

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 7, 2005

1:08 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 88

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 41

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

- MOVED CSHB 41(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 88

SHORT TITLE: OFFENSES BY MINORS/AGAINST TEACHERS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/05	(H)	READ THE FIRST TIME - REFERRALS
01/19/05	(H)	JUD, FIN
01/26/05	(H)	JUD AT 1:00 PM CAPITOL 120
01/26/05	(H)	-- Meeting Canceled --

02/02/05 (H) JUD AT 1:00 PM CAPITOL 120
02/02/05 (H) <Bill Hearing Postponed to 2/4/05>
02/04/05 (H) JUD AT 1:00 PM CAPITOL 120
02/04/05 (H) <Bill Hearing Postponed to 2/7/05>
02/07/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 41

SHORT TITLE: ASSAULT ON SCHOOL EMPLOYEES

SPONSOR(S): REPRESENTATIVE(S) LYNN, MCGUIRE

01/10/05 (H) PREFILE RELEASED 12/30/04
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) JUD, FIN
01/19/05 (H) JUD AT 1:00 PM CAPITOL 120
01/19/05 (H) Heard & Held
01/19/05 (H) MINUTE(JUD)
01/26/05 (H) JUD AT 1:00 PM CAPITOL 120
01/26/05 (H) -- Meeting Canceled --
02/02/05 (H) JUD AT 1:00 PM CAPITOL 120
02/02/05 (H) <Bill Hearing Postponed to 2/4/05>
02/04/05 (H) JUD AT 1:00 PM CAPITOL 120
02/04/05 (H) <Bill Hearing Postponed to 2/7/05>
02/07/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Presented HB 88 on behalf of the
administration and responded to questions; responded to a
question during discussion of HB 41.

PATTY WARE, Director
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 88.

GARDNER COBB, Lieutenant
Patrol Commander
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 88 and responded to a comment; provided comments during discussion of HB 41 and asked the committee to pass the bill with a minimum mandatory sentence.

JAMES S. "STEVE" LYONS, Detective
Robbery/Assault
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 88 and responded to questions.

LEONARD M. "BOB" LINTON, JR., District Attorney
Third Judicial District (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 88 and responded to questions.

STEPHEN BRANCHFLOWER, Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 88.

DEBRA MEISTER
Anchorage, Alaska

POSITION STATEMENT: Speaking as a parent, provided comments during discussion of HB 41.

MARY A. FRANCIS, Executive Director
Alaska Council of School Administrators (ACSA)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 41.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as one of the prime sponsors of HB 41.

TOM HARVEY, Executive Director
NEA-Alaska (National Education Association, Alaska branch)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 41, responded to questions and suggested a change.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [1:08:26 PM](#). Representatives McGuire, Anderson, Coghill, Dahlstrom, and Gruenberg were present at the call to order. Representative Gara arrived as the meeting was in progress. Representative Kott had previously been excused.

HB 88 - OFFENSES BY MINORS/AGAINST TEACHERS

[Contains discussion of HB 41.]

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 88, "An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

CHAIR McGUIRE noted that both HB 41 and HB 88 address the issue of assaults on school employees, but HB 88 does so via an aggravator - which, she surmised, would not comport with the U.S. Supreme Court case, Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004) - and also addresses the issue of offenses by minors. She expressed a preference for considering HB 41 as the vehicle and then perhaps rolling into it the part of HB 88 that addresses offenses by minors.

[1:11:14 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), relayed that the administration has introduced HB 88 for reasons similar to those of the sponsor of HB 41 - that being a serious concern about violence among youth and at school. She noted that the findings section of HB 88 makes reference to, and includes statistics from, surveys conducted by the Department of Health and Social Services (DHSS) and the Anchorage School District (ASD). She opined that the most disheartening of the statistics used are the ones that say 13 percent of students responding to the ASD survey reported feeling unsafe at school, and that this figure is more than double the national average.

MS. CARPENETI relayed that police have said that not only is violence in school a problem, but that "gun violence" among Alaskan youth is a serious problem. She said that she does not believe that the aggravating factor in HB 88 would violate Blakely; instead, the aggravating factor will just have to be proven differently than is currently done. She explained that HB 88 does two things: it adopts an aggravated sentencing factor for crimes against a person - crimes located in AS 11.41, which include assault, homicide, sexual assault, sexual abuse of a minor, kidnapping, and related offenses - when those crimes are knowingly directed at an employee of a school; and it provides for an automatic waiver into adult court for minors who are at least 16 years of age and who commit the crime of misconduct involving weapons in the first degree - a class A felony - or in the second degree - a class B felony - in violation of AS 11.61.190 or 11.61.195, which pertain in part to drive-by shootings and drug-related crimes involving firearms.

[1:14:44 PM](#)

MS. CARPENETI, in response to questions, said that the only crimes that HB 88 proposes for inclusion in the automatic waiver provision of law are those involving firearms, and indicated that forthcoming testimony by police will show that the commission of such crimes by 16- and 17-year-olds constitutes a really serious problem, particularly in Anchorage.

REPRESENTATIVE GRUENBERG asked whether there are any constitutional limits on what crimes a minor can be waived into adult court for.

MS. CARPENETI said she is not aware of any, but would be willing to research the issue further.

REPRESENTATIVE GRUENBERG asked that the results of that research be in writing.

REPRESENTATIVE DAHLSTROM said she has seen many studies indicating that crimes involving knives are more violent and bizarre than those involving firearms, and asked why such crimes were not included in the waiver provision of HB 88.

MS. CARPENETI said that the DOL and the DHSS have been cautious whenever suggesting the institution of an automatic waiver - limiting such waivers to only those 16 years of age and older, and to only the most serious of crimes - and so have chosen to have HB 88 propose a waiver only for those crimes involving

firearms that have the potential to harm a person. She explained that crimes involving knives constitute the crime of misconduct involving weapons in the third degree, a class C felony, and that presently there are not any class C felonies being automatically waived into adult court, though minors committing such crimes could still be subject to discretionary waiver.

REPRESENTATIVE GARA offered his understanding of how discretionary waivers are currently utilized and where juveniles that have been waived to adult court serve their sentences, and asked for more information.

1:20:56 PM

PATTY WARE, Director, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), said that juveniles that have been adjudicated without being waived into adult court get to serve their sentences in facilities run by the DHSS, or might be placed under formal probation supervision, and thus get to continue with school activities; juveniles that have been waived into adult court, however, serve their sentences in facilities run by the Department of Corrections (DOC). So the question becomes one of whether a particular crime is addressed in the juvenile system versus the adult system. She relayed that part of the DJJ's agency mission is to hold juvenile offenders accountable for their behavior; regardless of how that occurs, the DJJ's probation officers take that responsibility very seriously, and so in addition to supervising and monitoring the DJJ's juvenile offenders, treatment services are provided - the goal being to prevent juveniles from proceeding into the adult criminal system.

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REPRESENTATIVE GARA said that to the extent that a child is redeemable, he would prefer that the child be incarcerated with other children where he/she can continue with schooling, rather than with adults where such educational opportunities might not exist.

MS. WARE concurred, but noted that the DOC does have facilities wherein juveniles incarcerated via the adult system are kept separate and do have educational opportunities. She characterized the proposed waiver as fairly narrow and as a policy call.

MS. CARPENETI offered her belief that juvenile offenders incarcerated in adult facilities are segregated from adults, but offered to research the issue further.

[1:25:01 PM](#)

CHAIR McGUIRE posited that the policy behind the change proposed to the current waiver provision is to send a message that violence involving guns will not be tolerated regardless of a person's age, but acknowledged that a goal of the juvenile justice system (JJS) is to ensure that redeemable juveniles are rehabilitated so that they may come back into society. She suggested that the question is whether they are furthering that goal by putting a young person in a place where he/she may "end up just getting worse."

MS. CARPENETI opined that the offenders that would be subject to the proposed waiver are pretty serious offenders. In response to an earlier question, she noted that a judge will waive a juvenile to adult court under the discretionary waiver provision of current law if he/she feels that the juvenile cannot be rehabilitated by age 20. She also noted that in cases involving crimes other than unclassified and class A felonies, the state has the burden of proving by a preponderance of the evidence that a juvenile should be waived into adult court; in cases involving unclassified and class A felonies, the burden switches to the juvenile and there is a presumption of the juvenile's inability to be rehabilitated by age 20.

[1:26:47 PM](#)

REPRESENTATIVE GRUENBERG declared a conflict of interest, and asked to be excused from voting.

CHAIR McGUIRE objected, and asked Representative Gruenberg to vote on any motions requiring a roll call vote.

REPRESENTATIVE GRUENBERG asked whether, in light of Blakely, the DOL sees any potential constitutional problems with the aforementioned preponderance of the evidence standard.

MS. CARPENETI said she has not seen any decisions in that regard pertaining to waiver issues.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti to research the issue further and provide the results in writing. He also asked whether Alaska has something similar to the federal "youthful

offender" Act, which, he suggested, allows judges to consider sentences that might be considered appropriate for youthful offenders, particularly those without any criminal history, and whether instituting similar laws might be beneficial to Alaska; he asked that the results of any research on this issue also be in writing.

MS. CARPENETI noted that although Alaska statutes do not currently have anything specifically called a youthful offender Act, there are statutes that pertain to first time offenders of less serious crimes.

REPRESENTATIVE GRUENBERG indicated that he would like to provide the state with as many options as possible to allow judges to "deal with the individual offender and the individual case."

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REPRESENTATIVE GARA asked whether there is evidence that the current discretionary waiver provision is not being used correctly. Is there evidence that judges are not granting waivers into adult court for people who are irredeemable?

MS. CARPENETI said she would hesitate to say that judges are abusing their discretion, but noted that historically, it has been tremendously difficult to convince judges to discretionarily waive juveniles into adult court. That is why, she surmised, that the legislature initially took the tact of instituting mandatory waivers for certain juveniles committing certain crimes. She remarked that it is really difficult to establish an inability to be redeemed, and so the state generally just makes use of the automatic waiver provision and doesn't often ask for a discretionary waiver, which are rarely granted.

1:33:32 PM

GARDNER COBB, Lieutenant, Patrol Commander, Anchorage Police Department (APD), Municipality of Anchorage (MOA), relayed that he is the administrator of the School Resource Officer (SRO) program, is in charge of the APD's "Intel Unit" - the main purpose of which is to track Anchorage's youth gangs - and is a Special Weapons and Tactics (SWAT) commander. He relayed that he is in support of HB 88, provided a few examples of crimes involving youths with weapons, and noted that there have been several high-profile homicides, both this year and last year. Although the main goal of the juvenile justice system is to

rehabilitate juveniles, that goal must be balanced with protecting the public, he concluded.

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JAMES S. "STEVE" LYONS, Detective, Robbery/Assault, Anchorage Police Department (APD), Municipality of Anchorage (MOA), relayed that the APD's robbery/assault unit mainly investigates crimes of robbery and assault - the majority of which involve weapons, mostly guns - and gang-related activities. He said he agrees with the concept of rehabilitation, but personal experience has shown him that juveniles who have chosen to settle their differences with guns have elevated to that level of behavior over a period of time - they didn't start out with guns, but for whatever reason, that's where their lives have taken them. He relayed that the APD receives 15-20 "shots fired" calls every month, the majority of which involve drive-by shootings.

MR. LYONS offered:

With these type of shootings, these kids who've piled into these cars to go resolve these differences with their guns have no regard for where this is going to happen at or who's in the way. We have shootings in malls - the last one happened [on January 21, 2005] where two of our gangs got into a confrontation and shots were fired through the main doors of the mall without any regard [for] ... who was there. We also have houses shot up, cars shot up, businesses shot up. ... These things just happen and there's just no regard for public safety at all - it [isn't] ... like they go out in the woods and settle it themselves - they just pull into wherever and just start firing at each other. ...

When we have these calls of shot fired, typically the [APD] ... will find the car that this has happened from. What we run into, though, is ... that ... typically we'll find a weapon [in the car], but we can't put that weapon in anybody's hand; the kids who are at this level are smart enough to say ...: "I don't know whose gun it is," ... "It's not mine," "I [didn't] know it was in here," or "I want my attorney." And without us actually being able to put the gun in the kid's hand that fired it, we can't charge them.

Unfortunately, out of all of our shootings last year, we only know of 11 where we were able to charge these kids that did these shootings where ... these laws would have applied. And that's just sort of what we run into. ... It's not against the law for a 17- or an 18-year-old to have a gun as long as it's not concealed, and basically ... we're kind of in a hard spot there.

1:39:10 PM

CHAIR MCGUIRE remarked, however, that nothing in the bill appears to help link a firearm with the person who uses it, and so there may always be that challenge. The committee is addressing the question of whether to put someone 16 years of age or older into an adult facility, she relayed, and asked the APD to comment on how doing so will further the goals of the APD: Are youth incarcerated in youth facilities more of a danger to the public? Is there more of an opportunity for those offenders to escape from those facilities and cause problems back on the street? Are youth facilities not doing a good job of rehabilitating the type of juveniles being discussed? If the latter is the case, would those juveniles have a better chance of being rehabilitated in an adult facility, or are they just sort of being written off?

MR. LYONS replied that perhaps the juveniles under discussion can be rehabilitated if they can be caught early enough and if the penalties, at the juvenile level, are severe enough to act as a deterrent. He said, however, that what he has seen, particularly with regard to youths involved in gang-related activities, is that they are beyond rehabilitation; "they are doing now the only thing they know [how] ... to do, and that is to take a gun and use it to resolve all their problems." He mentioned that the federal system has a program called, "project safe neighborhoods," which focuses on gun crimes and those who are habitual users of guns; however, the only way to determine if someone is a habitual user of guns is if he/she has a prior felony conviction for gun use, and this is where [adoption of HB 88] could assist the APD, that is, if such juveniles are waived into an adult system and are convicted of felony gun use. If such occurs and the person continues his/her behavior into adulthood, then he/she will be subject to stiffer penalties, particularly under federal law.

1:42:34 PM

REPRESENTATIVE GARA said he wants to feel comfortable that adopting the bill is the right thing to do, that none of the children who will be affected by the bill would be redeemable through incarceration in a juvenile facility anyway.

MR. LYONS replied that according to his experience, the types of crimes HB 88 addresses are being committed by children of younger and younger ages, and the younger an offender is, the more hope there is that he/she can be rehabilitated. However, what he is also seeing, he relayed, is that those close to the age of adulthood have already made up their minds about "where they're going" and have a total disregard for anything and anybody; their experience has shown them that they won't be punished for their actions because of the ineffectiveness of current juvenile penalties, and they just don't realize that they will face severe penalties for their continued criminal behavior once they become adults. Such juveniles know that for the most part, until they reach the age of 18, they can participate in any activities involving guns and they will get away free. Once juveniles who have elevated their behavior to gun use reach a certain age, that is the only way they are willing to resolve their problems, and they just don't care about the outcome.

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MS. WARE said that with regard to statistics, in a two-year fiscal period, the DJJ only received 40 referrals for the combined charges of first degree and second degree misconduct involving a weapon; of those 40 referrals, only 26 of the juveniles were 16 years of age or older. Therefore, had the waiver provision of HB 88 been in effect for that particular two-year time period, it would have applied to only 26 juveniles, not a significant number of juveniles, particularly given the severity of the crimes committed by those juveniles.

CHAIR McGUIRE asked what factors tend to get the attention of juveniles, and what kind of recidivism rate juveniles have.

MS. WARE said that the DJJ tracks recidivism in two ways and for two-year periods: for juveniles who are leaving long-term institutional treatment; and for juveniles who have not served time in a facility but for whom the DJJ has closed out a probation supervision case. She relayed that she would get that data to committee.

CHAIR McGUIRE said it might be helpful to know whether the current policy is working and, if it isn't, whether it is because the juveniles are not [capable of] being rehabilitated in youth facilities or because there are not enough resources in youth facilities. She surmised that the committee wants to know whether there is really a need for the proposed policy change. She added:

With these young people, we're going to see them again; they're in our communities, we have to live with them for the rest of our lives until, presumably, they reoffend. And so if they have a better opportunity to get their act together and start being law-abiding citizens by staying in [a] youth facility, then that's where we want them. If you think that they're going to be better off in adult [populations], then I want to know why. So to the extent that any of your studies or information can lead us down that path [of understanding], I would ... [appreciate receiving it].

REPRESENTATIVE COGHILL offered his understanding that there are three populations that the DJJ has to deal with: youthful misdemeanants, those with mental health issues, and those that could be characterized as hardened criminals. If bill passes, it is saying that juveniles that are hardened criminals will be waived into adult court. He asked whether such juveniles are disruptive to the JJS, and whether putting them in the adult system would be harmful to them instead.

[1:50:18 PM](#)

MS. WARE said that perhaps the DJJ could arrange its recidivism data such that it reflected just the juveniles that would be affected by the bill, though she cautioned that such might not be possible.

REPRESENTATIVE COGHILL surmised that the JJS is quite different from the adult system and thus treats its offenders quite differently, even those that are considered hardened criminals.

CHAIR McGUIRE asked the DJJ to present an overview to the committee at a later date.

MS. WARE agreed to do so.

[1:52:22 PM](#)

REPRESENTATIVE GARA asked whether, in the aforementioned 26 cases, waivers were requested but denied. Why wouldn't the state just apply for waivers for those types of cases? Shouldn't that be the first step?

MS. WARE said she would research that information and provide it to the committee, but noted that Ms. Carpeneti already spoke to the issue of how difficult it is to get a discretionary waiver.

REPRESENTATIVE GARA questioned why the legislature should try and alter the current waiver provision of law if it's simply the case that discretionary waivers are not being sought to begin with. He noted that the bill appears to also apply to juveniles who shoot at road signs while out for a "joyride."

MS. WARE pointed out, however, that even if such juveniles do not intend to hurt someone with that particular behavior, they are still shooting a firearm from a moving vehicle and so there is the potential for innocent bystanders to get hurt or killed; also such juveniles, according to the information relayed by the APD, probably already have prior criminal histories. So the question before the committee, she surmised, is whether the offenses of shooting at property and people from a moving vehicle or using a gun while engaging in a drug-related activity rises to a level that warrants an automatic waiver into adult court.

REPRESENTATIVE GARA opined, however, that shooting at road signs is not irredeemable conduct, and reiterated that the bill as written appears to apply both to those that commit that kind of offense as well as to those that shoot at people from cars or during the commission of a drug-related crime. He suggested that the administration consider narrowing the scope of the bill so that the waiver provision applies only to the egregious circumstances.

[1:58:04 PM](#)

LIEUTENANT COBB said he agrees with Representative Gara on the issue of whether the bill should apply to those shooting at road signs; rather, the bill should be directed at those who shoot at residences, schools, or other buildings where people are likely to be.

[1:59:01 PM](#)

LEONARD M. "BOB" LINTON, JR., District Attorney, Third Judicial District (Anchorage), Department of Law (DOL), said that in the early '90s, the phenomenon of drive-by shooting began to occur. There began to be instances where, for no understandable or real reason, people would get into a dispute with one another and take it out on each another with guns - they'd fire at each other driving down the street, they'd fire at each other in neighborhoods, they'd fire at each other in the parking lots of commercial establishments - and people were being endangered. And it wasn't as if people could prevent themselves from being endangered merely by refraining from gang affiliation either, because they would be on those same streets, in those same neighborhoods, and at those same parking lots where the shooting was occurring.

MR. LINTON said that as a result, the legislature decided that the dangers engendered by drive-by shootings were sufficiently serious to make such crimes class A and B felonies. That meant that an offender convicted for the first time of such a crime was subject to a five-year presumptive sentence - for a class A felony - or to a one- to four-year sentence - for a class B felony - and any rehabilitative factors would be ignored at sentencing. House Bill 88, by including such crimes in the automatic waiver provision of current law, seeks to make those sentences apply to offenders who are 16 years of age and older.

MR. LINTON went on to detail a few examples of circumstances surrounding juveniles involved in recent drive-by shootings as illustrative of the need for the change proposed by HB 88. Such juveniles are not only perpetrating these acts of violence but are also ending up as the victims of similar retaliatory acts. Such conduct has no social utility whatsoever, he opined, and cannot be characterized as merely youthful conduct. So although the JJS is designed to be rehabilitative, the adult system is as well, and at some point the danger of a juvenile's conduct warrants legal actions other than those currently being taken.

[2:08:10 PM](#)

REPRESENTATIVE GRUENBERG asked whether, under HB 88, juveniles who are simply shooting at road signs would have to be waived to adult court.

MR. LINTON surmised that the court would have to determine whether such action constitutes a substantial and unjustifiable risk of harm to a person or damage to property, as outlined in AS 11.61.190(a)(2). In response to further questions, he said

he doesn't know of any instances where the court's discretion when considering crimes under that statute is being abused, and offered another example of a situation wherein two bystanders were nearly hit by people shooting at each other from moving vehicles, as well as an example of shots from moving vehicles being fired into a dwelling. He remarked that even if someone is just driving along shooting at road signs, there are few legitimate reasons for such behavior - that of shooting a gun from a moving vehicle - and it still constitutes dangerous behavior.

[2:13:29 PM](#)

STEPHEN BRANCHFLOWER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, said he supports HB 88 for the following reasons: it is very difficult to waive a juvenile into adult court under current law because of the demand on the system's resources; and juveniles who are involved with guns and drugs eventually graduate into adult courts within a couple of years but generally only after someone is injured or killed. House Bill 88 will allow the criminal justice system to intervene at an earlier stage, he opined, and suggested that another beneficial effect of the bill is that it would allow the prosecutor to negotiate with the defense counsel regarding conduct that falls within the ambit of the bill, and this negotiation could result in cases being resolved in alternative ways rather than trying the defendant as an adult. In conclusion he echoed Ms. Ware's statement regarding the probable number of cases the bill would apply to, and reiterated that he supports HB 88.

[2:16:19 PM](#)

CHAIR McGUIRE relayed that HB 88 would be set aside.

HB 41 - ASSAULT ON SCHOOL EMPLOYEES

[Contains discussion of HB 88 and a proposed amendment to it.]

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 41, "An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school who was engaged in the performance of school duties at the time of the assault."

CHAIR McGUIRE, speaking as one of the prime sponsors of HB 41, relayed that she is having an amendment for HB 41 drafted.

[2:17:14 PM](#)

DEBRA MEISTER shared with the committee her personal experiences regarding interactions she'd had with employees at her daughter's school as illustrative of the kinds of problems that could arise for parents if HB 41 is passed without strict [scrutiny], and characterized the behavior of [those she'd interacted with] as a misuse of power.

[2:26:40 PM](#)

MARY A. FRANCIS, Executive Director, Alaska Council of School Administrators (ACSA), mentioned that the ACSA has provided the committee with its resolution on this topic, and relayed that it is the responsibility of school administrators to seek and perpetuate a nonviolent climate in schools, adding that most assaults of the nature the bill proposes to address occur against school administrators. She pointed out that as educators, [school employees] are not trained to deal with some of the types of situations they are confronted with, and thus feel the need for additional protection.

[2:27:58 PM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, one of the prime sponsors of HB 41, noted that there has been a lot of interesting testimony, offered his belief that there is a broad range of support for HB 41, and said that HB 41 and HB 88 are complementary. In conclusion, he asked the committee for favorable consideration of HB 41.

[2:28:53 PM](#)

GARDNER COBB, Lieutenant, Patrol Commander, Anchorage Police Department (APD), Municipality of Anchorage (MOA), indicated that he is familiar with Ms. Meister's circumstances, noted that the bill would only apply to those convicted of assault, and assured the committee that the APD and the prosecutor would use their discretion to ensure that such is the case. He pointed out that the bill is intended to address the type of circumstance that arose three years ago, wherein the mother of an elementary school student came to school, issued threats towards a teacher and then severely and repeatedly assaulted the teacher while the children watched.

LIEUTENANT COBB relayed that at the time, the APD's policy in such a situation was to cite the person for misdemeanor assault, and since the woman was calm by the time police arrived, she was cited and allowed to leave the school. He opined that this sent the wrong message as far as APD was concerned, and the APD has since changed its policy so that anytime there is an assault on a teacher on school grounds, the perpetrator is removed from the school in handcuffs so as to send the message that such behavior will not be tolerated. Noting that current law provides protection against assaults for police officers, paramedics, firemen, and other emergency responders because they are sometimes called upon to do dangerous things, he asked that the bill be passed with a minimum mandatory sentence so as to send the message that violence in schools is unacceptable - students can't learn and teachers can't teach if they aren't safe.

LIEUTENANT COBB mentioned a couple of other similar situations in which the courts imposed significant sentences, and one the reasons for this, he surmised, had to do with the APD's close working relationship with the prosecutor's office and the judge. But those relationships can change, he remarked, and so it would be appropriate to institute a [statewide] standard so as to send the message that violence in schools is unacceptable.

2:33:39 PM

CHAIR McGUIRE mentioned that at a meeting she'd attended with Close Up Foundation students, the children expressed support for HB 41 and relayed that violence against teachers occurs more often than is heard about. She remarked that the legislature wants to be careful not to create a special class of victims, and mentioned that an amendment she'll be proposing specifies that the assault must occur on school grounds or at a school-sponsored event; this will send the message that schools are to be free from violence. Policy has already been set with regard to violent behavior towards police officers, and the bill sends the same message about school employees. She acknowledged that in the recent cases used as examples, the sentences have been greater than those proposed in the bill, but pointed out that the question then becomes whether such will occur in all future cases; setting public policy on this issue via the change proposed in HB 41 will ensure consistency in sentencing. In conclusion, she opined that adoption of HB 41 will not result in great numbers of people being incarcerated for the crime specified therein.

2:37:43 PM

CHAIR MCGUIRE made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, Line 4:

After "school duties"

Insert "while on school grounds or at a school-sponsored event"

CHAIR MCGUIRE said Amendment 1 narrows the set of circumstances that the bill would apply to such that a school employee must be on school grounds or at a school-sponsored event and must be engaged in his/her school duties; the bill, then, would not apply to assaults that occur off school grounds or while an employee is on his/her own time. She suggested that this distinction will ensure that a separate class of victims is not being created.

CHAIR MCGUIRE, in response to a question, relayed that although she'd originally thought the committee might meld the waiver provision of HB 88 into HB 41, she feels that the public testimony on and the committee's questions regarding HB 88 have indicated to her that it might be better to keep each bill separate.

REPRESENTATIVE GRUENBERG referred to his proposed amendment to HB 88, labeled 24-GH1096\A.1, Luckhaupt, 2/7/05, which read:

Page 1, line 2:

Delete "**against a school employee**"

Insert "**on school grounds, on a school bus, at a school-sponsored event, or in administrative offices of a school district**"

Page 2, lines 16 - 18:

Delete all material and insert:

"(31) the offense is a violation of AS 11.41 or AS 11.46.400 and the defendant directed the conduct constituting the offense against a person while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900."

REPRESENTATIVE GRUENBERG also referred to his proposed amendment to HB 41, labeled 24-LS0307\A.1, Luckhaupt, 2/7/05, which read:

Page 1, line 4, following "assault":

Insert "; relating to aggravating factors in sentencing for certain offenses committed against persons while on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district"

Page 2, following line 6:

Insert a new bill section to read:

"* **Sec. 2.** AS 12.55.155(c) is amended by adding a new paragraph to read:

(31) the offense is a violation of AS 11.41 or AS 11.46.400 and the defendant directed the conduct constituting the offense against a person while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900."

REPRESENTATIVE GRUENBERG said he would prefer to take the parts of HB 88 that the committee likes and [add them to HB 41]. He opined that there are two questions: whether to make "this" a separate crime, or whether to make "it" an aggravator. Whichever method is chosen, he remarked, the language [in the amendment] is not directed at whether the person is an employee but, rather, where the conduct takes place. In this way, teachers - both local and visiting - students, and contractors would be covered, the key point being the location where the conduct takes place, since the desire is to ensure that schools, school facilities, and school buses are safe.

CHAIR MCGUIRE said she likes that approach but feels that making the behavior an aggravator is fruitless at this point due to the Blakely decision, since resource limitations would make separate

trials for aggravators, as would be required under Blakely, prohibitive.

[2:44:25 PM](#)

REPRESENTATIVE GRUENBERG suggested using the language in his amendment that pertains to location so as to stipulate that the bill applies to whomever the conduct is directed at as long as he/she is on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district.

CHAIR MCGUIRE indicated that she was amenable to the concept [of stipulating location].

[2:44:53 PM](#)

CHAIR MCGUIRE withdrew Amendment 1.

CHAIR MCGUIRE said she would like to offer a conceptual amendment to implement Representative Gruenberg's suggestion. She asked whether the committee still wants to include the stipulation that the person the conduct is directed at be an employee, noting that the statute HB 41 proposes to amend already specifies uniformed groups of people.

REPRESENTATIVE GRUENBERG urged the committee to adopt the language in his amendment that reads:

 against a person while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district; in this paragraph,

 (A) "school bus" has the meaning given in AS 11.71.900;

 (B) "school district" has the meaning given in AS 47.07.063;

 (C) "school grounds" has the meaning given in AS 11.71.900."

REPRESENTATIVE GRUENBERG noted, however, that he would like to ensure that the current statutory definition of "school grounds" includes preschools.

[2:48:04 PM](#)

REPRESENTATIVE COGHILL pointed out that school sports activities can sometimes engender heated behavior, and said he would not want to include the locations of such activities in the bill. He offered his belief that the intent of the bill is to make schools safer, and asked whether the committee wanted to make the penalty proposed by the bill applicable only to behavior that occurs on school grounds. He indicated that he would be comfortable if the bill applies only to "those who are protecting children" during the course of their employment duties, rather than having the bill pertain to anyone on school grounds.

REPRESENTATIVE DAHLSTROM offered an example of two parents involved in the Parent Teacher Association (PTA) getting into a fight; although such behavior is wrong, particularly if it happens in front of children, she is not sure it rises to the same level as conduct directed at a teacher.

REPRESENTATIVE GRUENBERG asked about conduct that is directed at a child.

CHAIR McGUIRE offered her belief that such would be handled differently.

[2:50:14 PM](#)

CHAIR McGUIRE pointed out that Amendment 1 does essentially the same thing as Representative Gruenberg's suggested language except that it doesn't specify school buses.

CHAIR McGUIRE made a motion to adopt an amended Amendment 1, which would read [original punctuation provided]:

Page 2, Line 4:
After "school duties"
Insert "while on school grounds, a school bus, or at a school-sponsored event"

CHAIR McGUIRE offered her belief that the definitions outlined in Representative Gruenberg's amendment could also apply to Amendment 1.

REPRESENTATIVE GRUENBERG asked about [the inclusion of] preschools.

CHAIR McGUIRE said she is "not comfortable with that," and suggested that he consider offering language to that effect in a separate amendment.

2:51:48 PM

REPRESENTATIVE COGHILL objected for the purpose of discussion. He asked how school districts employ bus drivers. If bus drivers are contract workers, the employee stipulation may not cover them.

CHAIR McGUIRE asked the representative from the Alaska branch of the National Education Association (NEA-Alaska) whether people on contract with the school would be considered school employees while they are performing the duties they've been contracted to perform.

TOM HARVEY, Executive Director, NEA-Alaska (National Education Association, Alaska branch), said they would not be considered school employees; instead they are employees of the company that contracted the services.

CHAIR McGUIRE asked how many school bus drivers are on contract.

MR. HARVEY said he didn't have the exact number, but offered that bus drivers in Anchorage and Kenai are on contract, and indicated that elsewhere in the state there are folks performing duties in schools on contract.

REPRESENTATIVE ANDERSON asked Mr. Harvey whether he has any suggestions.

MR. HARVEY opined that adding the term "administrative offices of the school district" would be an appropriate change because personnel in such locations are not on school grounds, and offered to provide the committee with a suggested definition of school employee within 24 hours.

CHAIR McGUIRE suggested that the committee resolve the issue of whether to adopt Amendment 1, as amended.

REPRESENTATIVE ANDERSON made a motion to amend Amendment 1, as amended, to add a reference to administrative offices. There being no objection, Amendment 1, as amended, was amended in that fashion.

2:55:50 PM

CHAIR MCGUIRE asked Representative Coghill if he was maintaining his objection to Amendment 1, as amended.

REPRESENTATIVE COGHILL said he is struggling with the broader language being used in conjunction with the mandatory minimum sentence proposed by the bill, adding that although he did not want to hold up Amendment 1, as amended, he would be maintaining his objection.

2:57:14 PM

A roll call vote was taken. Representatives McGuire, Anderson, Dahlstrom, Gruenberg, and Gara voted in favor of Amendment 1, as amended. Representative Coghill voted against it. Therefore, Amendment 1, as amended, was adopted by a vote of 5-1.

2:57:50 PM

CHAIR MCGUIRE suggested the committee discuss the issue of contract employees.

REPRESENTATIVE GRUENBERG said he is troubled with the concept of elevating assaults against adults [who are school employees and who are at the specified locations as part of their profession] but not elevating assaults against children and other innocent bystanders who are at those same locations. He again suggested that the bill pertain to conduct at specified locations without regard to particular classes of people. Such a stipulation would address the issue of contract employees, he remarked, and offered his belief that schools ought to be safe for everybody including children and innocent bystanders. He offered an example wherein a person assaults two people, a child and a teacher. Under such a scenario, the assault on the teacher would result in the imposition of the mandatory minimum sentence proposed by the bill, whereas the assault on the child wouldn't. He offered further similar examples wherein assaults on two different people would result in two different sentences.

CHAIR MCGUIRE pointed out that the bill proposes to alter a statute that already pertains to assault in the fourth degree against certain classes of adults, not children. If the bill is not limited to school employees, it could apply to situations in which someone is assaulted while walking his/her dog on school grounds. In response to a comment, she pointed out that if a teacher chooses to walk his/her dog on school grounds and gets assaulted, that teacher is not performing school duties as

stipulated in the bill, and therefore the bill should not apply in such a situation.

REPRESENTATIVE ANDERSON offered his belief that the intent of the bill is to address assaults directed at school employees, and suggested that members who wish to address assaults directed at other individuals while on school grounds do so via a separate bill.

[3:02:11 PM](#)

REPRESENTATIVE GARA said he couldn't see where the bill only applies to adults.

REPRESENTATIVE GRUENBERG pointed out that Title 47 applies to sentences imposed on children, whereas the bill proposes to alter Title 12, which only applies to sentences imposed on adults.

REPRESENTATIVE GARA said he just wanted to be sure that the bill only applies to [sentences imposed on] adults.

[3:04:04 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), assured the committee that the mandatory minimum sentence proposed by the bill would not apply to children.

REPRESENTATIVE ANDERSON moved to report HB 41, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[3:05:05 PM](#)

REPRESENTATIVE GARA interjected with a motion to adopt Amendment 2, which read [original punctuation provided]:

The court may determine a shorter sentence is justified upon proof, under AS 12.55.155, that any of the factors in AS 12.55.155(d)(1-17) apply.

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GARA opined that Amendment 2 accepts the premise of the bill that assaulting a school employee is a serious issue, and remarked that he is in favor sending that message.

However, since the courts are already imposing sentences greater than that proposed by the bill, Amendment 2 give the court the flexibility to impose a lesser sentence if a statutory mitigator applies.

REPRESENTATIVE GARA again made the motion to adopt Amendment 2.

REPRESENTATIVE COGHILL said he tended to agree with Representative Gara [on this issue].

REPRESENTATIVE ANDERSON indicated that he was maintaining his objection.

REPRESENTATIVE GRUENBERG asked where Amendment 2 would be inserted.

[3:09:09 PM](#)

REPRESENTATIVE GARA suggested that Amendment 2 be inserted after the last line of the bill.

[3:09:23 PM](#)

A roll call vote was taken. Representatives Coghill, Gruenberg, and Gara voted in favor of Amendment 2. Representatives McGuire, Anderson, and Dahlstrom voted against it. Therefore, Amendment 2 failed by a vote of 3-3.

CHAIR MCGUIRE asked whether there were any objections to Representative Anderson's motion to move HB 41, as amended, from committee. There being none, CSHB 41 (JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:10 p.m.