in the family to keep the language in there. I'll be perfectly honest, it didn't hurt anything. And to add reasonable, and if I could, the amendment should also include line 4 also. There's two places where there's....

CHAIR SEEKINS asked if the amendment shortened the debate in the [House Judiciary Committee].

REPRESENTATIVE SAMUELS said it did.

SENATOR OGAN amended Amendment 1 to add "reasonable" to line 4 as well.

REPRESENTATIVE SAMUELS expressed concern that adding the word "reasonable" will give the lawyers one more thing to argue about and that the issue will become who is the better attorney rather than making sure the victim gets paid.

SENATOR OGAN suggested it might keep the victim from overcharging. He said he has no problem mandating that people pay restitution but is concerned that if the bill takes away the judge's discretion to decide whether to order restitution, it should provide for discretion regarding the amount.

SENATOR THERRIAULT commented that the word "reasonable" will apply to the evidence, not the price.

CHAIR SEEKINS noted that is why he suggested "clear and convincing."

SENATOR FRENCH felt that standard would be too high.

SENATOR THERRIAULT remarked, "I think we're just asking what kind of evidence, what kind of documentation, what you need to show the court that you have actually suffered an out-of-pocket expense and again, it's not whether you went to the lowest price windshield shop in town, it's what you have to show that you've actually forked money out."

CHAIR SEEKINS said if he had an accident, his insurance company would require him to get three estimates and to use the lowest estimate. If someone else hit him, he could get his vehicle repaired wherever he wanted to as a claimant as long as the repair cost was within reason. The victim has the right to not have to go to the cheapest repair shop to get his or her car fixed.

SENATOR FRENCH questioned whether inserting "a preponderance of the" [evidence] would satisfy members' concerns. It would complicate the matter in that it inserts a civil standard into a criminal proceeding and it puts some burden on the victim to bring forward evidence.

CHAIR SEEKINS said that would result in a civil judgment.

SENATOR FRENCH said it is that way right now but part of the idea [behind HB 357] is to not force the victim to go through the hoops of the civil system and instead to use the power of the criminal court to get restitution.

REPRESENTATIVE SAMUELS offered, "...on a preponderance - it's really a 50 percent, 51 percent, that's not a monetary amount. It's kind of an apples and oranges to me. A suggestion I just got from the Department of Law was maybe, perhaps, credible evidence...."

SENATOR THERRIAULT agreed "credible" was a good suggestion because it would apply to a valid receipt.

SENATOR THERRIAULT moved to amend Amendment 1 to change the word "reasonable" to the word "credible."

CHAIR SEEKINS announced that without objection, Amendment 1 was amended.

CHAIR SEEKINS asked if there was further discussion on Amendment 1 [to insert the word "credible" prior to the word "evidence" on lines 4 and 10 on page 1]. There being none, Amendment 1 as amended was adopted.

SENATOR OGAN moved SCS CSHB 357(JUD) and its attached fiscal notes from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, the motion carried.

#### **HB 397-DEFENSE CONTACTS WITH VICTIMS & WITNESSES**

MS. VANESSA TONDINI, staff to Representative Lesil McGuire, sponsor of HB 397, explained that the package of victims' rights legislation, of which HB 397 is part, rests on the premise that victims and witnesses to violent crimes are unwillingly thrust into the legal system. They did not ask to be involved in a legal case and are placed at risk of harassment.

#### **TAPE 04-24, SIDE A**

MS. TONDINI explained that the potential harms increase when the victim or witness is a minor and when the crime is a sexual

offense. HB 397 is also known as the Brooke Act, in honor of one of Representative McGuire's constituents, who was the victim of a rape. Her parents were unaware that a defense investigator had contacted her for an interview, which she gave without the guidance of her parents or an attorney.

MS. TONDINI informed members that HB 397 requires criminal defense attorneys and investigators to first obtain the consent of a minor's parent or guardian prior to conducting a tape recorded interview with a minor sexual assault victim or witness. The current law states when a defense attorney or investigator speaks to a minor victim or witness and the interview is not recorded, written authorization must first be obtained from a parent or guardian. However, no such consent is required if an interview is recorded. This loophole leaves juveniles and parents in the dark. Current law embodies an important provision that does not allow a defendant who is a parent or guardian of a minor sexual assault victim or witness to provide the authorization required by HB 397. She added that statements obtained from a victim or witness in violation of this statute are presumed inadmissible. To overcome the presumption of inadmissibility, the defendant is required to prove the statement is reliable, similar evidence is unavailable from another source, and that failure to reduce the statement would substantially undermine the reliability of the fact-finding process and result in manifest injustice.

SENATOR THERRIAULT asked why Section 1 is necessary.

MS. TONDINI said it provides a short title of the act as a courtesy to a constituent of Representative McGuire.

SENATOR THERRIAULT said although he understands a particular case can trigger a new section of law, the legislature should be careful about inserting people's names throughout the statutes for no compelling reason.

SENATOR OGAN concurred with Senator Therriault.

9:50 a.m.

MS. BARBARA BRINK, Alaska Public Defender Agency, said as a defense attorney, it is difficult to understand the negative feelings projected her way. She pointed out that defense investigations are not designed to harass, intimidate, or invade a victim's privacy. The defense investigation is designed to implement the right to counsel. HB 397 impairs the legitimate

investigative effort to right to counsel by adding more requirements and rules. She explained that police do the best job possible when interviewing witnesses at the scene, but those witnesses might be alcohol impaired or under extreme stress. Sometimes interviewing witnesses who did not come forward to the police can reveal facts that lead the prosecutor to conclude that the initial charges were inappropriate. That is not a miscarriage of justice, it allows the prosecutor to make a decision with more truthful information. On the other hand, further information may lead the defense attorney to conclude the defendant has nothing to gain by going to trial and should settle the case. She asked the committee to consider the positive aspects of defense investigation. HB 397 will make it more difficult for defense attorneys to interview witnesses and result in more indirect investigations. She said she appreciates the fact that parents should not be left in the dark, but the police and prosecutors have no obligation to inform parents about contact with minor victims.

MR. STEVE BRANCHFLOWER, Office of Victims' Rights, told members the defense in any criminal case has the right to do an investigation but that investigation is much different than a police investigation. The police start out in the dark. They do not know all or any of the facts about who is responsible. By the time a person is charged, the police have often solved the case. When a person is charged, the defense has a right to seek copies of police reports, lab reports, and statements of the victims and witnesses. Therefore when the defense starts its investigation, it knows what is in the district attorney's file and is not looking for evidence of what occurred. The defense is looking for evidence to create doubt. The most convincing way to do that is to obtain a tape-recorded statement from a victim or witness to impeach at a trial. HB 397 does not change the requirement that information be provided to a witness or a victim where the statement from the victim or the witness is not recorded. It simply focuses on a third way of obtaining information. This bill requires parental consent if the defense wants to obtain information from the minor and that the minor be informed of his or her rights. It will help parents to know what is going on in their children's lives and to make smart decisions. He stated support for the bill.

SENATOR FRENCH asked if, under current law, the defense wanted to talk to a witness but not record the statement, the defense would have to get written consent and notify the witness that he or she is under no legal obligation to talk to the defense. HB 397 would simply change the law to say if the defense wants to

take a statement from a victim or witness in a sexual abuse case that is going to be recorded, the same notification must be given.

MS. TONDINI affirmed that is correct.

CHAIR SEEKINS announced that public testimony was closed.

SENATOR THERRIAULT moved to delete Section 1 [Amendment 1].

CHAIR SEEKINS announced without objection, Amendment 1 was adopted.

SENATOR OGAN moved SCS CSHB 397(JUD) from committee with individual recommendations and attached fiscal notes.

CHAIR SEEKINS announced that without objection, the motion carried.

**CSHB 398(JUD)am-DOMESTIC VIOLENCE FATALITY REVIEW TEAM**

REPRESENTATIVE NANCY DAHLSTROM, sponsor of HB 398, explained to members this legislation will enable municipalities throughout the state to create a domestic violence fatality review team for the purpose of gaining knowledge and insight to more effectively prevent domestic violence fatalities in the future. CSHB 398(JUD)am passed the House with unanimous support. She offered to answer questions.

SENATOR FRENCH asked Representative Dahlstrom to elaborate on the timing of establishing the fatality review teams.

REPRESENTATIVE DAHLSTROM said her understanding is that almost all of the teams will be created after an offense has been committed and adjudicated. However, in special circumstances, it may be more effective to establish a team before a case is completed.

She then informed members that she distributed copies of an amendment, labeled Q.1, [Amendment 1].

SENATOR THERRIAULT moved Amendment 1 for the purpose of discussion, which reads as follows.

23-LS1321\QA.1  
Luckhaupt  
9/9/04

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: CSHB 398(JUD) am

Page 3, lines 16 - 19:

Delete all material.

Insert a new bill section to read:

"\* **Sec. 2.** AS 24.65.170 is amended to read:

**Sec. 24.65.170. Annual report.** The victims' advocate shall make available to the public an annual report of the victims' advocate's activities under this chapter and notify the legislature that the report is available. The victim's advocate may include in the report a summary of the advocate's participation as an ex officio member of domestic violence fatality review teams established under AS 18.66.400."

REPRESENTATIVE DAHLSTROM noted the amendment addresses a change made to the bill on the House floor that did not meet the legal standards.

CHAIR SEEKINS announced that without objection, the motion carried.

MR. STEVE BRANCHFLOWER, Director of the Office of Victims' Rights, stated support for HB 398.

SENATOR FRENCH asked Mr. Branchflower to address the timing issue.

MR. BRANCHFLOWER thought the language on line 10, "or at an earlier appropriate time," is a good catch-all phrase that will allow for unforeseen circumstances. He agreed with Representative Dahlstrom that in most cases, the teams would be established after a case has been adjudicated, but under certain circumstances, such as if a case is not prosecuted, a team would be established earlier.

SENATOR FRENCH asked Mr. Branchflower to comment on the confidentiality requirements in the bill.

MR. BRANCHFLOWER said to promote participant candor, a confidentiality clause is necessary, otherwise participants will be less likely to admit responsibility for actions that should

have been taken. The focus of the legislation is to improve the system to help victims; it is not to find fault.

SENATOR FRENCH asked if the fatality review teams will have subpoena power.

MR. BRANCHFLOWER was not sure.

REPRESENTATIVE DAHLSTROM said they would not.

LT. AL STOREY, Alaska State Troopers (AST), Department of Public Safety (DPS), stated support for HB 398 as DPS believes these review teams will improve the current system.

CHAIR SEEKINS announced that with no further participants, public testimony was closed.

SENATOR OGAN moved SCS CSHB 398(JUD) from committee with individual recommendations.

CHAIR SEEKINS announced with no objection, the motion carried. He then adjourned the meeting at 10:07 a.m.