

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

April 27, 2004

3:35 p.m.

**TAPE (S) 04-28**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Bert Stedman  
Senator Gretchen Guess

**MEMBERS ABSENT**

Senator Lyman Hoffman

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 496(STA)

"An Act creating the youth vote ambassador program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

MOVED CSHB 496(STA) OUT OF COMMITTEE

SENATE BILL NO. 224

"An Act relating to lowering the legal level of intoxication for operating a motor vehicle, aircraft, or watercraft to .02 percent or the equivalent for persons under 21 years of age; relating to implied consent for purposes of determining consumption of alcohol; and providing for an effective date."

MOVED CSSB 224(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 334(RLS)

"An Act relating to unlawful exploitation of a minor and to distribution of child pornography."

MOVED CSHB 334(RLS) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 534(FIN)

"An Act repealing the scheduled termination date of the office of victims' rights."

MOVED CSHB 534(FIN) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 33

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 405(EDU)

"An Act relating to reports on school and school district performance; and relating to accountability of public schools and school districts; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 438(JUD) am

"An Act relating to motorists moving over or slowing down for emergency vehicles."

SCHEDULED BUT NOT HEARD

#### **PREVIOUS COMMITTEE ACTION**

BILL: HB 496

SHORT TITLE: YOUTH VOTE AMBASSADOR / ELECTION BDS

SPONSOR(s): REPRESENTATIVE(s) DAHLSTROM

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	STA
03/24/04	(H)	STA AT 8:00 AM CAPITOL 102
03/24/04	(H)	Heard & Held
03/24/04	(H)	MINUTE(STA)
03/26/04	(H)	STA AT 8:00 AM CAPITOL 102
03/26/04	(H)	Moved CSHB 496(STA) Out of Committee
03/26/04	(H)	MINUTE(STA)
03/29/04	(H)	STA RPT CS(STA) 1DP 3NR 2AM
03/29/04	(H)	DP: COGHILL; NR: LYNN, BERKOWITZ,
03/29/04	(H)	WEYHRAUCH; AM: SEATON, HOLM
04/07/04	(H)	TRANSMITTED TO (S)
04/07/04	(H)	VERSION: CSHB 496(STA)
04/08/04	(S)	READ THE FIRST TIME - REFERRALS
04/08/04	(S)	STA, JUD
04/22/04	(S)	STA AT 3:30 PM BELTZ 211
04/22/04	(S)	-- Meeting Canceled --
04/27/04	(S)	STA AT 3:30 PM BELTZ 211

BILL: SB 224

SHORT TITLE: MINORS DRIVING AFTER CONSUMING ALCOHOL

SPONSOR(s): SENATOR(s) COWDERY

05/14/03	(S)	READ THE FIRST TIME - REFERRALS
05/14/03	(S)	TRA, STA
05/17/03	(S)	TRA AT 11:00 AM BUTROVICH 205

05/17/03 (S) Heard & Held  
 05/17/03 (S) MINUTE(TRA)  
 02/24/04 (H) TRA AT 1:30 PM CAPITOL 17  
 02/24/04 (S) Moved Out of Committee  
 02/24/04 (S) MINUTE(TRA)  
 02/25/04 (S) TRA RPT 2DP 2NR  
 02/25/04 (S) DP: COWDERY, WAGONER; NR: THERRIAULT,  
 02/25/04 (S) LINCOLN  
 02/25/04 (S) FIN REFERRAL ADDED AFTER STA  
 03/23/04 (S) STA AT 3:30 PM BELTZ 211  
 03/23/04 (S) Heard & Held  
 03/23/04 (S) MINUTE(STA)  
 04/13/04 (S) STA AT 0:00 AM BELTZ 211  
 04/13/04 (S) -- Meeting Canceled --  
 04/20/04 (S) STA AT 3:30 PM BELTZ 211  
 04/20/04 (S) Scheduled But Not Heard  
 04/27/04 (S) STA AT 3:30 PM BELTZ 211

BILL: HB 334

SHORT TITLE: UNLAWFUL EXPLOITATION OF MINOR/CHILD PORN

SPONSOR(s): REPRESENTATIVE(s) MEYER

01/12/04 (H) PREFILE RELEASED (1/2/04)  
 01/12/04 (H) READ THE FIRST TIME - REFERRALS  
 01/12/04 (H) JUD  
 01/30/04 (H) JUD AT 1:00 PM CAPITOL 120  
 01/30/04 (H) <Bill Hearing Postponed>  
 02/20/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/20/04 (H) Scheduled But Not Heard  
 02/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/23/04 (H) Heard & Held; Assigned to Subcommittee  
 02/23/04 (H) MINUTE(JUD)  
 03/01/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/01/04 (H) <Bill Hearing Postponed Wed. 3/3/04>  
 03/03/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/03/04 (H) Scheduled But Not Heard  
 03/05/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/05/04 (H) -- Meeting Postponed to 3/16/04 --  
 03/16/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/16/04 (H) Moved CSHB 334(JUD) Out of Committee  
 03/16/04 (H) MINUTE(JUD)  
 03/18/04 (H) JUD RPT CS(JUD) NT 5DP 1NR 1AM  
 03/18/04 (H) DP: SAMUELS, HOLM, ANDERSON, OGG,  
 03/18/04 (H) MCGUIRE; NR: GARA; AM: GRUENBERG  
 04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203  
 04/15/04 (H) Moved CSHB 334(RLS) Out of Committee  
 04/15/04 (H) MINUTE(RLS)

04/19/04 (H) RLS RPT CS(RLS) NT 2DP 4NR  
 04/19/04 (H) DP: COGHILL, ROKEGERG; NR: BERKOWITZ,  
 04/19/04 (H) MORGAN, KERTTULA, MCGUIRE  
 04/19/04 (H) TRANSMITTED TO (S)  
 04/19/04 (H) VERSION: CSHB 334(RLS)  
 04/20/04 (S) READ THE FIRST TIME - REFERRALS  
 04/20/04 (S) STA, JUD  
 04/27/04 (S) STA AT 3:30 PM BELTZ 211

**BILL: HB 534**

SHORT TITLE: MAKE OFFICE OF VICTIMS RIGHTS PERMANENT  
 SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

03/08/04 (H) READ THE FIRST TIME - REFERRALS  
 03/08/04 (H) JUD, FIN  
 03/22/04 (H) JUD AT 1:00 PM CAPITOL 120  
 03/22/04 (H) Moved Out of Committee  
 03/22/04 (H) MINUTE(JUD)  
 03/24/04 (H) JUD RPT 7DP  
 03/24/04 (H) DP: SAMUELS, HOLM, GARA, ANDERSON,  
 03/24/04 (H) GRUENBERG, OGG, MCGUIRE  
 04/05/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 04/05/04 (H) Moved CSHB 534(FIN) Out of Committee  
 04/05/04 (H) MINUTE(FIN)  
 04/06/04 (H) FIN RPT CS(FIN) NT 8DP  
 04/06/04 (H) DP: MEYER, HAWKER, STOLTZE, JOULE,  
 04/06/04 (H) CROFT, CHENAULT, FOSTER, WILLIAMS  
 04/19/04 (H) FIN CS ADOPTED Y28 N11 E1  
 04/19/04 (H) TRANSMITTED TO (S)  
 04/19/04 (H) VERSION: CSHB 534(FIN)  
 04/20/04 (S) READ THE FIRST TIME - REFERRALS  
 04/20/04 (S) STA, FIN  
 04/27/04 (S) STA AT 3:30 PM BELTZ 211

**WITNESS REGISTER**

Kelly Huber  
 Staff to Representative Nancy Dahlstrom  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced CSHB 496(STA) for sponsor

Richard Schmitz  
 Staff to Senator John Cowdery  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced SB 224 for sponsor

LeeAnn Lucas  
Special Assistant to the Commissioner  
Department of Public Safety  
PO Box 111200  
Juneau, AK 99811-1200

**POSITION STATEMENT:** Testified on SB 224

Lt. Al Storey  
AK State Troopers  
Department of Public Safety  
PO Box 111200  
Juneau, AK 99811-1200

**POSITION STATEMENT:** Testified on SB 224

Cindy Cashen  
Executive Director, MAAD Juneau  
211 4th Street, Suite 211  
Juneau, AK 99801

**POSITION STATEMENT:** Testified on SB 224

Representative Kevin Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 334

Suzanne Cunningham

Staff to Representative Kevin Meyer  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified on CSHB 334(RLS)

Sara Nielson  
Staff to Representative Ralph Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced CSHB 534(FIN)

Karla Schofield  
Deputy Director Administrative Services  
Legislative Affairs Agency  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified on CSHB 534(FIN)

**ACTION NARRATIVE**

**TAPE 04-28, SIDE A**

**CHAIR GARY STEVENS** called the Senate State Affairs Standing Committee meeting to order at 3:35 p.m. Present were Senators Cowdery, Stedman, Guess and Chair Gary Stevens.

**CSHB 496(STA)-YOUTH VOTE AMBASSADOR / ELECTION BDS**

CHAIR GARY STEVENS announced CSHB 496(STA) to be up for consideration.

KELLY HUBER, staff to Representative Nancy Dahlstrom, sponsor, explained that the bill is designed to increase young people's interest in voting, to allow meaningful student involvement in elections, and to help address the shortage of election workers.

CHAIR GARY STEVENS noted that this wouldn't have any fiscal impact on the Division of Elections.

MS. HUBER agreed.

CHAIR GARY STEVENS opined that this is a good program.

CSHB 496(STA) was reported from committee with individual recommendations and attached fiscal note.

**SB 224-MINORS DRIVING AFTER CONSUMING ALCOHOL**

RICHARD SCHMITZ, staff to Senator John Cowdery, sponsor explained that the bill has gone through a number of changes and the most recent version was \X.

CHAIR GARY STEVENS asked for a motion to adopt the most recent committee substitute (CS).

SENATOR BERT STEDMAN motioned to adopt CSSB 224 \X version as the working document. There being no objection, it was so ordered.

MR. SCHMITZ asked the committee to amend that version to correct a small error.

CHAIR GARY STEVENS asked for an explanation of the purpose of the bill first.

MR. SCHMITZ replied it is to increase the penalty on minors who elect to drink and drive. He said we know it's illegal to drink alcohol if you aren't 21 years old. A separate issue relates to people that get cited for driving under the influence (DUI), which means they have a blood alcohol content of at least .08. SB 224 falls in between and relates to the people that may not be drunk according to the DUI standard, but they are breaking the law because they're under 21 years old and they're drinking and driving. The sponsor wants to see those penalties increased and originally drafted the bill to make the offense a class B misdemeanor. They ran into difficulty because federal law states that you can't send someone to jail for a status offense.

The \X version CS calls for mandatory penalties. The first offense brings a \$500 fine and community work service. The second offense brings a \$1,000 fine and a third offense brings a \$1,500 fine. Subsequent fines would be no more than \$1,500 because a larger fine would boost the infraction to the misdemeanor penalty level.

CHAIR GARY STEVENS asked for an explanation of the proposed amendment.

MR. SCHMITZ explained there were two drafting errors on page 4. The bold type is inserted in the following:

AMENDMENT 1

CSSB 224 23-LS1037\X

Page 4, line 2

(2) has been previously convicted **once** under this section, AS 28.35.280, or

Page 4, line 11

(3) has been previously convicted **two or more times** under this section, AS 28.35.290, or

CHAIR GARY STEVENS asked for a motion to adopt Amendment 1.

SENATOR STEDMAN motioned to adopt Amendment 1. There being no objection, it was so ordered.

SENATOR GRETCHEN GUESS asked where she could find the definition in statute or regulation for operating a motor vehicle after consuming alcohol.

MR. SCHMITZ deferred to the Department of Public Safety.

LEEANN LUCAS, special assistant to the Commissioner of Public Safety, said that for the purposes of this bill, AS 28.25.280 provides the definition. It includes youths between the ages of 14 and 21.

SENATOR GUESS asked whether there is a way to determine that the youth was consuming alcohol rather than cough syrup for instance.

MS. LUCAS said it does, and read the statute.

SENATOR GUESS asked whether this had been litigated.

MS. LUCAS deferred to Lt. Storey.

LT. STOREY, Alaska State Trooper, said there would be some investigation involved and if the youth said they had been taking cough medicine that would be taken into consideration.

SENATOR GUESS asked if there would be any problems because current statute says "at least 14 years of age."

LT. STOREY said he didn't believe that would be a problem, but that isn't to say that there wouldn't be instances in which youths younger than 14 would consume alcohol.

SENATOR STEDMAN asked at what point the Breathalyzer meter becomes more viable.

LT. STOREY said that troopers carry a preliminary breath test device that is recalibrated from time to time and then there is the Intoximeter that is proven and very accurate.

SENATOR STEDMAN noted that in previous testimony he heard that accurate readings are difficult to obtain at a .02 level.

LT. STORER said the accuracy of the preliminary breath test could be argued at the .02 level, but the specific circumstances and other considerations would be taken into consideration.

CINDY CASHEN said she was representing MAAD Alaska chapters and they support the bill. "We want what is effective for our minors not only to stop underage drinking but also stop making poor

choices and one of the poor choices is drinking and driving," she said.

The system is currently overloaded and the kids quickly learn how to work the system. This bill will help make these kids immediately face the consequences of their actions and will increase community service in areas related to the infraction

There was no further testimony.

SENATOR GUESS motioned to move CSSB 224(STA) amended \X version from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

CHAIR GARY STEVENS announced a brief at ease at 3:58 p.m.

CHAIR GARY STEVENS reconvened the meeting at 4:40 p.m.

**CSHB 334(RLS)-UNLAWFUL EXPLOITATION OF MINOR/CHILD PORN**

CHAIR GARY STEVENS announced CSHB 334(RLS) to be up for consideration.

REPRESENTATIVE KEVIN MEYER, sponsor, explained that unlawful exploitation of a minor refers to the production of child pornography. The bill increases the penalties for the production and sale of child pornography from a class B felony to a class A felony for persons that have previously been convicted of the crime. It's repeat offenders that are targeted here, he said, and because federal laws are more stringent than the state laws, it's been difficult to qualify for federal grants. Increasing the penalties will address that issue.

When he was a member of the STAR Board (Standing Together Against Rape) he found that the production of child pornography leads to the more serious offense of sexual abuse of a minor. Increasing the penalties for production and distribution might help curb the other.

SENATOR JOHN COWDERY asked him to explain the difference between a class A and a class B felony.

REPRESENTATIVE MEYER explained that the most serious felony is an unclassified felony. The next most serious felony is a class A felony followed by a class B felony and finally a class C felony. The penalty for conviction of a class B felony is incarceration of between one and four years. On the second

offense, there is a mandatory four year sentence. The class A felony calls for a five year sentence for the first offense.

SENATOR BERT STEDMAN asked for an explanation of aggravators and how they apply.

REPRESENTATIVE MEYER said there are about thirty different aggravators and they may be added to a sentence at the judge's discretion.

SENATOR GRETCHEN GUESS asked how the state is doing in prosecuting and enforcing the laws on these crimes. She added that the prosecution and enforcement of statutory rape is pathetic in most states.

REPRESENTATIVE MEYER said his staff might have something to add, but he did know that 15 juveniles were charged with unlawful exploitation in a 10 year period.

SUZANNE CUNNINGHAM, staff to Representative Meyer, said that information from the Department of Corrections indicates that as of 2000 there were 14 offenders in jail for sexual exploitation of a minor. The youngest offender was age 24 and the oldest was 62. In February a defendant was tried and convicted of 16 counts of sexual abuse of a minor and incorporated in that were three counts of unlawful exploitation of a minor. He was sentenced to a total of 25 years for the 16 counts and is eligible for parole after 10 years.

SENATOR GUESS asked about the issue of multiple counts and what the penalty would be if they were all committed at the same time.

REPRESENTATIVE MEYER said the first offense would be a class B felony then on the second offense the penalty would be a class A felony first offense.

SENATOR GUESS asked which it would be if she were convicted of two counts at one time.

MS CUNNINGHAM replied the penalty would be a class B felony, but if you were released from prison and were then charged tried and convicted of the same crime then the penalty would be a class A felony.

SENATOR GUESS asked if they had a reason for addressing it that way. "Someone could get a class A because they're six months

apart on their crimes and someone else could have ten crimes and they would all be class B. Does that make sense?" she asked.

REPRESENTATIVE MEYER said he didn't have an answer to the question.

LT. STOREY stated that he was available to answer questions from the public safety standpoint. He said he had no prepared comments, but it is a good bill and they support it as a means of breaking the cycle of this type of exploitation.

CHAIR GARY STEVENS asked for a motion.

SENATOR COWDERY motioned to moved CSHB 334(RLS) from committee with individual recommendations and accompanying fiscal notes. He asked for unanimous consent. There being no objection, it was so ordered.

**HB 534-MAKE OFFICE OF VICTIMS RIGHTS PERMANENT**

SARA NIELSON, staff to Representative Ralph Samuels, sponsor, explained that the Office of Victims Rights (OVR) provides legal counsel, education, and assistance to victims of crime. The bill repeals the four year sunset date for the office and makes it permanent.

SENATOR GRETCHEN GUESS commented that an advantage to having a sunset provision is that it gives an opportunity to look at the issue and to determine whether or not there is anything that needs to be changed. She asked how she envisions the process for review and revision.

MS. NIELSON pointed out that a legislative member could still request an audit from the LB&A.

KARLA SCHOFIELD with the Legislative Affairs Agency added to the explanation saying that for the Legislature there are annual financial audits for any entity in the Legislature of which the Office of Victims Rights is one. In addition to that, a member of the Legislature could ask the chair of the Legislative Budget and Audit Committee for a performance audit at any time.

SENATOR COWDERY asked for the normal termination date.

MS. NIELSON said it's four years so the original bill would sunset in 2006.

CHAIR GARY STEVENS asked her to speak to the concern that many of the cases take many years to resolve and the sunset could prove problematic to the victim.

MS. NIELSON reiterated that the cases can take years to resolve and there is no wind down period for the office so when the sunset date comes up the case would be dropped.

SENATOR GUESS asked what other groups are treated similarly.

MS. NIELSON told her the Ombudsman Office is the same.

SENATOR GUESS asked if there was a reason that this wasn't addressed as a wind-down to address the issue.

MS. NIELSON said she thought the Finance Committee originally wanted the office to be permanent.

SENATOR GUESS asked if she or the sponsor thought this might not set an undesirable precedent.

MS. NIELSON didn't think so given the nature of the office.

There were no further questions.

SENATOR COWDERY made a motion to move CSHB 534(FIN) from committee with individual recommendations and attached fiscal notes. There being no objection, it was so ordered.

CHAIR GARY STEVENS announced that the committee had time constraints and he didn't believe there was time to address SJR 33 at that time. He asked Senator Guess to meet with Senator Seekins to work on some of the points of contention and the committee would take the matter up as soon as possible.

SENATOR GUESS agreed to do so.

CHAIR GARY STEVENS adjourned the meeting at 5:00 p.m.