

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

February 16, 2005

1:15 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 97

"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed, and to notaries public; and providing for an effective date."

- MOVED CSHB 97(JUD) OUT OF COMMITTEE

OVERVIEW(S): DEPARTMENT OF HEALTH & SOCIAL SERVICES, DIVISION OF JUVENILE JUSTICE

- HEARD

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."

- MOVED CSHB 88(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 97

SHORT TITLE: OATHS; NOTARIES PUBLIC; STATE SEAL

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (H) READ THE FIRST TIME - REFERRALS  
01/21/05 (H) STA, JUD, FIN  
01/26/05 (H) FN1: (GOV) - CORRECTED  
02/03/05 (H) STA AT 8:00 AM CAPITOL 106  
02/03/05 (H) Moved CSHB 97(STA) Out of Committee  
02/03/05 (H) MINUTE(STA)  
02/07/05 (H) STA RPT CS(STA) 6DP 1NR  
02/07/05 (H) DP: LYNN, GATTO, ELKINS, GRUENBERG,  
RAMRAS, SEATON;  
02/07/05 (H) NR: GARDNER  
02/16/05 (H) JUD AT 1:00 PM CAPITOL 120

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 Fri. 2/4/05>  
02/04/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/05 (H) -- Rescheduled from Wed. 2/2/05 --  
02/07/05 (H) JUD AT 1:00 PM CAPITOL 120  
02/07/05 (H) Heard & Held  
02/07/05 (H) MINUTE(JUD)  
02/16/05 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

BRIAN WESTAD, Intern  
Office of the Lieutenant Governor  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 97 on behalf of the  
administration.

SCOTT CLARK, Notary Commission Administrator  
Office of the Lieutenant Governor  
Juneau, Alaska  
POSITION STATEMENT: Responded to questions during discussion of  
HB 97.

ANNETTE KREITZER, Chief of Staff  
Office of the Lieutenant Governor

Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 97.

PATTY WARE, Director

Division of Juvenile Justice (DJJ)

Department of Health & Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Presented the overview of the Department of Health and Social Services' Division of Juvenile Justice.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section-Juneau

Criminal Division

Department of Law (DOL)

Juneau, Alaska

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

LEONARD M. "BOB" LINTON, JR., District Attorney

Third Judicial District (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

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

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:15:28 PM](#). Representatives McGuire, Coghill, Dahlstrom, Gruenberg, and Gara were present at the call to order. Representatives Anderson and Kott arrived as the meeting was in progress.

HB 97 - OATHS; NOTARIES PUBLIC; STATE SEAL

[1:16:16 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 97, "An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed, and to notaries public; and providing for an effective date." [Before the committee was CSHB 97(STA).]

[1:16:25 PM](#)

BRIAN WESTAD, Intern, Office of the Lieutenant Governor, relayed that HB 97 would make changes to Alaska's notary statutes, which have not been updated since 1961. These changes have been proposed by Alaska's notaries working together with the Lieutenant Governor's office, and are outlined in a handout titled, "Notary Statue Comparison - CSHB 98(STA)", which lists the following categories: Qualifications, Term, Fees, Bond, Commission Types, Commission Revocation, Notary Data, And Non-Commissioned Notaries. With regard to qualifications, the bill proposes to lower the minimum age requirement to 18 - one of the reasons for doing this is to allow bank tellers to become notaries public - and also proposes to require notaries public to reside legally in the U.S. and not be convicted of or incarcerated for a felony within 10 years of application.

MR. WESTAD said that with regard to terms, notaries public will continue to serve a term of four years, but the bill proposes to create limited governmental notaries public commissions, which will be linked with one's position as a government worker and will end when one's job ends. With regard to fees, the application fee for non-state government notaries will remain the same - \$40 - but the fee for a Lieutenant Governor certificate will increase from \$2 to \$5. With regard to bonds, the requirement will remain the same. With regard to commission types, notaries public will continue to serve four years, but limited governmental notaries public will serve as long as they hold their governmental positions. With regard to commission revocation, the bill proposes to allow the Lieutenant Governor to revoke a commission for good cause via a formal disciplinary procedure using the administrative hearing office. With regard to notary data, the bill proposes that the Lieutenant Governor may collect information in addition to that which is already gathered and made public.

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REPRESENTATIVE GARA asked why a notary must reapply every four years, and whether anyone who has reapplied has been turned down.

SCOTT CLARK, Notary Commission Administrator, Office of the Lieutenant Governor, remarked that current law requires reapplication every four years, and that "there's not very many people, if any," that have ever been denied.

ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor, said that in creating the bill, it was thoroughly vetted amongst current notaries and other industry groups, and changing the length of term didn't seem to be an issue, so the bill keeps the term at four years.

REPRESENTATIVE GARA surmised that increasing the length of a notary's term could reduce the state's paperwork, and suggested that the lieutenant governor's office pursue that concept further.

MS. KREITZER said that point is well taken and the lieutenant governor's office will continue to consider that concept. At this point, however, even though a version of the current bill has been proposed [several] times, it has not yet passed, and so the lieutenant governor's office would like to see the current proposal adopted before considering other changes. In response to further questions, she relayed that the increase in licensing fees for Lieutenant Governor certificates is simply a reflection of the higher cost of doing business since 1961, and that Mr. Clark has done research to justify the proposed \$3 increase.

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REPRESENTATIVE GRUENBERG [although the following alterations were already incorporated into CSHB 97(STA)] made a motion to adopt Amendment 1, to incorporate alterations detailed by the drafter in a memo dated 1/28/05:

replace commas with semicolons in proposed AS 44.50.032(b)(2) and (c)(2); add "; delegation" to the catchline of proposed AS 44.50.069; remove parentheses and add "created under" to proposed AS 44.50.069(e); rewrite the definition of "notary public" in proposed AS 44.50.200(1) to be more precise with regard to the cross-referenced sections.

CHAIR McGUIRE suggested making Amendment 1 conceptual.

MS. KREITZER indicated that the lieutenant Governor's office has no objections to the motion.

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CHAIR McGUIRE asked whether there were any objections to [Conceptual] Amendment 1. There being none, Conceptual Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG, referring to a change suggested by the drafter in the aforementioned memo, made a motion to adopt Amendment 2, to delete "shall" and insert "may" on page 11, line 9.

CHAIR MCGUIRE objected for the purpose of discussion.

MS. KREITZER indicated that the lieutenant governor's office has no objections to Amendment 2.

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

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, labeled 24-GH1008\F.1, Luckhaupt, 2/16/05, which read:

Page 11, line 22, following "handwriting":

Insert "or by electronic means as authorized by regulations adopted by the lieutenant governor"

Page 13, lines 14 - 15:

Delete "; a notary public may not sign through the use of a facsimile stamp or an electronic or graphic printing method"

Insert ", or sign an electronic document by electronic means as authorized by regulations adopted by the lieutenant governor"

Page 13, line 19:

Following "official":

Insert "handwritten"

Following "signature":

Insert "and information regarding the notary public's electronic signature"

Page 13, following line 19:

Insert a new subsection to read:

"(c) Within 10 days after the security of a notary public's electronic signature has been compromised, the notary public shall provide the lieutenant governor with written notification that the signature has been compromised. After the notary public has provided the lieutenant governor with the notification, the notary public shall provide the

lieutenant governor with any additional information that the lieutenant governor requests about the compromise of the signature."

Page 13, line 28:

Delete "or"

Insert ", "

Page 13, line 30, following "length":

Insert ", or may be an electronic form as authorized by regulations adopted by the lieutenant governor"

Page 13, line 31, through page 14, line 1:

Delete "in a secure area"

Insert "secure and"

Page 14, line 2, following "lost,":

Insert "or the security of the notary public's official electronic seal is compromised,"

Page 14, line 4:

Delete "or"

Insert ", "

Following "loss":

Insert ", or compromised security. After the notary public has provided the lieutenant governor with the notification, the notary public shall provide the lieutenant governor with any additional information that the lieutenant governor requests about the compromise of the seal"

Page 14, line 12:

Delete "A"

Insert "With regard to each paper document being notarized, a"

Page 14, line 15:

Delete "of each paper document notarized,"

Page 14, line 18:

Delete "Illegible"

Insert "For a notarized paper document, illegible"

Page 14, following line 23:

Insert a new subsection to read:

"(d) A notary public may use a seal in electronic form on electronic documents notarized by the notary public as authorized by regulations adopted by the lieutenant governor. The seal shall be affixed only at the time the notarial act is performed."

Page 15, line 14, following "signature":

Insert "and information regarding the notary public's electronic signature"

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG said Amendment 3 was crafted so as to allow the use of electronic notarizations when that technology becomes available.

CHAIR MCGUIRE asked whether there were any further objections to Amendment 3. There being none, Amendment 3 was adopted.

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REPRESENTATIVE GARA asked whether initial or subsequent applications to become a notary must be done in person.

MR. CLARK said it can be done by mail, but the signature must be notarized as must the oath on the notary bond.

REPRESENTATIVE GRUENBERG disclosed that he is a notary.

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 97.

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REPRESENTATIVE GRUENBERG moved to report CSHB 97(STA), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 97(JUD) was reported from the House Judiciary Standing Committee.

OVERVIEW(S)

DEPARTMENT OF HEALTH & SOCIAL SERVICES, DIVISION OF JUVENILE JUSTICE

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CHAIR McGUIRE announced that the next order of business would be the overview by the Department of Health & Social Services, Division of Juvenile Justice.

PATTY WARE, Director, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), presented the overview of the Department of Health and Social Services' Division of Juvenile Justice. She relayed that one of the DJJ's missions is to hold juvenile offenders accountable for their behavior through a variety of ways, including supervision in the community, in a variety of capacities, under court-ordered probation supervision requirements. Another of the DJJ's missions is to promote safety and the restoration of victims and communities; the DJJ is both a justice agency and a rehabilitative agency. The emphasis is on letting juvenile offenders know that they have in fact harmed a victim, harmed communities, and that they need to pay the victim back and repair the harm they have caused. The DJJ's third mission is to assist offenders and their families in developing skills to prevent crime; this a critical component because the DJJ believes its responsibility is to make sure that juveniles leave the juvenile justice system (JJS) with a higher level of [life] skills than when they first came into the JJS so that they don't reoffend.

MS. WARE relayed that the DJJ works closely with law enforcement, with Department of Law (DOL) attorneys, with the Public Defender Agency (PDA), and with the Alaska Court System (ACS). The delinquency statutes are in Title 47: AS 47.12 guides all of the DJJ's operations including how it handles police reports, how it files petitions, and how it secures detention; and AS 47.14 contains information regarding juvenile institutions. With regard to the Alaska Administrative Code (AAC): 7 AAC 52 details all the regulations guiding DJJ facility operations and includes everything from grievance procedures to how juveniles are treated; and 7 ACC 54 details all the regulations guiding juvenile confidentiality.

MS. WARE relayed that the DJJ has jurisdiction of minors under the age of 18, and noted that there are differences between the adult system and the JJS. For example, except under certain limited circumstances, the DJJ is not subject to the adult sentencing guidelines located in AS 12.55. Those exceptions pertain to the automatic waiver provisions located in AS 47.12.030; for example, if a 16- or 17-year-old commits either an unclassified felony, a class A felony against a person, or a class B felony against a person with a deadly weapon after

having been previously adjudicated of a similar crime, then that juvenile would automatically be waived into the adult system, and the DJJ would not get that referral. She mentioned that in some circumstances, a juvenile could also be subject to "blended sentencing," which is sometimes referred to down south as dual sentencing; in such instances, a juvenile would be subject to both a juvenile court order and adult sentencing guidelines, and if the juvenile follows through with the juvenile court order, then the adult sentencing requirements would not kick in.

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MS. WARE said that with regard to detention in the JJS, the purposes are clearly delineated in statute, and should be used to protect the minor or the community, or to ensure the minor's attendance at a court hearing. Significant effort has been expended recently to ensure that locked-detention resources are being used for the aforementioned purposes; historically such resources have been used less for those purposes and more because of a lack of community-based alternatives. She mentioned the Detention Assessment Instrument (DIA), explained that it is a risk-based screening instrument used by juvenile probation officers to determine which juveniles to detain, and noted that although initially there were concerns among law enforcement that using the DIA might compromise public safety, they have not been borne out by experience.

MS. WARE also pointed out that by statute, when a juvenile is put into a detention bed, within 48 hours that juvenile must either be released or be brought into court to get a judge's approval to extend the period of detention beyond the initial 48 hours. Such approval is primarily handled by juvenile probation officers within the DJJ working in conjunction with the district attorney's office. She then turned attention to the issue of the DJJ's options regarding judgments and orders for formal cases. She indicated that one option is when the judge finds the juvenile delinquent; the DJJ then gets what is known as a "B-1," which is full departmental custody with the DHSS, and the juvenile is placed in one of the DJJ's locked institutions. This option is reserved for the most serious and/or repeat juvenile offenders.

MS. WARE explained that another option is known as supervisory custody; the department retains custody of the juvenile but he/she is released either to his/her parent or legal guardian. A third option involves full departmental custody with placement in a non-detention setting; this is also known as residential

care, and such care is provided by nonprofit organizations and is funded by grants targeting youth under the age of 18. A fourth option is foster care, she noted, but pointed out that the DJJ doesn't use foster care often. Another rare option is that of issuing a restitution order only; the juvenile would not be supervised, but the DJJ would be taking steps to ensure that restitution is paid.

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MS. WARE relayed that what triggers the work that the DJJ does is a police report from either state or local law enforcement. In fiscal year (FY) 2004, the DJJ received 6,189 delinquency referrals from across the state, representing 10,213 charges; the latter equates to 4,275 "unduplicated kids" that the DJJ needed to work with and make decisions about. She referred to a chart in members' packets and relayed that the percentages pertaining to reports of crimes against persons versus reports of crimes against property reflect data that has been pretty consistent over a period of years: nearly 50 percent of referrals pertain to crimes against property, and 19 percent pertain to crimes against persons. She added that roughly 35-40 percent of referrals are from Anchorage. Another chart reflects the same 6,189 reports broken down by class of crime; she indicated that the percentages in this chart have been consistent from year to year. Misdemeanor charges make up 55 percent of the workload, felony charges make up 31 percent of the workload, and conduct and probation violation charges make up 13 percent of the workload.

MS. WARE surmised that when the majority of Alaskans consider the JJS, they think about locked, secure institutions. Although such institutions make up a large part of the DJJ's budget, every single one of the aforementioned delinquency referrals is handled by a juvenile probation officer who provides a tremendous amount of accountability, making sure that the juvenile is paying back restitution, that the juvenile is performing community work service (CWS), and that the juvenile is doing the things he/she must do in order to move on to do something more productive with his/her life. Juvenile probation officers do this by supervising children at home and at school, by making contacts in work settings, and by partnering with law enforcement in school-based settings. She noted that the DJJ files delinquency petitions - formal court processes - on about 35 percent of its cases.

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MS. WARE relayed that another important role of juvenile probation officers is victim contact throughout the entire justice process, and includes informing victims of the juvenile process, getting victim impact statements, ensuring that victims know their rights, and notifying victims who wish it that a juvenile is going to be released. Because of budgetary constraints, however, this piece of the DJJ's workload has sometimes fallen by the wayside; that is why the DJJ is requesting four victim services positions in the governor's FY 06 budget.

MS. WARE relayed that the DJJ is implementing something known as the Youth Level of Service/Case Management Inventory (YLS/CMI). Because it is very important for the DJJ to be making decisions about which young people pose a risk to the community, which young people need to be institutionalized, and which young people have such a low level of risk that state resources should not be expended on them, the DJJ has spent time looking at various instruments that will assist the DJJ in making these decisions, and has opted to implement the YLS/CMI as the best method by which to obtain needed information. She mentioned that currently, the YLS/CMI is only being used after the DJJ has made the decision to file a delinquency petition, brought the juvenile to court, and had him/her adjudicated; the DJJ anticipates using the YLS/CMI much sooner in the process so as to make use of the resulting information sooner.

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MS. WARE turned attention to what she characterized as the most visible portion of the DJJ: the DJJ's eight locked facilities, which are located in Anchorage, Fairbanks, Juneau, Bethel, [Palmer], Ketchikan, Kenai, and Nome, and which have a total of 288 beds of two types - short term detention beds used for periods of up to 30 days pre-adjudication, and long term detention beds used for juveniles that have been adjudicated. She noted that four stand-alone detention centers - located in Ketchikan, [Palmer], Kenai, and Nome - have only short term detention beds, and that four stand-alone detention centers - located in Anchorage, Fairbanks, Juneau, and Bethel - have both short term and long term detention beds.

MS. WARE said that all of the DJJ's institutions have recently begun to focus some of their resources on transitional and reentry services, though currently Anchorage has the most comprehensive model, called the Transitional Services Unit, and

the hope is that that model can be adapted to fit some of the DJJ's smaller institutions. Additionally, the DJJ is transitioning to "Performance-based Standards (PbS)," a national quality assurance initiative developed by the Council of Juvenile Correctional Administrators (CJCA) in conjunction with the U.S. Department of Justice (DOJ), Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

MS. WARE said that Alaska has recently "signed onto" [PbS], which is a very rigorous exacting process that will help the DJJ focus on outcomes for detention units as well as treatment units. The outcomes are categorized by safety, security, order, programming, health, mental health, justice, and reintegration, and are based on best practice and research. She mentioned that the PbS requires two data collection cycles per year, and that Alaska just completed its first cycle in October, 2004, which involved having every facility enter data - based on 159 outcomes for treatment and 59 outcomes for detention - into a web-based portal; the resulting information will assist the DJJ in moving forward with improvement plans.

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MS. WARE mentioned that the DJJ reports a number of performance measures to the legislature, including re-offense data regarding juveniles who are leaving long-term institutional treatment, and juveniles who have not served time in a facility but for whom the DJJ has closed out a probation supervision case; both types of juveniles are tracked for two years. Referring to a chart in members' packets, she noted that the re-offense rate regarding juveniles with closed out probation supervision is 22 percent, and that the re-offense rate for juveniles leaving long-term institutional treatment is 37 percent through the first year and 58 percent through the second year. In response to a question, she indicated that because of a lack of resources, juveniles with closed out probation supervision are not tracked when they reach the age of majority. She also mentioned that a re-offense could simply be another referral.

MS. WARE mentioned that other performance measures include data pertaining to restitution collection and to CWS. Referring to another chart in members' packets, she indicated that for informal cases in FY 04, at time of case closure, there was a 90 percent collection rate, and that 96 percent of CWS hours ordered were completed. In response to a comment, she relayed that although the re-offense rate may seem high, the DJJ is trying to improve upon that, and mentioned that compared with

other states, Alaska is not doing too poorly. In response to a question, she noted that the DJJ also internally tracks re-offenses based on the seriousness of the offenses. She also mentioned that the DJJ will be striving to compile more re-offense data, particularly regarding the closed out probation supervision cohort, and hopes to get that information to the legislature during the interim, as well as information regarding juveniles who end up in the JJS because of substance abuse or mental health disorders.

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MS. WARE, in response to questions regarding current waiver provisions, relayed that it is difficult to get a discretionary waiver, even on murder cases; that the DJJ, in conjunction with the district attorney's office, has filed for discretionary waivers in different jurisdictions, but they have not been granted; that she believes that although the DJJ does a good job of providing an array of treatment services in its institutional facilities, there are certain criminal offenses serious enough to warrant waiver into the adult system; and that the administration's position is that it is appropriate to add certain serious offenses involving weapons to the current automatic waiver provision of statute.

MS. WARE, in response to a question regarding what services the DJJ's institutions provide, relayed that all juveniles in those institutions are required to meet educational requirements; that there are substance abuse prevention and/or treatment services, depending upon the facility; that there are contract mental health services in the DJJ's "treatment institutions," as well as a mental health clinician in the Anchorage, Bethel, and Fairbanks facilities and soon in the Juneau facility; that the Anchorage facility has some specialized units such as a sex offender unit, a girls unit, and a closed treatment unit specializing in juveniles who are serious, violent offenders or "mental health offenders"; and that anger management classes, victim empathy classes, as well as other treatment services are provided in all of the DJJ's facilities.

CHAIR McGUIRE thanked Ms. Ware for her presentation.

HB 88 - OFFENSES BY MINORS/AGAINST TEACHERS

[2:16:12 PM](#)

CHAIR McGUIRE announced that the final 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 after ascertaining that no one else wished to testify, closed public testimony on HB 88.

[2:17:54 PM](#)

REPRESENTATIVE GRUENBERG referred to Amendment 1, 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 GARA, referring to a letter in members' packets from Mr. Linton, Department of Law (DOL), dated 2/16/05, which detailed three out of four cases in which a discretionary waiver was sought but not granted, asked why the cases involving murder weren't automatically waived into adult court.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that it was because they involved a juvenile defendant under 16 years of age.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1.

REPRESENTATIVE COGHILL objected, saying he is not a big fan of the school grounds issue, though he can understand why they might want the bill to apply to an incident that occurs on a school bus. He offered his belief that specificity with regard to location could create problems.

CHAIR McGUIRE offered her understanding that as currently written, the bill could apply to assaults that are mere bumps and pushes.

REPRESENTATIVE GRUENBERG noted that AS 11.61.195(a)(2) specifies location, and indicated that he's attempting to do something similar with proposed AS 12.55.155(c)(31) because he wants to protect everyone who is on school grounds. He added that he would be happy to consider a friendly amendment that would say the conduct has to happen while school is in session.

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REPRESENTATIVE DAHLSTROM asked Representative Gruenberg whether would consider it a friendly amendment to say "certain crimes committed against school employees" and then insert "on school grounds, on a school bus". She posited that such language might take care of concerns that the language is open ended and would apply to anyone, while still getting to the root of "where we want to go."

REPRESENTATIVE GRUENBERG said he would consider such language a friendly amendment because it would make the language more precise. He asked, however, whether members have any interest in having the aggravator apply when anyone is assaulted "during a school event, on school property, or in a school bus".

CHAIR McGUIRE said she is not sensing a tremendous amount of support for that concept. She offered her understanding that Representative Dahlstrom is proposing an alternative that would incorporate a lot of the work done by Representative Gruenberg, and surmised that that alternative would have more committee support.

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CHAIR McGUIRE clarified her understanding that Representative Dahlstrom's suggestion would be to leave the language specifying that the assault was directed at a school employee and then add language which would specify that the assault occurred on the school grounds, on a school bus, at a school-sponsored event, or in the administrative offices.

REPRESENTATIVE GRUENBERG said he would support that change, but suggested that the language also specify that the conduct occurred while school is in session.

REPRESENTATIVE DAHLSTROM concurred with Chair McGuire's synopsis of her suggested amendment to Amendment 1.

REPRESENTATIVE KOTT said he is concerned that perhaps student teachers would not be covered by language specifying school employee, and remarked that they should be afforded the same protection.

REPRESENTATIVE GARA suggested adding language so that the bill covers "school employee, volunteer, or intern".

CHAIR McGUIRE said such would not cover school bus drivers that are on contract.

REPRESENTATIVE GARA suggested also adding "contractor"; thus the language would read in part, "school employee, intern, volunteer, or contractor".

REPRESENTATIVE GRUENBERG said he supports that concept, but asked why they wouldn't also protect children.

[2:30:42 PM](#)

REPRESENTATIVE COGHILL offered his understanding that children are already protected, and reiterated his belief that specificity with regard to location could create problems.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti whether there is an aggravating factor for assaulting a child on school grounds.

MS. CARPENETI said not to her knowledge. She noted that a problem with specifying which people the bill applies to is that the person who fills up the school vending machines might not then be covered. She acknowledged that that might be a justification for focusing on location.

CHAIR McGUIRE noted that HB 88 does not discuss the place so much as person.

MS. CARPENETI concurred.

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CHAIR McGUIRE noted that there is concern about altercations between students having a very serious aggravator apply.

REPRESENTATIVE GRUENBERG said he did not intend for the aggravator to apply to such situations; rather, he merely wants to protect children from serious assaults such as occurred at Columbine High School in Colorado. He pointed out that applying an aggravator is not mandatory, and suggested that the committee could clarify his intent in some fashion. He said he feels very strongly that children must be protected, that children should be safe at schools.

REPRESENTATIVE COGHILL agreed, but pointed out that the bill already specifies, "school employee" and "on school grounds or at a school-sponsored event". He offered his understanding that the bill will be applicable only after there is already a conviction; thus he is not sure that [changing the language] will make any difference. Instead, there is the potential to create more problems than are solved.

CHAIR McGUIRE, in response to comments, indicated that the question before the committee is whether to say that anyone who is in the aforementioned areas, regardless of who they are, who is assaulted by another adult, will have this aggravator available.

REPRESENTATIVE GRUENBERG mentioned a situation that occurred several years ago in his district where a person came onto school grounds with a knife and started slashing children. Such a situation is illustrative of the need for language that will protect both children and adults.

[2:38:17 PM](#)

REPRESENTATIVE COGHILL pointed out, however, that the bill doesn't actually protect children, instead it merely provides an aggravator for sentencing purposes after the assault has already occurred. He suggested that if the goal is to protect children, then they should consider providing for personnel in the schools to perform that function.

REPRESENTATIVE GRUENBERG said he would accept that suggestion as a friendly amendment.

REPRESENTATIVE COGHILL withdrew his objection.

[2:38:52 PM](#)

REPRESENTATIVE GRUENBERG urged the committee adopt Amendment 1.

CHAIR McGUIRE noted that Representative Dahlstrom had suggested an amendment to Amendment 1.

REPRESENTATIVE DAHLSTROM withdrew her suggested amendment to Amendment 1.

CHAIR McGUIRE objected to the motion to adopt Amendment 1 for purposes of discussion.

MS. CARPENETI indicated that the administration is amenable to Amendment 1.

[2:40:02 PM](#)

REPRESENTATIVE GARA asked whether there are currently any aggravators that increase sentences when the victim is a minor.

MS. CARPENETI said she thinks there are, since there are aggravators that apply when the victim is extremely vulnerable, and that would include a child.

REPRESENTATIVE GARA asked whether such would apply if the victim is a 16-year-old.

MS. CARPENETI said she wouldn't think so, depending on the circumstances.

REPRESENTATIVE GARA sought assurance that the change proposed by Amendment 1 would not create an aggravator that would be redundant to an existing aggravator.

MS. CARPENETI offered her belief that it would not.

CHAIR McGUIRE withdrew her objection.

REPRESENTATIVE KOTT said he thinks that Amendment 1 is a good amendment.

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1. There being none, Amendment 1 was adopted.

[2:41:41 PM](#)

CHAIR MCGUIRE referred to Amendment 2, labeled 24-GH1096\A.3, Luckhaupt, 2/8/05, which read:

Page 3, lines 14 - 15:

Delete all material and insert:

**"(4) that is misconduct involving weapons**  
**in the**  
**(A) first degree under**  
**(i) AS 11.61.190(a)(1); or**  
**(ii) AS 11.61.190(a)(2) when the firearm**  
**was discharged under circumstances manifesting**  
**substantial and unjustifiable risk of physical injury**  
**to a person; or**  
**(B) second degree under AS 11.61.195."**

CHAIR MCGUIRE opined that Amendment 2 speaks to the heart of bill, which adds offenses to the automatic waiver provision of current statute.

REPRESENTATIVE GARA made a motion to adopt Amendment 2.

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA remarked that the bill aims to automatically transfer a whole class of juveniles into adult court - juveniles who engage in weapons crimes, juveniles who engage in very serious activity. One of the crimes the bill proposes to waive into adult court, however, pertains to the crime of discharging a firearm from a propelled vehicle and damaging property; shooting at a road sign could constitute such behavior. Since other sections of the law already address similar behavior wherein there is an unjustifiable risk that harm could befall a person, Amendment 2 proposes to eliminate the proposed waiver into adult court if the behavior could only cause property damage. If Amendment 2 is adopted, juveniles who engage in a weapons crime that involves substantial risk to a person would still be waived into adult court.

[2:44:00 PM](#)

MS. CARPENETI said that although she generally agrees that property crimes are different from crimes against a person, under the circumstances of first degree misconduct involving weapons, it is really hard to imagine that somebody shooting a gun out of a moving vehicle wouldn't be endangering another person. However, to the extent that there might be those unusual circumstances that the behavior could only be that of shooting at a road sign when nobody is around, then she supposed that she didn't have an objection. She asked that Mr. Linton be allowed to comment on Amendment 2 because of his familiarity with "these cases."

[2:44:50 PM](#)

LEONARD M. "BOB" LINTON, JR., District Attorney, Third Judicial District (Anchorage), Department of Law (DOL), relayed that he has not yet seen Amendment 2.

REPRESENTATIVE GARA explained the content of Amendment 2.

MR. LINTON pointed out that the conduct which Amendment 2 proposes to exclude from the automatic waiver is already part of current law as it applies to adults, and if the circumstances are such that it would be unreasonable to charge an adult with a class A felony, it would also be unreasonable to charge a 16- or 17-year-old juvenile with a class A felony for the same conduct. It would behoove the prosecution to look at the statute and see whether the conduct constitutes a substantial and unjustifiable risk of physical injury to a person or damage to property, he remarked, adding that he does not know of any instances where adults have been charged under AS 11.61.190(a)(2) for shooting at road signs in remote areas. The current law has not been misapplied such that the language "substantial and unjustifiable [risk]" has been applied to a road sign in a remote area. In conclusion, he said he does not see any risk that prosecutors, courts, or police would apply the statute in circumstances where the conduct was committed by juveniles.

CHAIR MCGUIRE asked Mr. Linton to explain why he thinks an unjustifiable risk of damage to property deserves escalated treatment.

MR. LINTON mentioned examples where automobiles parked outside houses were being shot at. He added: "Were there people getting into or getting out of those vehicles at the time? Would people normally be getting into, getting out of, or likely

to be in vehicles? Are people just sitting inside ... their vehicles to avoid the fight with the wife or the husband?"

2:50:47 PM

REPRESENTATIVE GARA said he is not trying to change the proposed waiver as it pertains to AS 11.61.195 or AS 11.61.190(a)(1). He asked Mr. Linton to offer a reason for waiving a juvenile who does not cause any danger to a person into adult court.

MR. LINTON indicated that he would do some research to try to find examples where a juvenile is shooting at an empty house or an empty vehicle and it does not constitute an unjustifiable risk of physical injury to a person. He pointed out that the shooter in such cases doesn't care whether the house or the vehicle is empty or whether someone is standing nearby; rather, the shooter just wants to terrorize.

REPRESENTATIVE GRUENBERG mentioned that he has been the victim of a drive-by shooting when his vehicle was shot while it was parked outside of his house. The concern at this point, he surmised, is that the statute is broad enough to include the act of shooting at a road sign even if there is no one else within 10 miles of it.

CHAIR MCGUIRE asked Mr. Linton to look at 11.61.195(a)(3), which speaks to [knowingly] discharging a firearm at or in the direction of "(A) a building with reckless disregard for a risk physical injury to a person; or (B) a dwelling". She asked him to comment regarding possibly adding "an automobile" via a subparagraph (C). Such a change would make shooting a firearm at or in the direction of a vehicle the crime of misconduct involving a weapon in the second degree, a class B felony. She pointed out that the term "property" is very broad and does include road signs.

MS. CARPENETI remarked that Mr. Linton might have difficulty finding examples of cases wherein property is damaged without there also being an unjustifiable risk of physically injuring a person, because those types of cases are not prosecuted under this section; the DOL uses its discretion in charging such cases, as do judges and juries. She indicated that she would not have a problem with Amendment 2, but would not want to add "vehicle" to AS 11.61.195(a)(3).

CHAIR MCGUIRE withdrew her objection to Amendment 2.

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

2:56:10 PM

REPRESENTATIVE ANDERSON moved to report HB 88, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for the purpose of discussion. He remarked that he has not seen any evidence that the current law regarding waiving a juvenile into adult court is not working, nor heard evidence that such a waiver would be better for the juvenile. He said he wants evidence that the juveniles referred to in HB 88 would not be better served in the juvenile justice system (JJS).

CHAIR MCGUIRE pointed out that Mr. Linton's letter describes one case that goes to the point that the current waiver provision is not working, though she added that she does share a portion of Representative Gara's concerns. She remarked that it would be helpful to know that some effort is going towards rehabilitation of those that will be affected by Section 3 of the bill.

REPRESENTATIVE GRUENBERG said he supports the bill, but doesn't see the need for retaining Sections 1, 2 and 6, which would establish a short title for the proposed Act, would add findings and intent language into uncodified law, and would provide an effective date of July 1, 2005.

REPRESENTATIVE GRUENBERG suggested that the committee strike Sections 1, 2, and 6.

CHAIR MCGUIRE remarked that any motion to that effect would be out of order because there is already a motion before them to report the bill from committee. She suggested to Representative Gruenberg that he consider offering such an amendment in either the next committee of referral or on the House floor.

REPRESENTATIVE GARA withdrew his objection to report the bill from committee. He added that he just didn't understand the need for the bill.

3:05:08 PM

CHAIR MCGUIRE asked whether there were any further objections to reporting HB 88, as amended, from committee. There being none,

CSHB 88(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 3:06 p.m.