

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 23, 2005

8:04 a.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

CONFIRMATION HEARING(S)

Chief Administrative Law Judge

Terry L. Thurbon - Douglas

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 187

"An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."

- MOVED HB 187 OUT OF COMMITTEE

HOUSE BILL NO. 188

"An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

- MOVED HB 188 OUT OF COMMITTEE

HOUSE BILL NO. 91

"An Act relating to indecent exposure."

- MOVED CSHB 91(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 219

"An Act relating to crimes and dangerous instruments."

- MOVED HB 219 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 187

SHORT TITLE: AMERADA HESS INCOME; CAPITAL INCOME ACCT.

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	JUD, FIN
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/09/05	(H)	Heard & Held
03/09/05	(H)	MINUTE(JUD)
03/10/05	(H)	CORRECTED GOVERNOR'S TRANSMITTAL LETTER
03/16/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/16/05	(H)	Scheduled But Not Heard
03/18/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/18/05	(H)	Scheduled But Not Heard
03/23/05	(H)	JUD AT 8:00 AM CAPITOL 120

BILL: HB 188

SHORT TITLE: STATE OF AK CAPITAL CORP.; BONDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	JUD, FIN
03/09/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/09/05	(H)	Heard & Held
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03/16/05	(H)	Scheduled But Not Heard
03/18/05	(H)	JUD AT 1:00 PM CAPITOL 120
03/18/05	(H)	Scheduled But Not Heard
03/23/05	(H)	JUD AT 8:00 AM CAPITOL 120

BILL: HB 91

SHORT TITLE: INDECENT EXPOSURE TO MINORS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/21/05 (H) READ THE FIRST TIME - REFERRALS
01/21/05 (H) JUD, FIN
03/23/05 (H) JUD AT 8:00 AM CAPITOL 120

BILL: HB 219

SHORT TITLE: STRANGULATION CRIMES
SPONSOR(S): REPRESENTATIVE(S) HAWKER

03/15/05 (H) READ THE FIRST TIME - REFERRALS
03/15/05 (H) JUD, FIN
03/23/05 (H) JUD AT 8:00 AM CAPITOL 120

WITNESS REGISTER

TERRY L. THURBON, Appointee
Chief Administrative Law Judge
Douglas, Alaska

POSITION STATEMENT: Testified as appointee to the position of
Chief Administrative Law Judge.

KAREN LIDSTER, Staff
to Representative John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 91 on
behalf of the sponsor, Representative Coghill.

DEBBIE JOSLIN
Delta Junction, Alaska

POSITION STATEMENT: Provided comments during discussion of HB
91 and asked the committee to consider passing the bill.

TAMARA de LUCIA, Associate Victims' Rights Advocate
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 91, provided
comments and urged passage of the bill; during discussion of HB
219, provided comments and urged passage of the bill.

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

POSITION STATEMENT: Testified in support of HB 91 and suggested an amendment; testified in support of HB 219 and responded to questions.

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 219.

TARA HENRY, R.N., S.A.N.E.-A. (Sexual Assault Nurse Examiner)
Anchorage, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 219 and responded to questions.

PEGGY BROWN, Executive Director
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 219.

CAREN ROBINSON, Lobbyist
for the Alaska Women's Lobby
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 219.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [8:04:24 AM](#). Representatives McGuire, Anderson, Coghill, and Dahlstrom were present at the call to order. Representatives Kott, Gruenberg, and Gara arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

Chief Administrative Law Judge

[8:05:10 AM](#)

CHAIR McGUIRE announced that the committee would first consider the appointment of Terry L. Thurbon to the position of Chief Administrative Law Judge.

TERRY L. THURBON, Appointee, Chief Administrative Law Judge, relayed that she is currently serving as the acting Chief Administrative Law Judge for the Office of Administrative Hearings, Department of Administration (DOA); that she has found

it to be as challenging as she anticipated it would be; and that the opportunity to start the program, to get it off on the right footing - to work on the regulations projects, the case management, and the development of office procedures - is what drew her to the position. She also noted that she has a background in administrative law as well as in some of the ancillary functions of the office such as training, and felt that her background was driving her in the direction of the position for which she is seeking appointment.

CHAIR McGUIRE noted that Ms. Thurbon's resume is in members' packets, and remarked that it details an amazing set of accomplishments.

REPRESENTATIVE COGHILL thanked Ms. Thurbon for being willing to accept the challenge of being the Chief Administrative Law Judge. He remarked that the legislature's intention was to create an administrative hearing process that would provide a good venue. He said he would like Ms. Thurbon to report back to the legislature with her insights as to how the technical aspects of the new system are or aren't working.

MS. THURBON said she would be happy to return. She noted that the legislation authorizing the position of the Chief Administrative Law Judge requires her office to provide an annual report to the legislature and the governor by January 31, and that the first report was "kind of skimpy" because her office had only been in operation for about a month. She said she fully anticipates watching throughout the course of the coming year and every year thereafter for suggestions for statutory and other changes that will make the process more efficient.

REPRESENTATIVE COGHILL expressed a preference for having her report back to the legislature personally in addition to providing the written report.

CHAIR McGUIRE noted that she'd served as chair of the Joint Committee on Administrative Regulation Review, and expressed hope that the new process will work.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on the confirmation hearing.

REPRESENTATIVE COGHILL made a motion to advance from committee the nomination of Terry L. Thurbon as appointee to the position of Chief Administrative Law Judge. There being no objection,

the confirmation was advanced from the House Judiciary Standing Committee.

HB 187 - AMERADA HESS INCOME; CAPITAL INCOME ACCT.
HB 188 - STATE OF AK CAPITAL CORP.; BONDS

[8:09:37 AM](#)

CHAIR MCGUIRE announced that the next order of business would be a hearing on two bills: HOUSE BILL NO. 187, "An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."; and HOUSE BILL NO. 188, "An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

CHAIR MCGUIRE relayed her intention to move the bills forward, noting that they'd only been referred to the House Judiciary Standing Committee for the purpose of having the issue of bias addressed and this has been done. She said she has asked members to agree, notwithstanding their reservations, to move the bills forward to the House Finance Committee where they will receive a full fiscal analysis. She noted that individual committee members do have concerns about the bills and want to know more about them, and predicted that the committee report will reflect this.

[8:11:33 AM](#)

REPRESENTATIVE COGHILL moved to report HB 187 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 187 was reported from the House Judiciary Standing Committee.

[8:11:50 AM](#)

REPRESENTATIVE COGHILL moved to report HB 188 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 188 was reported from the House Judiciary Standing Committee.

[HB 187 and HB 188 were reported from the House Judiciary Standing Committee; the hearing on HB 187 and HB 188 resumed later in this meeting.]

HB 91 - INDECENT EXPOSURE TO MINORS

8:12:13 AM

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 91, "An Act relating to indecent exposure."

REPRESENTATIVE COGHILL, speaking as the sponsor, relayed that he would be having one of his staff members give the introduction to HB 91, which was engendered by a situation wherein someone exposing himself to a minor "plea bargained" down to a misdemeanor.

8:13:30 AM

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, sponsor, on behalf of Representative Coghill, paraphrased from the sponsor statement, which read [original punctuation provided]:

Several young girls in Delta Junction were subjected to a man exposing himself to them in the parking lot of a local store last summer. He was apprehended and arrested. In a background check it was reported that he had a prior conviction of a similar incident in Arizona. A customer noticed the man following a little six-year-old girl and began to follow him. He followed the girl to the toy section and pulled his pants down. The customer contacted store officials, the police were called, and the man was arrested. The police report stated he matched the description of a man reported for the same activity several times but they could never catch him.

In the Delta Junction incident, the local magistrate charged him with three felonies but because of the circumstances, he could not be convicted of a felony. He plea-bargained down to one misdemeanor.

Children are more vulnerable and innocent than adults and children fall prey to sex offender more easily than adults. This legislation makes repeat convictions of indecent exposure within the

observation of a person under the age of sixteen a felony.

MS. LIDSTER explained that HB 91 adds the following language to AS 11.41.458(a): "(2) the offender has been previously convicted under this section or AS 11.41.460(a) or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section or AS 11.41.460(a)".

CHAIR MCGUIRE, referring to a recently publicized crime that occurred in Florida involving the murder of a young girl, noted that the perpetrator's "gateway crime" was indecent exposure, and noted that she'd heard the view expressed that someone should have anticipated the kind of crime the perpetrator's behavior was leading up to. She also referred to testimony provided during the Department of Corrections' presentation regarding the containment model that illustrated that those who engage in the crime of indecent exposure get a great deal of gratification out of their behavior and are therefore very likely to repeat it as well as very likely to engage in more serious deviant behavior.

MS. LIDSTER, noting that she is the grandmother of a young boy, said that she views HB 91 as very important legislation.

REPRESENTATIVE COGHILL noted that AS 11.41.460(a), which is referenced in the new language being proposed via HB 91, reads:

Sec. 11.41.460. Indecent exposure in the second degree.

(a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor.

REPRESENTATIVE COGHILL said that HB 91 will make that behavior a felony crime if the person has previously been convicted of that behavior. He relayed that he doesn't typically enjoy ratcheting up crimes to the felony level, but this crime seem to warrant such a change.

8:18:43 AM

DEBBIE JOSLIN said she was sorry to have to testify on HB 91, but it was her children, ages two and seven, who the aforementioned man exposed himself to. She went on to describe the incident, and noted that because the man's hand never touched his genitals, his behavior did not constitute masturbation and so he was only convicted of a misdemeanor even though he'd been engaging in similar behavior for some time. Ms. Joslin mentioned that her two-year-old is still afraid to go back to the place where the incident took place, and pointed out that her children are not going to be able to easily rid themselves of the picture that man presented while engaging in that behavior. She noted that another man in Fairbanks who was engaging in similar behavior was out purposely looking for children in front of whom to commit his acts. She said that she, too, is now aware that the man who committed the murder of the young girl in Florida had been previously convicted of indecent exposure to children. Such behavior should be a red flag that such individuals have even more heinous crimes in mind for the future. In conclusion, she opined that the behavior addressed by HB 91 should be made a felony crime because robbing a child of his/her innocence is such a serious matter.

CHAIR MCGUIRE asked whether it was brought up at trial that the man had been convicted in the past.

MS. JOSLIN said yes, but added that when he was convicted in Arizona, he only had to get counseling; when convicted in Alaska, counseling was ordered again. She said she is not against having the man get counseling, but offered her belief that this is a crime that deserves some real punishment. She went on to say:

I was told that I was overreacting, that I should ratchet it down and stay more calm about this. In fact, the [district attorney's] office told me that I should just explain to my children that some people do naughty things. But I haven't come to the [district attorney's] office or to this legislature ... for advice on how to parent my children. I'm asking you to help me ... explain to them why should a man walk away free after he's done that to little kids. And that's the thing I had trouble explaining to them. So I would just ask for you to consider passing this bill; I think it's very important, and I think that

the State of Alaska needs to take a very dim view of this kind of activity.

8:22:51 AM

REPRESENTATIVE GARA offered his view that the bill seems fairly tailored and fine as written.

TAMARA de LUCIA, Associate Victims' Rights Advocate, Office of Victims' Rights (OVR), Alaska State Legislature, relayed that the OVR worked on the aforementioned case, which engendered HB 91. Noting that the offender had previous convictions for indecent exposure in another jurisdiction, she relayed that in the Alaska case, the actual conduct did not qualify for felony level conduct because the law at that time was very particular with regard to what conduct constituted a felony, even though the individual was increasing his predatory conduct and was clearly a danger to the community. The concept of increasing a penalty to a felony for committing more than once what would otherwise be a misdemeanor offense is not unique in Alaska. She opined that a misdemeanor conviction for indecent exposure to a minor does not provide enough of a penalty, particularly in situations where the sexual predator has a history of sexual offenses. Research has shown that such offenders do ratchet up their offenses and will continue to increase their predatory conduct, particularly when children are involved; children are a very vulnerable population that should be protected. She urged the body to pass HB 91.

8:25:19 AM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that the DOL supports HB 91. However, she added, she has noticed that a technical change might be in order so as to have [those with multiple convictions for indecent exposure] covered under the sex offender registration statute; to accomplish this, she suggested the bill also alter AS 12.63.100(6)(C)(iv) so as to include those convicted under proposed AS 11.41.458(a)(2). Such a change will ensure that anyone who is convicted of indecent exposure when they have prior convictions, regardless of the age of the victim, will have to register as a sex offender.

REPRESENTATIVE ANDERSON made a motion to adopt Conceptual amendment 1, to add the crime outlined under proposed AS 11.41.458(a)(2) to AS 12.63.100(6)(C)(iv).

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 1.

REPRESENTATIVE COGHILL said he doesn't have any objections to Conceptual Amendment 1, but does wonder, though he thinks it unlikely, whether it will have a fiscal impact.

CHAIR McGUIRE, after ascertaining that there were no objections, announced that Conceptual Amendment 1 was adopted.

[8:27:08 AM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 91.

REPRESENTATIVE DAHLSTROM moved to report HB 91, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 91(JUD) was reported from the House Judiciary Standing Committee.

HB 187 - AMERADA HESS INCOME; CAPITAL INCOME ACCT.

HB 188 - STATE OF AK CAPITAL CORP.; BONDS

CHAIR McGUIRE resumed the hearing on: HOUSE BILL NO. 187, "An Act establishing the Alaska capital income account within the Alaska permanent fund; relating to deposits into the account; relating to certain transfers regarding the Amerada Hess settlement to offset the effects of inflation on the Alaska permanent fund; and providing for an effective date."; and HOUSE BILL NO. 188, "An Act establishing the State of Alaska Capital Corporation; authorizing the issuance of bonds by the State of Alaska Capital Corporation to finance capital improvements in the state; and providing for an effective date."

[8:27:56 AM](#)

REPRESENTATIVE GARA, acknowledging that HB 187 and HB 188 have already moved from committee, asked to make comments on them. He said:

I think I agree with the chair that those two bills - that had to do with using permanent fund earnings, the [earnings from the settlement of the State v. Amerada Hess, et al. 1 JU-77-847 Civ. (Superior Court, First Judicial District) case], to fund a road construction

bond - largely ... [have] a finance implication; the judiciary implications, I think, were pretty narrow, so I see sending [them to the House Finance Committee] as an appropriate thing.

But I do want to state on the record - I spent a lot of time with the folks from the [Alaska Permanent Fund Corporation] and Department of Revenue on this bill - that [the] bond is essentially going to be funded this way: for roughly a [\$320 million] road bond, we're going to take what's going to average about [\$30 million] a year of permanent fund earnings out of the Amerada Hess "account" to fund this bond. Over the course, it's going to be a 17-year bond, roughly. So that's [\$30 million] a year, 17 years, it's going to be about [\$500 million] in permanent fund earnings to fund this bond.

I think the way they've structured it, they're going to get a good bond rate, and so that part doesn't concern me. What concerns me is spending a half billion dollars out of the permanent fund. I can't envision, at this point, supporting this bill when it reaches the [House] floor; that's a lot of money to use from the permanent fund, at a time where I don't think we have to, without a public vote. So I do have concerns about both of those bills, and somebody might try and talk me into changing my mind but, at this point, I don't think it's a wise thing to do.

Just one other thing - we've talked about this Amerada Hess account, and the way the law is written, that Amerada Hess money isn't supposed to be used for the permanent fund dividend [PFD]. And that's fine. But that is not a green light to use ... that permanent fund money for state spending. Those are two separate questions. It's okay if you can't use the money for the dividend but I don't think it's okay to take the money out of the permanent fund

REPRESENTATIVE DAHLSTROM said she appreciates Representative Gara's comments, adding:

I echo many of the same things that you have just expressed. And the reason I was comfortable letting it go out of committee was because of the narrow purview that we do have with the judiciary issue, and

I'm confident that [the House Finance Committee] will do the necessary research. I don't know how I will be voting on that bill. I have deep concerns about the permanent [fund], have made commitments to my constituents; I have been told in my office from folks from Cheryl Frasca's office that ... there is not a penny coming out of permanent fund earnings, [that] it's all Amerada Hess and it's a totally separate fund. I will continue to research that, but I do feel confident that we did our job in committee with the narrow scope that we have

REPRESENTATIVE COGHILL said that it certainly is a reasonable question, when there is something invested in the permanent fund, whether those earnings are the same earnings that pay out the dividend. He added:

I expect to hear, in the [House Finance Committee], a little further vetting of that particular issue. But to say that they [are] just earnings of the permanent fund ... [and] have never been commingled with the earnings that have paid out [dividends] does raise enough question in my mind [to say] that we need to look at it. Now the bonding issue, that's a totally different question, in my view, of: why would we go into debt when we could pay off a debt. And I think that's one of the questions we'll be asking in [the House Finance Committee]. ... They are definitely earnings that are vested from the permanent fund, but they're not commingled with what is normally considered earnings of the permanent fund. And so that is a pretty clear distinction at this point, I think. ...

REPRESENTATIVE GRUENBERG indicated that he is doing some research on the term "the fund" as it is used in [the legislation], and noted that it doesn't clarify whether the money is being taken out of the corpus or out of the earnings. He said he thinks that that is an aspect of poor drafting, and so may have some concerns to raise on the House floor after further review. He went on to say:

I also have some problems with them doing "that" quickly without really vetting that with the people of this state. I have suggested that they visit community councils and [things] ... like that, because people may very well think that that is an attempt to

get into the permanent fund without a vote of the people. And this is something that we have never done, never used the money in the permanent fund to collateralize - they don't like that term, but that's what it is, well, it's not technically - to put up in some manner, to finance in some manner, the issuance of a large amount of bonds, and it's a significant precedent. So at this point, until I ... complete those [research] steps and am satisfied, politically and legally and economically ..., I don't plan to support ... it on the [House] floor.

CHAIR McGUIRE characterized the points made by members as good points, and offered her belief that at some point, the legislature will need to decide whether or not the Amerada Hess money will be used for something, because, currently, it is clear that that money is separate from the [PFD] and has been kept separate and just continues to earn money "on top of itself." She noted, though, that if the legislature does decide to make use of the Amerada Hess money, it won't be necessary to spend all the money. If and when the money is used, she surmised that the questions surrounding that issue will include: "How much do we want in the way of a capital budget?" "Is \$340 million the appropriate figure?" "Is that the figure simply because that's the amount in the Amerada Hess fund, or is it the figure because it's the right figure?" On the issue of bonding and the question of why the state should issue debt, she noted that it does serve the purpose of being able to get more out of the state's money at a time when interest rates are "really good, like they are right now." With regard to the comment about bringing the issue before the voters, she predicted that the public will get an opportunity to express their thoughts on the matter via their elected officials, adding that she questions the practice of asking the public to do the legislature's job with regard to budget issues.

REPRESENTATIVE GRUENBERG remarked:

It's not just the question of getting into the permanent fund. ... This is a way of getting, floating, a lot of bonds that would normally be [general obligation (GO)] bonds, and under a different provision of the [Alaska State Constitution], because [if] they put up the full faith and credit, they'd have to go ... to the people. So this is a way of "end running" votes to the people under two different theories.

CHAIR MCGUIRE said that is a good point.

REPRESENTATIVE GARA offered his recollection that it has been presented that somehow the Amerada Hess money is different than permanent fund money and therefore it's okay "to bond" with this money. He offered his belief, however, that it isn't different and therefore he opposes it use. He offered his understanding that the Amerada Hess money, which came to the state as a result an oil tax settlement, was always intended to be part of the permanent fund but was instead kept separate in order to avoid a potential legal argument. That is a separate question, he opined, than whether the money is part of the fund; it was always intended, back then, to be part of the fund, it is part of the fund, and the only reason it's segregated now is because of the legal argument that existed many years ago about whether or not the money should go into the dividend and therefore possibly influence the judge and the jurors in the Amerada Hess litigation. So the question, he opined, is really whether it is time to spend permanent fund earnings, regardless of whether it is Amerada Hess money.

CHAIR MCGUIRE remarked that if the Amerada Hess money is part of the permanent fund earnings and it can't go towards PFDs, then that raises the question of what should be done with it, and whether it should simply be sitting there earning interest for no logical purpose.

REPRESENTATIVE GRUENBERG mentioned that he was a member of the House Judiciary Standing Committee when the original legislation came before that committee, and characterized the passage of that bill onto the House Finance Committee as a mistake. That bill was considered a finance issue, and so it was allowed to move on to that committee without the House Judiciary Standing Committee considering the issue of whether to have the rule of necessity incorporated into it. "We should have dealt with it like that, rather than this tortured, non-fish-nor-foul thing that we did with this large pot of money, and the only reason I'm saying that to the members of this committee is because if we move very quickly on things that aren't normally in our purview, without really knowing what we're doing, then it could have a lot of consequences 20 years later," he concluded.

[HB 187 and HB 188 were reported from the House Judiciary Standing Committee earlier in this same meeting.]

HB 219 - STRANGULATION CRIMES

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 219, "An Act relating to crimes and dangerous instruments."

[8:42:28 AM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, sponsor, relayed that a constituent of his who is a forensic nurse had described to him situations that prompted him to sponsor HB 219. Currently it is very difficult to establish the "serious injury" criteria in situations involving strangulation, which is a major element in domestic violence crimes, so as to be able to prosecute such situations as a felony. There is not always physical evidence that strangulation has occurred, and HB 219 proposes to assist the legal community in such cases, which currently are being prosecuted as misdemeanors.

CHAIR McGUIRE acknowledged the amount of work that has gone into HB 219.

[8:46:40 AM](#)

REPRESENTATIVE GARA complimented Representative Hawker for his work on the issue, and characterized the bill as well written and narrow. He cautioned, however, that sometimes there is a tendency for [legislators] to go through the criminal code and attempt to increase a sentence for a particular crime even though any current sentence has been well thought out, well debated, and is consistent with sentences for similar crimes; he opined that sentences should only be increased for a very compelling reason.

REPRESENTATIVE HAWKER acknowledged all the work done by his constituent, his staff, the Department of Law, and Legislative Legal and Research Services in developing HB 219.

[8:50:11 AM](#)

TARA HENRY, R.N., S.A.N.E.-A. (Sexual Assault Nurse Examiner), indicated that she is a forensic nurse consultant and, as such, performs examinations on men and women who've been victims of sexual assault, child abuse, and domestic violence, as well as assists the state medical examiner's office with the forensic examinations of homicide victims in such cases. Strangulation is a very serious, sometimes fatal, physical force and can result in death very quickly without leaving any outward sign.

Because a victim can be strangled to the point of unconsciousness quickly, oftentimes there is no sign of any visible physical injury, and so it can be difficult to convince a jury that the victim came very close to dying, that he/she did indeed suffer a life-threatening event.

MS. HENRY said that historically, such assaults have been charged as misdemeanor fourth degree assaults. She relayed that she has spent the last few years educating doctors, nurses, law enforcement, prosecutors, and advocates to the pathophysiology and signs and symptoms of strangulation, as well as educating prosecutors that there are symptoms present even when there is no visible sign present on the neck of the victim. Since then, particularly recently, many prosecutors have been prosecuting such situations as felonies, though doing so is very difficult because an expert must be called in to explain to the jury why a person can be strangled and yet not show any outward signs of such. She mentioned that she's been involved in cases wherein the victims were strangled to death without there being any external injuries.

MS. HENRY added:

I recently was involved in a case [in which] the judge dismissed the grand jury indictment because the victim had testified about strangulation but there wasn't anybody else there to explain why it was serious, so the prosecutor had to go back and re-indict that case with me testifying as to seriousness. Basically, if I put my hands around your neck, and I prevent oxygen from getting to your brain, or carbon dioxide from getting out of your brain, I am literally controlling whether you live or die. And so if you pass this bill, it's going to help the prosecutors be able to ... charge [these cases as] ... felonies, prosecute them more easily. This is not a fourth degree misdemeanor assault - it's not a simple slap on the arm - this is a life threatening assault.

CHAIR MCGUIRE thanked Ms. Henry for her work.

[8:53:53 AM](#)

REPRESENTATIVE COGHILL asked what the signs of strangulation are.

MS. HENRY said that when there are visible injuries, prosecutors have taken those cases forward as felonies, but when there are no visible injuries, prosecutors haven't always realized that there are other signs that they can rely on to show that strangulation has taken place. Such signs include difficulty breathing, hyperventilation, vomiting, loss of bladder control, loss of bowel control, loss of voice, hoarseness, and neck swelling. Also, even though strangulation presents an immediate risk of death, the victim is also at risk of dying days or weeks later due to cellular damage in the brain as a result of oxygen deprivation or due to the throat swelling as a result of trauma to the internal muscles and tissues of the neck. Additionally, pregnant women who are strangled often suffer from miscarriages. When interviewing victims of strangulation, law enforcement and prosecutors must start asking victims whether they have experienced any of the aforementioned symptoms. She mentioned that internal injuries aren't always reflected on the skin surface with signs of bruising; sadly, it is often only during an autopsy that signs of internal injury, such as hemorrhaging in the tissue, become visible.

[8:56:28 AM](#)

REPRESENTATIVE COGHILL characterized the information Ms. Henry has provided as important.

REPRESENTATIVE GRUENBERG noted that hands can be dangerous instruments, and characterized the bill as speaking to the issue that certain types of assaults are difficult to prove because of a lack of physical evidence. He asked whether there are other types of [assaults] that could cause death but which are as difficult to prove.

MS. HENRY said not that she has come across. She offered her understanding that current law says a dangerous instrument is anything that can be used, is threatened to be used, or is attempted to be used to cause serious physical injury. The bill is saying that by using one's hands, forearm, or ligature to control the oxygen going to another's brain, then one is creating a substantial risk of death.

REPRESENTATIVE GRUENBERG noted that the bill is not limited to hands, and surmised that it is instead focusing on a particular type of injury.

MS. HENRY said that what the bill is focusing on is the fact that external pressure is being applied to the neck to occlude

oxygen exchange in the brain - acts of strangulation and suffocation.

REPRESENTATIVE GRUENBERG asked whether crimes involving poison should be included in the bill, and offered an example of a case he was familiar with.

MS. HENRY pointed out that a toxicology sample can show the presence of poisons in the system, but such cannot be done in cases of strangulation.

REPRESENTATIVE GARA offered his understanding that the bill addresses cases where the person does not die and so a crime involving strangulation might just be prosecuted as a misdemeanor; he opined that the bill proposes to treat strangulation as felony behavior in a wise way.

[9:03:06 AM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said simply that the DOL supports HB 219.

TAMARA de LUCIA, Associate Victims' Rights Advocate, Office of Victims' Rights (OVR), Alaska State Legislature, said that as a former domestic violence prosecutor and as a current victim advocate, she personally feels very strongly about HB 219. Strangulation, particularly in a domestic violence context, is undercharged and underprosecuted, she assured the committee, because the injuries are not readily discernable. She added that the lack of physical evidence has caused many strangulation cases to be treated as minor incidences, similar to a slap in the face, and to be prosecuted as misdemeanors, particularly in a domestic violence context. However, strangulation is one of the most deadly methods of controlling a victim.

MS. de LUCIA relayed that the Journal of Forensic Science published an article in 1985 on strangulation injuries and reported that it takes 11 pounds of pressure on the carotid artery for 10 seconds to cause unconsciousness; she characterized 11 pounds of pressure from an adult hand as hardly any pressure at all, adding that brain death will occur in 4 to 5 minutes if that pressure persists. Strangulation is a pretty swift method of controlling one's victim, she remarked, adding that strangulation injuries are very difficult to see upon initial officer contact because the telltale signs such as

difficulty swallowing, symptomatic voice changes, and other signs only show up a day or two after the event.

MS. de LUCIA pointed out that there are also mental changes that can manifest as restlessness and combativeness as a result of temporary brain anoxia and severe stress reaction. Thus, often, when an officer gets to the scene, the "hysterical" victim is dismissed as unable to give a coherent statement of what happened; really what the victim is experiencing is a very normal symptom of being strangled. That is why the bill is so important, she remarked, because it doesn't require the prosecutor to show physical injuries in order to charge felony conduct, adding her belief that this behavior should be considered felony conduct.

MS. de LUCIA reiterated that strangulation is one of the most lethal forms of domestic violence, and concurred with Ms. Henry that internal injuries may only manifest several days later and may cause death; domestic violence perpetrators use strangulation to silence their victims, and this behavior should be charged not only as a felonious assault but also as attempted murder. Strangulation is a form of power and control and it has devastating psychological effects on victims in addition to a potentially fatal outcome. She relayed that the Federal Bureau of Investigation's Uniform Crime Reporting Data - which was analyzed in 2004 by the Violence Policy Center in Washington, DC - indicates that Alaska is number one in the nation for domestic violence deaths. That's just not a statistic to be proud of, she concluded. She asked the committee to raise the penalty for the crime of strangulation to the level of severity that it deserves and to give the prosecution the tools to prosecute these crimes in the manner in which they deserve.

[9:06:19 AM](#)

PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said that the ANDVSA supports the bill, remarked that it has been a long time coming, and characterized the bill as addressing the very root of domestic violence - taking someone to within an inch of his/her life is all about power and control. Shelter programs across the state deal with this issue every day, both in rural areas and urban areas. In conclusion, she called the act of strangulation abhorrent, and said the ANDVSA appreciates what the bill attempts to do.

REPRESENTATIVE GRUENBERG said he supports the bill but noted that it brings up the issue of whether there are other items that should be added to the bill, for example, certain types of poisons. He asked Ms. Carpeneti to comment.

[9:09:06 AM](#)

MS. CARPENETI suggested that Ms. Henry is in a better position to address that issue, adding that she is not aware of any other crimes that are as difficult to prove as strangulation. She relayed that she would be willing to research the issue further.

REPRESENTATIVE GARA asked why strangulations are not being prosecuted now.

MS. CARPENETI explained that there is often a lack of physical evidence, and so the question of whether a serious physical injury has occurred can't be proven beyond a reasonable doubt. In response to a further question, she relayed that prosecutors are now attempting to prosecute strangulations as felonies, but are not that successful and always have to have an expert witness testify as to why there aren't any visible signs of strangulation. She opined that HB 219 will help with such evidentiary matters.

[9:11:21 AM](#)

CAREN ROBINSON, Lobbyist for the Alaska Women's Lobby, said the Alaska Women's Lobby supports HB 219, appreciates the sponsor bringing the bill forward, and would appreciate the committee moving the bill from committee.

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 219.

[9:12:00 AM](#)

REPRESENTATIVE DAHLSTROM offered compliments to the sponsor and characterized HB 219 as a good bill.

REPRESENTATIVE DAHLSTROM moved to report HB 219 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 219 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

9:12:21 AM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 9:12 a.m.