

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 27, 2006

1:07 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 326

"An Act relating to harassment."

- RESCINDED ACTION OF 1/18/06; MOVED NEW CSHB 326(JUD)
OUT OF COMMITTEE

HOUSE BILL NO. 321

"An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test."

- HEARD AND HELD

HOUSE BILL NO. 314

"An Act relating to defense of self, other persons, and property."

- HEARD AND HELD

HOUSE BILL NO. 379

"An Act relating to controlled substances."

- HEARD AND HELD

HOUSE BILL NO. 343

"An Act relating to harassment."

- HEARD AND HELD

HOUSE BILL NO. 150

"An Act requiring licensure of occupations relating to radiologic technology, radiation therapy, and nuclear medicine technology; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 326

SHORT TITLE: POSTING LEWD MATERIAL AS HARASSMENT

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

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
01/18/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/18/06	(H)	Moved CSHB 326(JUD) Out of Committee
01/18/06	(H)	MINUTE(JUD)
01/26/06	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
01/26/06	(H)	<Bill Hearing Postponed>
01/27/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 321

SHORT TITLE: AGGRAVATED DRUNK DRIVING

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN
01/18/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/18/06	(H)	Scheduled But Not Heard
01/25/06	(H)	JUD AT 1:00 PM CAPITOL 120
01/25/06	(H)	Heard & Held
01/25/06	(H)	MINUTE(JUD)
01/27/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 314

SHORT TITLE: USE OF FORCE TO PROTECT SELF/HOME

SPONSOR(S): REPRESENTATIVE(S) COGHILL, GATTO, LYNN

01/09/06	(H)	PREFILE RELEASED 12/30/05
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	JUD, FIN

01/25/06 (H) JUD AT 1:00 PM CAPITOL 120
01/25/06 (H) Scheduled But Not Heard
01/27/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 379

SHORT TITLE: CONTROLLED SUBSTANCES, INCL. ANALOGS
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/18/06 (H) READ THE FIRST TIME - REFERRALS
01/18/06 (H) JUD, FIN
01/27/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 343

SHORT TITLE: HARASSMENT
SPONSOR(S): REPRESENTATIVE(S) LYNN

01/09/06 (H) PREFILE RELEASED 1/6/06
01/09/06 (H) READ THE FIRST TIME - REFERRALS
01/09/06 (H) JUD, FIN
01/27/06 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as one of the prime sponsors of
HB 326; testified as the sponsor of HB 379.

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
House Finance Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of the
proposed CS for HB 326, Version F, on behalf of Representative
Meyer, one of the bill's prime sponsors; assisted with the
presentation of HB 379 on behalf of the sponsor, Representative
Meyer.

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

POSITION STATEMENT: During discussion of the proposed CS for HB 326, Version F, provided comments and responded to questions; testified in support of HB 379.

JANE PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 321 on behalf of the sponsor, Representative Ramras, and responded to questions.

RON TAYLOR, Coordinator
Alcohol Safety Action Program (ASAP)
Prevention and Early Intervention Section
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 321.

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

POSITION STATEMENT: Presented HB 314 on behalf of one of the prime sponsors, Representative Coghill.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 314.

MIKE MILLIGAN
Kodiak, Alaska

POSITION STATEMENT: Provided comments and suggested a change during discussion of HB 314.

TRINKA PORRATA, President
Project GHB
Phoenix, Arizona

POSITION STATEMENT: During the hearing on HB 379, answered questions.

REPRESENTATIVE BOB LYNN

Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 343.

JAMES A. HELGOE, Lieutenant, Legislative Liaison
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 343.

MAE L. BARNEY, Correctional Officer II
Fairbanks Correctional Center
Division of Institutions
Department of Corrections (DOC)
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 343.

MICHAEL SICA, Staff
to Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 343, responded to comments and questions on behalf of the sponsor, Representative Lynn.

RICHARD SCHMITZ, Public Information Officer
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 343.

SUSAN A. PARKES, Deputy Attorney General
Criminal Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 343 and responded to questions.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:07:58 PM](#). Representatives McGuire, Coghill, Wilson, Gruenberg, and Gara were present at the call to order. Representative Anderson arrived as the meeting was in progress.

HB 326 - POSTING LEWD MATERIAL AS HARASSMENT

1:08:16 PM

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 326, "An Act relating to harassment." [HB 326, as amended, was moved from committee on 1/18/06; in committee packets was a proposed committee substitute (CS) for HB 326, Version 24-LS1223\F, Luckhaupt, 1/26/06.]

1:08:39 PM

REPRESENTATIVE COGHILL made a motion to rescind the committee's action on 1/18/06 in reporting CSHB 326(JUD) [HB 326, as amended on 1/18/06] from committee. There being no objection, it was so ordered.

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, one of the prime sponsors of HB 326, relayed that the proposed CS, Version F, corrects some technical aspects of the version of the bill that moved from committee on 1/18/06.

1:09:40 PM

REPRESENTATIVE COGHILL made a motion to adopt the proposed CS for HB 326, Version 24-LS1223\F, Luckhaupt, 1/26/06, as a work draft. There being no objection, Version F was before the committee.

1:10:07 PM

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, one of the prime sponsors of HB 326, relayed on behalf of Representative Meyer that members' packets contain a memorandum from the sponsor highlighting comments from Legislative Legal and Research Services, the Department of Law (DOL), and the Alaska Court of Appeals case, McKillop v. State; and indicating that [Amendments 1 and 2] to HB 326 would hinder the state's ability to prosecute someone.

1:10:51 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), explained that the words, "sole purpose" would make it much more difficult to prosecute someone, notwithstanding the court's

ruling in McKillop, because the DOL would have to prove beyond a reasonable doubt that the person performed the activities listed in proposed AS 11.61.120(a)(6) for no other reason than to harass or annoy another person.

MR. PAWLOWSKI indicated that Version F contains the title change that was incorporated into the original bill via [Amendment 3] and aside from that change is identical to the original version.

REPRESENTATIVE GRUENBERG said he is concerned that the court's interpretation in McKillop would make it impossible to prosecute the type of behavior outlined in proposed AS 11.61.120(a)(6). He offered his belief that they should make it clear that the court should reexamine its interpretation of AS 11.61.120(a)(4) because it failed to note the practical implications of its decision in McKillop, that being that it will be impossible to prosecute someone for violating that statute. He asked Ms. Carpeneti to comment on this issue.

MS. CARPENETI said that the DOL's position is that when statute includes as an element of the defense that the state has to prove beyond a reasonable doubt that the defendant's actions were for the sole purpose of harassing or annoying another person, then the DOL must prove that fact beyond a reasonable doubt; this will be difficult because people do things for a variety of reasons, or, at the very least, can claim that they had a variety of reasons.

REPRESENTATIVE GRUENBERG asked whether it would help to include a "purposes" section in the bill, that purpose being that the legislature is considering the practical implication of the [ruling in McKillop].

MS. CARPENETI said she has found such statements to be helpful.

REPRESENTATIVE GRUENBERG suggested that "findings and purposes" language could be drafted in the House Finance Committee; that language could reflect that they are directly confronting [the interpretation in McKillop] and are asking the court to consider the practical consequences of its decisions.

[1:16:42 PM](#)

REPRESENTATIVE GARA offered his belief that without stipulating that the intent to annoy is either a main purpose or a primary purpose for distributing the types of photographs outlined in

the bill, it would make criminals out of kids who are distributing photographs of public figures.

MR. PAWLOWSKI said he would argue that even that behavior is unacceptable if the photographs contain the elements listed in proposed AS 11.61.120(a)(6); such photographs are not casual photographs regardless of who the subject is, and the distribution of them rises to a level of conduct that should be criminal.

REPRESENTATIVE GARA offered his belief that as written, the bill also captures behavior that is not meant to be covered.

CHAIR MCGUIRE offered her understanding that the committee doesn't want to be making criminals out of "people who are pranksters, who are kids, who [are] goofing off"; not that that conduct is to be condoned, however. This proposed law is for those serious cases where one is truly harassing somebody, and stems from a situation in which a constituent of the sponsor was very upset to have nude photographs of herself being posted in an offensive manner. She asked whether it would be acceptable to use the term "primary" or "main" - or perhaps some other term that is used in another criminal statute - instead of "sole"; some word that will relay that although there may have been ancillary motivations for the behavior, the main goal was really to harass someone. She surmised that including something along those lines would make members more comfortable while also clarifying the intent of the legislation.

MS. CARPENETI explained that the DOL has to prove, beyond a reasonable doubt, that when the person did the act, that he/she did it with intent to annoy or harass. Therefore, the use of the word "primary" is better than "sole", but the DOL would rather only have to prove that the person acted as he/she did with the intent to harass or annoy another person. As demonstrated in the McKillop case, she pointed out, the courts are not going to allow broad-ranging prosecutions that punish a person for a silly prank or a child for behaving in a juvenile manner.

CHAIR MCGUIRE acknowledged that point.

[1:23:50 PM](#)

REPRESENTATIVE GARA said he is not comfortable with the concept of writing a law in a broad fashion and then simply trusting

that all prosecutors won't enforce the law to the full extent of the words in that law.

MS. CARPENETI pointed out, however, that this same standard must be used in the prosecution of all the other paragraphs of the harassment statute. "I think that ... requiring, beyond a reasonable doubt, proof of intent to harass or annoy another person ... gets at the crux of what you're looking at; now, if you want to put "primary", that would be better than "sole", [but] I think it's not necessary and it might be problematical," she added.

REPRESENTATIVE GARA indicated that with regard to "harass", that is acceptable; however, the language is also making it a crime to "annoy" someone. Someone may not be forwarding a photograph of a public figure with the intent to harass the subject, but [a reasonable person could be expected to assume] that the action will annoy the subject; thus, even though it needs to be proven beyond a reasonable doubt, simply annoying someone would also be against the law. Therefore, he expressed a preference for including the word "primary" or some other word which will stipulate that the purpose, regardless that the act was intentional, has to be a motivating purpose.

MS. CARPENETI argued that by including such language, the DOL would find itself in a situation wherein the defendant simply says that in addition to having the intent to annoy or harass, he/she committed the act for his/her own gratification or for various other reasons. Again, this could be problematic for the prosecution, she remarked, and recommended that such language not be included.

REPRESENTATIVE GARA suggested that using the term, "a main purpose" would address the DOL's concern. For example, a person could have three main reasons to commit the act but one of them was to harass another person.

[1:26:29 PM](#)

MS. CARPENETI indicated that the language in subsection (a) - "with intent to annoy or harass" - demonstrates that a person already has a main purpose in committing the act. She suggested, though, that if such words are added, that they apply only to proposed paragraph (6).

REPRESENTATIVE GARA agreed.

REPRESENTATIVE WILSON concurred that a defendant could always say, whether true or not, that he/she committed an act for reasons in addition to harassing or annoying.

MS. CARPENETI said proving such to be false would be very difficult.

REPRESENTATIVE WILSON surmised, then, that defendants could be given a "total out."

REPRESENTATIVE GARA said that is why he is suggesting the use of the term, "a main purpose", rather than, "the main purpose".

CHAIR McGUIRE noted that when paragraph (6) is read in conjunction with subsection (a), it is clear that one must have the intent to harass or annoy another person, and therefore her concern with the current proposed language is alleviated. She indicated that [the DOL probably] doesn't want to get into having to measure to what percentage a person has the intent to harass or annoy. She remarked that she wants the record to reflect that [the committee does] not want the bill to apply to school pranks, and that it views harassment as a serious crime.

[1:29:57 PM](#)

REPRESENTATIVE GARA suggested that the bill could be changed such that it wouldn't apply when public figures are the subject of a photograph. Another option would be to change the bill such that proposed paragraph (6) only applies when the intent is to harass, but not when the intent is to annoy.

MS. CARPENETI questioned how [the latter suggested] change would be drafted.

CHAIR McGUIRE said she is uncomfortable with the concept of having the intent to annoy not apply to paragraph (6). As for the suggested change regarding public figures, she pointed out that the public figure would have to come forward and say that the publishing, posting, or distributing of the types of photographs listed in paragraph (6) annoys or harasses him/her; therefore, a kid in Alaska forwarding on a picture of a public figure is unlikely to be prosecuted under the proposed statute. Furthermore, a legislator could be considered a "public figure". Just because public figures have a higher level of exposure, she remarked, she doesn't know that they need to be [exempted from the bill].

REPRESENTATIVE COGHILL pointed out that if public figures were [exempted from the bill], the question could then become how much of a public figure was the subject of a photograph. He surmised that current law already outlines that one has the right to not be annoyed, and opined that paragraph (6) stipulates probably the most egregious behavior as compared to the behavior outlined in the other five paragraphs.

REPRESENTATIVE GRUENBERG noted that paragraph (6) pertains to more than mere speech, which the court addressed in McKillop, as did the court in Jones v. Anchorage, which said, "We conclude that AS 11.61.120(a)(4) must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose - when the caller's speech is devoid of any substantial information and the caller's sole intention is to annoy or harass the recipient." He asked whether the sponsor wishes to address only paragraph (6) or is willing to take on the issue raised in McKillop. If it is the latter, he suggested, they could add to [subsection (a)] some of the language used in Jones to say, "when the person's communication is devoid of any substantial information and the [person's] intention is to annoy or harass the recipient". He also suggested that they should provide a definition for the word "anonymous", which is used in paragraph (4) of AS 11.61.120(a); they could perhaps define it as the court does.

[1:38:56 PM](#)

MR. PAWLOWSKI relayed that the sponsor would prefer to simply address paragraph (6).

MS. CARPENETI concurred.

REPRESENTATIVE GRUENBERG offered his belief that at some point in the future they should address the remainder of AS 11.61.120 in light of the ruling in McKillop.

REPRESENTATIVE ANDERSON pointed out that McKillop and Jones are many years old and address the issue of phone calls rather than photographs, surmised that many public figures will never even know that kids might be passing around their photographs and thus won't be harassed or annoyed by that activity, offered his belief that the courts will have the discretion to ensure that only legitimate instances of harassment are prosecuted, and opined that the legislature is correct in making a policy call and setting a precedent to say that such behavior is

unacceptable. He further opined that there is no need to codify the court's interpretation of AS 11.61.120(1)(4).

[1:43:18 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment [1], to insert the words, "with a main purpose being to harass or annoy the person," on page 1, line 15, after "(6)". He opined that the addition of this language will satisfy the intent of the sponsor without making the provision so hard to prosecute.

REPRESENTATIVE MEYER said he opposes Conceptual Amendment 1 as being unnecessary and potentially causing problems further down the road.

REPRESENTATIVE GRUENBERG sought clarification that the amendment would be conceptual in nature, and offered his belief that a conforming change, via that amendment, would also be in order on page 1, lines 4-5.

REPRESENTATIVE GARA indicated that he would be amenable to having Conceptual Amendment 1 address that portion of the bill as well.

REPRESENTATIVE ANDERSON mentioned that he doesn't see how Conceptual Amendment 1 could hurt the bill.

REPRESENTATIVE GRUENBERG suggested that it could be problematic for the prosecution to have to prove that annoying or harassing another person is a main purpose for committing an activity, and said he is not sure how the courts would go about ranking purposes so as to determine whether a particular purpose was "a main purpose". He asked whether any other statute makes use of the term, "a main purpose" with regard to mental intent.

MS. CARPENETI reiterated that the DOL must already prove beyond a reasonable doubt that when the photograph was published the person acted with the intent to annoy or harass; therefore, use of the term, "a main purpose" could create a problem for the prosecution. She indicated that she is unaware of any other statute that uses the term, "a main purpose" with regard to mental intent; specific intent crimes usually are with intent to cause a certain harm.

REPRESENTATIVE GRUENBERG said he is concerned about forcing the jury to determine whether a purpose was a main purpose.

MR. PAWLOWSKI reiterated his belief that if the photographs contain the elements listed in proposed AS 11.61.120(a)(6), it doesn't matter that the photographs were sent around as part of a joke; just because something could be viewed as a joke, and regardless of who the subject is, it shouldn't mean that the nature of the crime could be limited.

REPRESENTATIVE ANDERSON used an example wherein a person gets charged with a crime even though the person had not meant to harass or annoy another person.

CHAIR MCGUIRE said she is concerned that layering on the term, "a main purpose", could result in sort of having a trial within a trial. Other aspects of the criminal code simply look at intent, she noted, without having a determination regarding the percentages that could be attributed to particular purposes.

MS. CARPENETI said that under the harassment statute, the state has to prove that it was the actor's specific intent to annoy or harass, not that the subject was actually annoyed or harassed by the behavior.

[1:52:40 PM](#)

A roll call vote was taken. Representatives Anderson and Gara voted in favor of Conceptual Amendment 1. Representatives McGuire, Coghill, Wilson, and Gruenberg voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 2-4.

REPRESENTATIVE GRUENBERG again expressed a desire to deal with the issues raised by the McKillop case. He asked Ms. Carpeneti whether she would like to have the issue of including an "intents or purposes" section addressed by the next committee of referral.

MS. CARPENETI said she did not think so.

[1:53:58 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 326, Version 24-LS1223\F, Luckhaupt, 1/26/06, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, [new] CSHB 326(JUD) was reported from the House Judiciary Standing Committee.

HB 321 - AGGRAVATED DRUNK DRIVING

1:54:29 PM

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 321, "An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance and to refusal to submit to a chemical test." [Before the committee was the proposed committee substitute (CS) for HB 321, Version 24-LS1099\F, Luckhaupt, 1/16/06, which had been adopted as a work draft on 1/25/06.]

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, on behalf of Representative Ramras answered questions posed on January 25, 2006. She reminded the committee that Representative Gruenberg had asked why the committee would want to repeal AS 28.35.032(i) via Section 5. She explained that for those circumstances outlined in the bill, there would no longer be a 72-hour sentence as outlined in AS 28.35.032(i) for refusing to take a chemical test to determine a blood alcohol concentration (BAC) level; instead, the sentence for refusal would mirror what is in the bill for driving under the influence (DUI) convictions. She reminded the committee that Representative Gara had asked for some statistics regarding the effectiveness of the [current] DUI laws and informed the committee that the statistics are in the packet.

1:56:33 PM

MS. PIERSON noted that Ron Taylor, Coordinator, Alcohol Safety Action Program (ASAP), Prevention and Early Intervention Section, Division of Behavior Health (DBH), Department of Health and Social Services (DHSS), brought up the question of [a possible] amendment dealing with increased [fees for reinstating a person's driver's license]. She stated that although Representative Ramras didn't want to increase the court fines, he didn't have a problem with increasing the [fee] for reinstating a driver's license. In regard to the fiscal notes and Representative Gruenberg's question about them, she remarked that she has yet to receive a return email from the Department of Corrections (DOC). In regard to the available grants, she relayed that 23 U.S.C. 410 alcohol-impaired driving countermeasures incentive grants are available if certain criteria are met, and referred to the criteria for the grants in committee packets.

MS. PIERSON relayed that one of the things she checked into was whether a .15 BAC would be a threshold for that and the answer is no. There are states that have a high BAC law, for example a .20 BAC, and they are still receiving these grants. [Alaska] has to meet the criteria and she offered her understanding that Alaska is qualified under "Basic Grant A" criteria and probably under "Basic Grant B" criteria. She relayed that Ron Taylor also asked what it would count as if one were to get a third DUI and had gotten two previous DUIs with a low BAC but the third DUI was with a high BAC. She opined that if one gets a high BAC [DUI] and it is the third one, it falls under DUIs that one is charged with under [proposed] AS 28.35.030, but acknowledged that perhaps this is not yet clear in the bill.

REPRESENTATIVE GRUENBERG referred to the "rule of lenity": if a criminal statute can be interpreted two ways - one way that's harsher than the other way - the court will have to interpret it the less-harsh way. Therefore, the statute needs to be clearer, otherwise the aforementioned rule may be brought to bear.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to increase the [fee for reinstating a driver's license], after a second high-risk DUI offense, to \$750.

CHAIR MCGUIRE suggested that Amendment 1 be conceptual so the drafter could put it where it's appropriate.

REPRESENTATIVE GRUENBERG then altered Conceptual Amendment 1 so that it would increase the fee to only \$700. In response to a question and comments, he noted that AS 28.15.271 relates to driver's license reinstatement fees.

REPRESENTATIVE GARA said he doesn't understand what the purpose would be of increasing the [fee] by \$200.

REPRESENTATIVE GRUENBERG posited that increasing the fee is creating another aspect of deterrence for this higher-level crime.

RON TAYLOR, Coordinator, Alcohol Safety Action Program (ASAP), Prevention and Early Intervention Section, Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), relayed that his suggested increase in the driver's license reinstatement fee is in response to something that said at the previous meeting, which is that each time something is changed in [the DUI statutes] it's going to send a clear message to a high-risk driver that he/she will have the

distinction of being subject to higher penalties - whether it be fines, jail time, or reinstatement fees. He remarked that there's no rhyme or reason for a 50 percent increase across the board for jail time, fines, and reinstatement fees.

[2:06:52 PM](#)

REPRESENTATIVE GRUENBERG, in response to a question, clarified that if one has a .16 [BAC], [Conceptual Amendment 1] applies, while if one has a .159 [BAC], it won't.

REPRESENTATIVE GARA offered his understanding that in 2000 there were 4,686 DUI arrests and the number was the same in 2005. In the intervening years, the number of DUI arrests have increased and decreased, but that's not compelling evidence that changes in DUI laws have caused the number of arrests or convictions to decrease. He opined that although the fines have been drastically increased, it seems like increases in jail time is more important because it is punitive. He expressed his concern about whether [an increase in fees] is actually needed.

REPRESENTATIVE GRUENBERG said, "We have not increased the [fines] ... in the bill, so [Conceptual Amendment 1 would be] ... the only additional monetary sanction in it."

MS. PIERSON concurred.

REPRESENTATIVE ANDERSON recalled Representative Ramras stating that someone affluent can easily pay a fine and that therefore his intent was to change the jail time, not the fine.

MS. PIERSON concurred with that summation.

[2:11:24 PM](#)

A roll call vote was taken. Representative Gruenberg voted in favor of Conceptual Amendment 1. Representatives McGuire, Wilson, Anderson, and Gara voted against it. Therefore, Conceptual Amendment 1 failed by a vote of 1-4.

MS. PIERSON, in response to comments, informed the committee of the high BAC levels in states which are receiving the aforementioned grants: .15 in Arizona; .15 in Arkansas; .20 in California; split .15/.20 in Colorado; .16 in Connecticut; .16/.20 with a graduated law in Delaware; .20 in Florida; and .15 in Georgia. In response to a question, she offered her

understanding that this legislation would make it so that [the State of Alaska] would be able to apply for the grants.

MR. TAYLOR indicated that that issue has not yet been clarified. He said he was unaware of whether having a high BAC threshold of .16 would impact [the State of Alaska] for the upcoming fiscal year (FY).

REPRESENTATIVE GARA relayed that the point to him isn't that one is half as dangerous with a .159 BAC than if one has a .161 BAC; "the truth is, you're a fantastic danger at both." He opined that to pretend that one is twice or half as dangerous simply by using these numbers is a fiction, and that one's first time DUI conviction, in a lot of cases, just seems like a "slap on the wrist" when it should instead have a bigger impact. It seems reasonable to him, he remarked, that in a more serious case, a first time DUI should result in six days [in jail], whereas always making the penalty twice as much, every single time, doesn't make as much sense. He reiterated his concern that HB 321 sends the message that it's okay to drive with a .10 or .08 BAC, and opined that doing so is not okay.

[2:17:31 PM](#)

REPRESENTATIVE GARA moved to adopt Conceptual Amendment 2, to make a conviction for a first time DUI at the .16 BAC level result in a minimum of six days [in jail] and enhancing the sentence for subsequent DUIs by a minimum of a third longer than it currently is though the court can impose something longer if it thinks the circumstances justify it.

[2:18:58 PM](#)

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

[Following was a brief discussion regarding what changes to sentences would have been effected by Conceptual Amendment 2.]

REPRESENTATIVE GRUENBERG suggested replacing "40 days" with "30 days" on page 2, line 26; "80 days" with "70 days" on page 2, line 28; "140 days" with "130 days" on page 2, line 31; and "280 days" with "260 days" on page 3, line 3.

CHAIR McGUIRE referred to Representative Gruenberg's suggested changes as Amendment 3.

CHAIR McGUIRE informed the committee that she would hold HB 321 over. She expressed her concern about the bill sponsor's absence and Amendment 3 being a fairly substantive change to the legislation, which is intended to double the penalties in the category of jail sentences. She expressed her desire for a more definitive answer - in writing - as to whether .15 BAC or .16 BAC makes a difference. In response to questions, she clarified that HB 321 will be held over with Amendment 3 left pending, adding that it would be okay if Representative Gruenberg wanted to withdraw Amendment 3 at the next meeting.

REPRESENTATIVE GARA commented that none of the committee members should be doing "math on the fly," and asked whether the federal government has stipulated how much the states have to increase their sentences by.

MS. PIERSON clarified that [the federal language in part] reads, "a law that imposes stronger sanctions or additional penalties for high risk drivers with a BAC of .15 or more".

[2:27:56 PM](#)

CHAIR McGUIRE announced that HB 321 [Version F] would be held over with the question of whether to adopt Amendment 3 left pending.

HB 314 - USE OF FORCE TO PROTECT SELF/HOME

[2:28:07 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 314, "An Act relating to defense of self, other persons, and property."

[2:28:38 PM](#)

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, one of the prime sponsors of HB 314, relayed on behalf of Representative Coghill that HB 314 will expand the area in which a person is allowed to stand his/her ground and [use deadly force to] protect himself/herself when faced with the threat of death, serious physical injury, kidnapping, sexual assault, or robbery. Currently one may only use deadly force while on premises that one owns or leases and is not the initial

aggressor. She noted that members' packets contain an Amendment 1, which, with some formatting changes and explanations, read [original punctuation provided]:

Page 2, Line 6: after the word "assault" delete:
", SEXUAL ABUSE OF A MINOR"

insert:
in the first degree, sexual assault in the second degree

We are recommending deleting the proposed change and staying with the original wording in order to address the concerns that "sexual abuse of a minor" could be a loophole for a father to walk in on his 15-year-old daughter with her 19-year-old boyfriend, and the father claim "self defense of a child" as justification for killing the boyfriend.

Line 10: after "to a" insert:
reasonable

In discussions with the AG's office, they felt that our original language "to a certainty" was much too broad and could let bad actors get away with using deadly force. It was agreed that adding in reasonable was a compromise that we both could live with.

Line 21: after the word "assault" delete:
", SEXUAL ABUSE OF A MINOR"

insert:
in the first degree, sexual assault in the second degree

In this new section (b) we recommend staying with the same language as Line 6 above.

MS. LIDSTER relayed that the Department of Law (DOL) had expressed concern that one of the proposed changes in Section 2 - that which would replace the words, "in the first degree, sexual assault in the second degree" with the words, ", sexual abuse of a minor" - could create a loophole in situations where a parent is angry that his/her teenager is having a relationship

with someone over the age of majority. Amendment 1 proposes to leave the language as it currently is in AS 11.81.335(a)(2). Amendment 1 would also change, in proposed AS 11.81.335(b), the proposed new wording, "to a certainty" to, "to a reasonable certainty"; this provision specifies one's duty to retreat. This change was also requested by the DOL because it felt that without the word, "reasonable" there could be difficulty proving that a person really could have retreated instead of using deadly force. The last alteration Amendment 1 proposes is that of changing Section 3 of the bill such that the language will mirror what is currently in AS 11.81.335(a)(2) regarding the crimes listed.

[2:32:51 PM](#)

REPRESENTATIVE GARA suggested that Amendment 1 be incorporated into a proposed committee substitute (CS).

CHAIR McGUIRE agreed to arrange that.

REPRESENTATIVE GARA indicated that the bill might still have some unintended consequences. For example, he offered his belief that the crime of kidnapping includes custodial interference, and relayed that it's his belief that the sponsor doesn't intend for the bill to apply in those situations. Referring to Section 3, he offered his understanding that as currently written, one could use deadly force simply when one reasonably believes that a child is in imminent threat of having one of the things listed occur to him/her, and would not have to reasonably believe that the use of deadly force is the only way in which to stop those things from occurring. He suggested that this also is not the sponsor's intent, particularly with regard to robbery, and therefore the current language in Section 3 could prove problematic.

MS. LIDSTER agreed to research those issues.

[2:37:06 PM](#)

REPRESENTATIVE GRUENBERG suggested that the bill should include a definition of "carjacking". He asked what the difference is between "carjacking" - as used in proposed AS 11.81.350(e)(1) - and "theft of a motor vehicle when another person ... is inside the vehicle" - as used in proposed AS 11.81.350(e)(2) - adding that he thought the latter was a carjacking.

MS. LIDSTER indicated that in proposed AS 11.81.350(e)(1), the person is still in the vehicle, and in proposed AS 11.81.350(e)(2), the person is outside of the vehicle and there is another person, perhaps even a child, in the car.

REPRESENTATIVE GRUENBERG offered his belief that the activity in both proposed AS 11.81.350(e)(1) and proposed AS 11.81.350(e)(2) are simply different forms of carjacking.

MS. LIDSTER said she would research that issue.

CHAIR MCGUIRE noted that one of her former staff was the victim of a carjacking, and briefly described that situation, which she characterized as very serious.

REPRESENTATIVE GARA indicated that he is amenable to [the changes proposed via Amendment 1], and reiterated his concern regarding Section 3; on the latter point, he suggested adding the phrase, "the person reasonably believes the use of deadly force is necessary.

MS. LIDSTER acknowledged that point, again offering to research that issue further.

REPRESENTATIVE GRUENBERG asked whether carjacking is currently punished as a separate crime.

MS. LIDSTER said she would also research that issue.

[2:42:36 PM](#)

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), relayed that the administration supports having a good, strong, self-defense law, but at the same time wants it to be a workable law so that gang members, drug dealers, and other criminals don't use the justification of self defense as an excuse for shooting up a neighborhood. He mentioned that he has been working with the sponsor in an effort to improve the bill so that it will accomplish both goals. In response to Representative Gruenberg's question, he noted that carjacking can include any number of crimes and can also be prosecuted as a separate crime of vehicle theft - a felony in and of itself - or as felony theft of property depending on what items were in the car. Furthermore, depending on what is done to the driver/passengers, assault charges might also be warranted.

MR. GUANELI, in response to a further question, said he is not sure how other states treat this behavior.

REPRESENTATIVE GRUENBERG asked whether the administration would like to see a separate crime for carjacking.

MR. GUANELI indicated that current law is sufficient, particularly given that a lot of case law involves the merging of convictions when they relate to one continuous course of conduct.

CHAIR MCGUIRE suggested that what makes the act of carjacking distinguishable from the act of simply stealing a car is the mental intent of being willing to endanger someone in order get the vehicle, and indicated that she would research this issue further.

REPRESENTATIVE GRUENBERG asked whether there are many incidences of carjacking in Alaska.

MR. GUANELI said he would have to research that issue.

REPRESENTATIVE GRUENBERG expressed a preference for developing a statute that would specifically address the issue of carjacking. He then referred to the interplay between self-defense and gang-related activity.

[Following was a brief discussion regarding provisions in other legislation as they pertained to gang-related activities.]

[2:51:07 PM](#)

MIKE MILLIGAN relayed that he has submitted written testimony, shared with the committee some personal experiences regarding the issue of self defense, said he is very concerned about the intent of the bill, and opined that that intent should be to allow people to defend themselves without allowing them to just simply shoot each other. He noted that Section 1 of the bill pertains to the civil code, whereas the remaining sections pertain to the criminal code. He opined that the bill should emphasize that there are standards [with regard to firearms]. For example, one of the aspects of the original "concealed carry" legislation was that in order to get a permit, one had [to pass a handgun safety course], adding that he would like to see a reference to that requirement included in both the civil and criminal provisions of the bill. Referring to his written testimony wherein he'd offered suggested language changes for

HB 314, he acknowledged that perhaps the committee could come up with better wording for both the civil and criminal provisions of the bill.

CHAIR McGUIRE offered her understanding that that training requirement had been eliminated.

REPRESENTATIVE GRUENBERG surmised, then, that if Mr. Milligan's suggested changes were adopted, one would have an enhanced ability to [use the provisions of the bill to justify the use of deadly force] if one had taken the aforementioned safety course and had a permit.

MR. MILLIGAN concurred, adding that in a civil case, [such changes] would provide for a preponderance of the evidence standard in the defendant's favor. He pointed out that he is advocating for language that would allow the permit to be either current or expired. He mentioned that the sponsor's staff has explained to him that the concealed carry permit provisions remain in place because of the reciprocal laws that would allow one to take a "concealed carry" permit to another state.

CHAIR McGUIRE surmised, then, that although one doesn't have to have a permit to carry concealed, one could still opt to obtain such a permit, and that Mr. Milligan is suggesting that in doing so one is a more responsible gun owner and thus there ought to be special considerations given in situations wherein HB 314 comes into play.

MR. MILLIGAN concurred.

REPRESENTATIVE GRUENBERG asked whether the sponsor would look favorably upon Mr. Milligan's suggested changes. He mentioned that such language might provide people with incentive to get the training that would enable them to qualify for a permit.

MS. LIDSTER said she would research that issue.

[2:56:12 PM](#)

REPRESENTATIVE GARA asked that the phrase, "any place where the person has a right to be", be further defined.

MS. LIDSTER listed examples such as one's work place, a healthcare provider's office, and shopping facilities.

REPRESENTATIVE GARA surmised, then, that that phrase means "everywhere."

MS. LIDSTER concurred.

CHAIR MCGUIRE surmised that Representative Gara's point is whether the phrase, "any place where the person has a right to be" would be legally defensible; she suggested that the sponsor have Legislative Legal and Research Services provide a definition for that phrase. She said she assumes that there is a reason for using that phrase as opposed to "anywhere you are"; perhaps the distinction is that one can't be engaged in a criminal act.

MS. LIDSTER concurred, adding that AS 11.81.330 addresses the issue of what activities one cannot be engaged in, in order to be justified in protecting oneself through the use of nondeadly force.

CHAIR MCGUIRE indicated that HB 314 would be held over.

HB 379 - CONTROLLED SUBSTANCES, INCL. ANALOGS

[2:58:27 PM](#)

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 379, "An Act relating to controlled substances."

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor of HB 379, relayed that the bill was engendered by an incident wherein a 16-year-old girl died and an 18-year-old was severely injured after a group of older men slipped an analog of GHB into their drinks. This legislation, he explained, elevates gamma-hydroxybutyric acid (GHB) and its analogs to a schedule IA controlled substance from its current listing as schedule IVA controlled substance. He opined that GHB should be elevated to a schedule IA because the primary purpose of GHB is for use in date rape. Furthermore, the drug is potent, almost impossible to detect, and easily slipped into a drink. Specifically, GHB induces a feeling of severe intoxication and enables others to take advantage of the vulnerable and incoherent individuals who are under its influence.

REPRESENTATIVE MEYER highlighted that HB 379 also includes analogs in the statutory definitions of controlled substance. He further noted that the legislation does exempt compounds approved by the Federal Drug Administration (FDA) as well as

those compounds involved in specific medical tests and used for human consumption. He specified that HB 379 attempts to cleanup the statutes while sending a message that [use of] the compounds in GHB are unacceptable and dangerous.

[3:01:13 PM](#)

REPRESENTATIVE GRUENBERG asked if the sponsor would be willing to narrow the title.

REPRESENTATIVE MEYER replied, "Yes."

REPRESENTATIVE GARA opined that the purpose of HB 379 "seems appropriate." However, the list of chemicals considered illegal drugs under HB 379 is lengthy, and therefore he expressed the need to hear from someone that the chemicals listed should be considered illegal.

REPRESENTATIVE MEYER said that there are individuals available who can address that question.

[3:02:24 PM](#)

TRINKA PORRATA, President, Project GHB, began by noting that she is a retired Los Angeles police officer. She explained that Project GHB is a nonprofit organization dedicated to educating people about GHB, a drug that she has dealt with for the past 10 years. She noted that she is considered the nation's expert on GHB and thus has worked with some of the top researchers of this drug. Ms. Porrata said that she is glad that this issue is being addressed. Furthermore, the analog provision is very important because GHB has many analogs, even more than the three listed in the bill. The analog provision provides the [state] the opportunity to address them without the time required to pass legislation for each drug. She explained that analogs are chemical cousins and thus have similar/related chemical structure and effects.

[3:06:41 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), relayed that the DOL supports HB 379, although she said she cannot speak to some of the technical aspects of it.

REPRESENTATIVE GRUENBERG, drew the committee's attention to page 2, lines 1-10, and relayed his reluctance to adopt this language because it may be subject to a challenge of void for vagueness.

MS. PORRATA pointed out that the language [on page 2, lines 1-10] is similar to that adopted by both California and the federal government to address analogs. Ms. Porrata explained that an analog of a controlled substance would automatically refer to the controlled substance.

REPRESENTATIVE GRUENBERG clarified that his concern is whether such language has already been interpreted by the courts. He questioned how [the public] could be given fair notice that they may be prosecuted for possessing something that isn't even in existence or listed [as prohibited].

[3:10:29 PM](#)

MS. PORRATA interjected that the point of that language is that when a comparable drug to one listed is created, it's automatically covered.

REPRESENTATIVE GRUENBERG reiterated that his concern is whether such can be done from a constitutional perspective because due process requires fair notice. He expressed interest in seeing case law on the aforementioned, though he noted his support of the legislation.

MS. PORRATA relayed that similar language has been tested in federal court and has been consistently upheld. She acknowledged that each time [an analog is added] there has been a challenge, but the law itself has been upheld.

REPRESENTATIVE GRUENBERG requested that the DOL research his concerns. He also expressed his desire to hear from the public defender on this matter.

REPRESENTATIVE WILSON offered her understanding that because the drug involves chemical formulas, [the bill has been] narrowed to refer to similar molecular structures.

[3:12:48 PM](#)

REPRESENTATIVE GRUENBERG said he is wondering whether the language "substantially similar" has been upheld by the courts and, if so, how has it been upheld. He then pointed out that

the language on page 2, lines 7-10, refers to any substance that has a particular effect on the central nervous system.

3:13:26 PM

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, House Finance Committee, Alaska State Legislature, surmised, then, that Representative Gruenberg is concerned about providing notice when a chemical compound is made illegal without specifically being mentioned in law.

REPRESENTATIVE GRUENBERG further clarified that he is concerned because these analogs aren't even referenced in a list that's established by regulation. He then noted that the bill contains a provision repealing AS 11.71.170(b)(28), and asked why.

MR. PAWLOWSKI specified that it refers to the chemical name for GHB as it is currently listed in the schedule IVA controlled substance statute.

REPRESENTATIVE GARA expressed the need to be reassured by a chemist that each of the chemicals listed in the legislation is GHB. The language on page 1, line 6, specifies that also illegal is any salt or isomer contained in one of the listed drugs. In regard to that language, he expressed the need for [a chemist] to specify whether any of these drugs contain a sub-isomer that may be legitimate.

[HB 379 was held over.]

HB 343 - HARASSMENT

3:16:03 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 343, "An Act relating to harassment."

REPRESENTATIVE BOB LYNN, Alaska State Legislature, sponsor, mentioning that he has worked as a jailer, relayed that HB 343 was requested by correctional officers and those who want more protection from inmates and others who would throw bodily fluids and feces. Currently, such behavior - included in the crime of harassment - is prosecuted as a class B misdemeanor, engendering a sentence that can range from "0" days to 90 days; HB 343 would make such behavior a class A misdemeanor - which can engender a sentence ranging from "0" days to 1 year - and would specifically provide for a mandatory minimum sentence of 60 days

if the victim is a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault.

REPRESENTATIVE LYNN noted that a letter provided by the chief police of the City of Fairbanks Police Department, Daniel P. Hoffman, says in part, "Being spit upon, having blood or feces flung at you ..., should never be considered 'just part of our job'"; that in a portion of a position paper provided by the Public Safety Employees Association, Inc. (PSEA), John Cyr says, "Any attempt to increase the penalty for this type of behavior is [overdue]"; that a letter provided by the president of the Alaska Association of Chiefs of Police (AACOP), Thomas Clemons, says in part, "... someone throwing bodily fluids at any individual is not only repulsive, but should have a penalty attached to it which will deter the activity, or at least punish the offender more appropriately than what is currently allowed under State Law"; and that a letter provided by the president of the board of directors of the Alaska Correctional Officers Association (ACOA), Daniel Colang, says in part, "Inmates have spit in the face of officers, tried to smear them with feces and in one case sprayed a female employee with a mixture of semen, urine and saliva. ... we need our leaders to protect us from the threat and danger of assault by bodily fluids."

REPRESENTATIVE LYNN, in summary, said that HB 343 is aimed at protecting everyone, but especially those who protect the public's safety and respond to emergency situations.

[3:20:29 PM](#)

JAMES A. HELGOE, Lieutenant, Legislative Liaison, Division of Alaska State Troopers, Department of Public Safety (DPS), stated simply that the Alaska State Troopers support HB 343.

[3:21:11 PM](#)

MAE L. BARNEY, Correctional Officer II, Fairbanks Correctional Center, Division of Institutions, Department of Corrections (DOC), relayed that she is the correctional officer [mentioned in the letter from the ACOA] that had a mixture of semen, urine, and saliva sprayed on her, adding that another correctional officer was also a victim. In response to a question, she went on to describe that incident.

MICHAEL SICA, Staff to Representative Bob Lynn, Alaska State Legislature, sponsor, asked, on behalf of Representative Lynn, that Ms. Barney comment regarding whether the correctional officers in Fairbanks support the bill.

MS. BARNEY said all the correctional officers support HB 343.

[3:24:59 PM](#)

RICHARD SCHMITZ, Public Information Officer, Office of the Commissioner - Juneau, Department of Corrections (DOC), stated simply that the DOC supports [HB 343], thinks it's a good bill, and would like to see it pass.

REPRESENTATIVE WILSON noted that nurses are often subject to contact with the aforementioned substances. She asked whether nurses who work in emergency rooms would be covered under the bill.

MR. SICA relayed that for a violation to occur under the bill, a person would have to intentionally subject another person to those substances.

REPRESENTATIVE WILSON asked whether similar behavior by someone who is drunk or under the influence of drugs [would be covered by the bill].

MR. SICA suggested that someone else might be better able to address that question, but proffered that the intent of the bill is to make this type of behavior fall under the crime of harassment, which involves someone intentionally harassing or annoying another person.

[3:27:05 PM](#)

REPRESENTATIVE WILSON pointed out that drunken people do things intentionally.

MR. SICA surmised, then, that such behavior would be covered under the bill.

REPRESENTATIVE GARA offered his understanding that the bill differentiates between activity directed at a police officer or emergency responder and activity directed at a member of the public.

MR. SICA concurred with that summation.

REPRESENTATIVE GARA suggested that they might want to exempt saliva and perhaps sweat, and gave an example wherein two kids start spitting at each other during a schoolyard fight.

MR. SICA indicated that the sponsor had intended for saliva to be included in the bill but perhaps had not intended for sweat to be included, and so he will research that issue further.

REPRESENTATIVE GARA acknowledged that when one spits at another person, the intention is to annoy that person.

MR. SICA concurred, and offered his belief that [spitting at someone] is already included under the harassment statute as a class B misdemeanor.

REPRESENTATIVE GRUENBERG noted that AS 11.61.120(a)(5) already makes subjecting another person to offensive physical contact a crime of harassment, and surmised that the bill would make that behavior a class A misdemeanor - as harassment in the first degree - if the offensive physical contact involves the use of human or animal bodily fluids or feces.

MR. SICA concurred with that summation.

[3:30:28 PM](#)

SUSAN A. PARKES, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), relayed that the DOL supports HB 343, and that the sponsor did consult with the DOL in drafting the bill.

REPRESENTATIVE WILSON again asked whether the bill would cover emergency room nurses who have intoxicated patients spit at them or throw other items at them.

MS. PARKES said that the DOL would have to prove the factual question of whether the person took that action with the intent to harass or annoy, and in the case of an intoxicated person or a person under the influence of some substance, the level of intoxication or impairment could also be a factor. If the person is spewing profanities, looking the victim in the eye, is coherent enough to engage in other intentional acts, and spits or throws other bodily fluids on the victim, a jury could easily make a finding that although the person was intoxicated, he/she intended his/her conduct.

3:33:08 PM

REPRESENTATIVE GARA offered his understanding that spitting is not covered under existing law.

REPRESENTATIVE GRUENBERG argued that spitting is covered under AS 11.61.120(a)(5) in that it would be considered "offensive physical contact".

MS. PARKES concurred, adding that the concern of correctional officers is that this behavior is currently only a class B misdemeanor, which they argue is insufficient. The intent of the bill, she suggested, is to recognize that throwing bodily fluids or feces is serious conduct and that protecting those who ensure the public's safety and respond to emergency situations is a priority.

CHAIR MCGUIRE asked why the bill shouldn't just be limited to those who protect the public's safety and respond to emergency situations.

REPRESENTATIVE LYNN opined that no one should be subjected to having bodily fluids or feces thrown at him/her, and offered his understanding that this is occurring to people other than those who protect the public's safety and respond to emergency situations.

3:35:52 PM

REPRESENTATIVE GRUENBERG indicated that he has a potential conflict of interest and asked to be excused from voting.

CHAIR MCGUIRE objected [thus requiring Representative Gruenberg to vote should it be necessary].

REPRESENTATIVE GARA asked whether spitting would be considered "offensive physical contact".

MS. PARKES said, "That is the theory that we prosecute it under, and ... we've gotten convictions under that theory."

3:37:56 PM

REPRESENTATIVE WILSON referred to page 3, lines 2-4 - which lists the people against whom an offense would garner a mandatory minimum sentence - noted that medical personnel are not included, and suggested that they should be.

REPRESENTATIVE LYNN said he would view such a change to be a friendly amendment.

REPRESENTATIVE GRUENBERG suggested that such a change may warrant a title change. He then referred to the Alaska Court of Appeals case, McKillop v. State, and opined that the ruling in that case makes the current statute regarding the crime of harassment virtually unworkable. He asked the sponsor whether he would be amenable to curing that problem via HB 343.

REPRESENTATIVE LYNN said he would follow the advice of the DOL on that issue.

MS. PARKES recommended that that issue be taken up with the drafter.

MR. SICA relayed that the drafter had simply indicated that the harassment statute was the most appropriate section of statute with which to address the behavior the sponsor was concerned about.

[3:41:00 PM](#)

REPRESENTATIVE GARA said he is uncomfortable making it a crime to throw [or project] sweat or saliva at regular people. He asked the sponsor to consider amending the bill such that it would only be a crime to throw or project sweat or saliva if the victim was someone [listed in Section 4].

REPRESENTATIVE LYNN suggested that if someone has taken the time to collect enough sweat to throw it at another person, that illustrates real intent.

MS. PARKES pointed out that Section 4 of the bill is merely a sentencing provision that sets a mandatory minimum sentence for the behavior listed in Section 2 if the victim is someone listed in Section 4, and opined that Representative Gara's suggested change could be problematic.

CHAIR McGUIRE relayed that HB 343 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:44 p.m.