

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 8, 2006
1:14 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Peggy Wilson
Representative Les Gara

MEMBERS ABSENT

Representative Max Gruenberg

COMMITTEE CALENDAR

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."

- MOVED CSHB 321(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 353

"An Act relating to sentences for sexual offenses."

- HEARD AND HELD

HOUSE BILL NO. 363

"An Act increasing the number of superior court judges designated for the third judicial district, to provide additional superior court judges at Anchorage, Palmer, and Kenai; and providing for an effective date."

- MOVED HB 363 OUT OF COMMITTEE

HOUSE BILL NO. 339

"An Act relating to the definition of 'victim' in relation to crime; and relating to parole board hearings and information provided to the public by the parole board."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

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
01/27/06	(H)	Heard & Held
01/27/06	(H)	MINUTE(JUD)
02/08/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 353

SHORT TITLE: SENTENCING FOR SEXUAL OFFENSES

SPONSOR(S): REPRESENTATIVE(S) NEUMAN, 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
02/03/06	(H)	JUD AT 1:00 PM CAPITOL 120
02/03/06	(H)	<Bill Hearing Canceled>
02/08/06	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 363

SHORT TITLE: ADDITIONAL JUDGES FOR THIRD DISTRICT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/13/06	(H)	READ THE FIRST TIME - REFERRALS
01/13/06	(H)	JUD, FIN
02/08/06	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: Explained the proposed CS for HB 321,
Version Y, on behalf of the sponsor, Representative Ramras.

JAMES A. HELGOE, Lieutenant, Legislative Liaison
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified that HB 321 is a step in the right direction.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 321.

SUSAN A. PARKES, Deputy Attorney General
Criminal Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 321, answered questions regarding interlock devices; provided comments during discussion of HB 353; presented HB 363 on behalf of the administration.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: One of the prime sponsors of HB 353.

REX SHATTUCK, Staff
to Representative Mark Neuman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Discussed the importance of proportionality in HB 353 on behalf of one of the bill's prime sponsors, Representative Neuman.

PORTIA PARKER, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 353 and discussed the treatment of sex offenders.

LEONARD M. LINTON, JR., District Attorney
3rd Judicial District (Anchorage)
District Attorneys
Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 363, relayed that he did not object to passage of the bill.

LARRY COHN, Executive Director

Alaska Judicial Council (AJC)

Anchorage, Alaska

POSITION STATEMENT: Asked a question during discussion of HB 363.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [1:14:14 PM](#). Representatives McGuire, Anderson, Coghill, and Wilson were present at the call to order. Representative Gara and Kott arrived as the meeting was in progress.

HB 321 - AGGRAVATED DRUNK DRIVING

[1:14:58 PM](#)

CHAIR McGUIRE announced that the first 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; left pending from 1/27/06, and not addressed further during this meeting, was the question of whether to adopt an Amendment 3 to Version F.]

[1:15:33 PM](#)

REPRESENTATIVE WILSON made a motion to adopt the proposed committee substitute (CS) for HB 321, Version 24-LS1099\Y, Luckhaupt, 1/30/06, as the work draft. There being no objection, Version Y was before the committee.

[1:15:49 PM](#)

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, sponsor, explained on behalf of Representative Ramras that Version Y [contains a new] Section 3, which clarifies that a person convicted of driving under the influence (DUI) with a high blood alcohol concentration (BAC) will be

subject to the enhanced penalties in accordance with the previous number of DUIs he/she has been convicted of.

REPRESENTATIVE ANDERSON asked whether HB 321 will substantially curb drinking and driving.

JAMES A. HELGOE, Lieutenant, Legislative Liaison, Division of Alaska State Troopers, Department of Public Safety (DPS), offered his belief that HB 321 is a step in the right direction. There are many factors contributing to the problem of [drinking and driving in Alaska]. The media and law enforcement agencies throughout Alaska are attempting to increase public awareness as well as voluntary compliance. He opined that tougher penalties is a means of educating the public that it will be held more accountable [for drinking and driving], whether through increased [fees] or longer jail time.

[1:20:44 PM](#)

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, in response to a question, relayed HB 321 is endorsed by both the Cabaret Hotel Restaurant & Retailer's Association (CHARR) and Mothers Against Drunk Driving MADD. He noted that he attended 10-15 meetings of the Fairbanks MADD chapter and initially they were reluctant to endorse HB 321 because they didn't want to differentiate between "drunk" and "really drunk." It wasn't until other MADD chapters around the country began to endorse it that the local MADD chapter "came around." The Cabaret Hotel Restaurant & Retailer's Association, on the other hand, embraced HB 321 initially at its annual convention because it recognized that it's not the intent of the hospitality and/or food and beverage industry to put drunk people out on the road.

REPRESENTATIVE RAMRAS noted that 31 states have adopted an aggravated drunk driving law. Currently, there is one threshold for drunk driving, which is .08 BAC. He expressed his hope that [HB 321 will result in] safer roads. He noted that he explored the issue of federal grants and found that Alaska can't qualify unless it adopts several provisions outlined by the federal government. He informed the committee that the fiscal note for HB 321 is \$1.2 million.

[1:27:15 PM](#)

REPRESENTATIVE WILSON asked Representative Ramras whether he feels that [Alaskans] who "don't have that much of a problem but just have to be careful of how much they drink" are going to

[take notice of HB 321]. She opined that those whom [the legislature] is concerned about aren't going to be aware of how high his/her BAC is.

REPRESENTATIVE RAMRAS relayed that in states where an aggravated drunk driving law has been passed and implemented, the recidivism has decreased. He noted that license suspension isn't working since there are people who have had their licenses suspended for a lifetime but are still driving and are still getting [DUIs]. He suggested that for those people the bill will put them in jail longer and thereby act as a deterrent. He noted that felony drunk driving is already "on the books" and that it's not that successful against chronic drunk drivers. He posed the questions of whether HB 321 will lead to safer roads and greater public safety, and whether it will be worth the fiscal note of \$1.2 million. He answered, "A resounding yes because it has the potential of changing behavior."

REPRESENTATIVE WILSON, in regard to the states that have already adopted [an aggravated drunk driving law], asked what the impact has been.

REPRESENTATIVE RAMRAS referred Representative Wilson to a document in the packet that addressed her question.

REPRESENTATIVE GARA relayed that he's not convinced that HB 321 is going to make major changes in recidivism rates or behavior. State law currently doesn't allow the use of interlock devices to prevent people from driving as a condition of probation if one has been convicted of a felony [DUI]. He asked why that is.

[1:33:48 PM](#)

SUSAN A. PARKES, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), relayed that the statute may not require [the use of an interlock device] in felony [cases], but she doesn't know why it couldn't simply be a condition of probation.

REPRESENTATIVE GARA asked whether [the use of an interlock device] is required in misdemeanor DUI cases.

MS. PARKES relayed her understanding that in certain instances, [interlock devices] are required or order for a person to get a limited license, but said she would research that issue further.

CHAIR McGUIRE inquired as to whether driving under the influence of marijuana would be considered a DUI.

MS. PARKES indicated that driving under the influence of any drug or alcohol is a DUI crime. However, "drug driving" cases, whether involving OxyContin, methamphetamine, or marijuana are much more difficult to prosecute in terms of proving the level of intoxication; for example, in regard to marijuana, specific blood tests have to be conducted and one has to be able to show that tetrahydrocannabinol (THC) was active in the body at the time of the driving.

CHAIR McGUIRE remarked that she's heard that judges are routinely throwing out evidence related to [driving under the influence of] marijuana on the grounds that that evidence is more prejudicial than probative. She asked, "Is it a question of changing the law or is it a question of funding or coming up with a test that's more accurate in showing how those other drugs also [influence driving]?"

MS. PARKES, in response to questions, reiterated that [people who are driving under the influence of drugs] are subject to the same penalties as those driving under the influence of alcohol, but it's just much more difficult to prove those cases. The problem with drugs, especially when [the drugs] are interacting with alcohol, is that there are differences in body type and tolerance, and standard levels haven't been set for every drug, although the Division of Alaska State Troopers has recently [employed] certified drug recognition experts. The specific problem with marijuana is that THC remains in one's body up to 30 days after one has used marijuana. To determine whether it's just still in one's body because he/she got high two weeks ago or because he/she just got high and got in his/her car takes a very specific test that state's crime lab doesn't do. When "drug driving" cases are prosecuted, the tests have to be sent to an outside laboratory to determine whether [THC] was actually active in one's body.

[1:38:30 PM](#)

CHAIR McGUIRE remarked that the more severe the penalties become for DUI and the focus being on alcohol, questions regarding drugs arise. When new crimes or enhanced penalties for existing crimes are being considered, recidivism and deterrence are not the only things that are looked at. She added that there are graduated penalties for the severity of crimes.

REPRESENTATIVE GARA offered his understanding that in the "seriously high" BAC level cases, the courts are already imposing longer sentences, adding that he's worried that HB 321 is going to send a message that driving with a BAC of .159 is okay. Therefore, why run that risk if judges are already imposing longer sentences for higher BACs?

REPRESENTATIVE RAMRAS clarified that his approach is to set an aggravated drunk driving standard to discourage people from drinking and driving. The very first thing that goes out the window when one has been drinking is his/her ability to reason/think rationally.

REPRESENTATIVE GARA expressed his interest in adding a provision that would require the use of interlock devices.

[1:49:36 PM](#)

MS. PARKES referred to AS 12.55.102, which read:

(a) The court may order as a condition of probation or generally as part of a sentence that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device.

MS. PARKES added that it's clear that [an interlock device] can be ordered in DUIs or any alcohol-related offense. She referred to AS 28.15.201, which read in part: "(ii) the court or department requires the person to use an ignition interlock device during the period of the limited license;".

REPRESENTATIVE GARA said that he would drop the interlock device idea until later, and remarked that there's a certain amount of logic to HB 321, so he's partially supportive of it; HB 321 addresses people who are so irresponsible that they won't stop drinking. He again expressed his concern, however, about the state advertising that .16 BAC is no longer tolerated, because that will imply that driving with lower BAC levels is okay.

[1:53:22 PM](#)

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

In any public relations efforts by the state to inform the public about AS 28.35.030(b)(1)(B), the state shall in no way minimize the danger of intoxication below those levels while driving, and shall advise that intoxication below those levels is also illegal and/or dangerous.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GARA explained that Amendment 1 provides that if the State of Alaska begins advertising the dangers of driving at a .16 BAC and above, it also needs to emphasize that driving drunk at all is dangerous and unacceptable. He said he doesn't want the State of Alaska to put money into anything suggesting that driving with something less than a .16 BAC is acceptable behavior.

REPRESENTATIVE RAMRAS said that he did not object to Amendment 1.

REPRESENTATIVE COGHILL indicated that he is not in favor of having the language in Amendment 1 listed in statute, and would therefore vote against it.

REPRESENTATIVE WILSON added that she would also vote against Amendment 1 because she doesn't feel that such language needs to be put in statute.

REPRESENTATIVE ANDERSON inquired about a letter of intent.

[1:55:49 PM](#)

REPRESENTATIVE GARA withdrew Amendment 1.

[1:55:58 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 2, to add to the uncodified law [the text of Amendment 1], thereby sending a message to the current administration and/or future administrations to think through its advertising campaign. There being no objection, Conceptual Amendment 2 was adopted.

[1:56:36 PM](#)

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 321, Version 24-LS1099\Y, Luckhaupt, 1/30/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE COGHILL objected. He relayed that he's against drunk driving, but is not convinced that HB 321 is going to do what Representative Ramras intends for it to do. He's said that although he's convinced that HB 321 will change the state's behavior, he is not convinced that it will change drunken driving behavior.

REPRESENTATIVE COGHILL then withdrew his objection.

CHAIR MCGUIRE asked whether there were any further objections to reporting the bill from committee. There being none, CSHB 321(JUD) was reported from the House Judiciary Standing Committee.

HB 353 - SENTENCING FOR SEXUAL OFFENSES

[Contains brief mention of SB 218.]

[1:59:15 PM](#)

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 353, "An Act relating to sentences for sexual offenses."

[1:59:45 PM](#)

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS) for HB 353, Version 24-LS1449\G, Luckhaupt, 2/2/06, as the work draft. There being no objection, Version G was before the committee.

[1:59:59 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, one of the prime sponsors of HB 353, explained that HB 353 deals with sentencing for sexual offenses. The bill will essentially double the present presumptive sentencing for all sexual assault crimes, sexual abuse of a minor crimes, and a few other similar crimes, thereby sending a clear message of zero tolerance to anybody contemplating or involved in these most egregious acts. The bill also provides for periodic polygraph testing for sex offenders on probation, which will give the Department of

Corrections (DOC) an additional tool to identify potential repeat offenders before another child is victimized.

REPRESENTATIVE NEUMAN commented that with the amount of sexual assault crimes on the rise in Alaska and the increased numbers of Alaskans speaking out, it's time to toughen the laws. Other states have enacted, or are in the process of enacting, laws with stiffer penalties for those who commit these heinous crimes. According to statistics compiled by the Federal Bureau of Investigation (FBI), Alaska has the highest per capita rate of reported rapes, and that rate is nearly 71 percent greater than that of the next highest state. According to the report, "Making Sense of Rape in America: Where Do the Numbers Come From and What Do They Mean?", the reporting of these cases is as low as 16 percent. Arrest rates are also low, with as few as 27 percent of reported crimes resulting in arrest. Furthermore, Alaska has 4,300 registered sex offenders. He remarked that these figures lead him to the conclusion that the number of actual sex offenders in Alaska is significantly higher.

REPRESENTATIVE NEUMAN relayed that there's no record of any treatment or therapy having any significant effects on sex offender recidivism rates. However, there are steps that can be taken to reduce repeat offenses. Longer sentences will ensure that the most dangerous offenders are kept away from [Alaska's] children. He informed the committee that regular polygraph testing for all sexual offenders has proven to have an effect on sexual behavior. Supervision of offenders with polygraph tests has lead to a 69 percent compliance with probation requirements, while supervision without polygraph tests has lead to only a 26 percent compliance rate. He opined that requiring a probation period as part of a sentence, along with mandating regular polygraph tests, will make Alaska safer and reduce the number of sexual assault over time. He further opined that adopting HB 353 is imperative if they want to change Alaska's position as the number one state in the nation with regard to sexual assault and sexual abuse of minors, and thereby provide a safer place for Alaska's residents.

[2:03:20 PM](#)

REPRESENTATIVE ANDERSON questioned whether HB 353 will curb sexual offense behavior.

REPRESENTATIVE NEUMAN suggested that doubling the sentences for the aforementioned crimes will provide some continuity.

REPRESENTATIVE ANDERSON suggested that doing so may possibly alleviate any potential court challenge.

REPRESENTATIVE NEUMAN relayed that the fiscal note for HB 353 is currently indeterminate.

[2:07:10 PM](#)

REPRESENTATIVE GARA noted that [proposed AS 12.55.125(i)(3)] pertains to sexual assault in the second degree, which stipulates in part that engaging in sexual contact with somebody without his/her consent is a class B felony. He asked Representative Neuman whether he had a minimum number of years of jail time in mind for offenses involving sexual contact.

REPRESENTATIVE NEUMAN indicated that he did not.

REPRESENTATIVE GARA observed that HB 353 proposes to send somebody to jail for four to eight years for such an offense. He asked Representative Neuman whether he thought that was appropriate.

REPRESENTATIVE NEUMAN responded that he thinks that that is something for the court to decide based on circumstances surrounding the offense; each case will have to be decided on a case-by-case basis.

REPRESENTATIVE GARA pointed out, though, that HB 353 won't leave that decision to the court.

[2:10:34 PM](#)

CHAIR McGUIRE asked Representative Gara whether he has a constructive idea about how to remedy his particular concern.

REPRESENTATIVE GARA offered his opinion that Representative Neuman doesn't recognize the ramifications of simply doubling "everything."

REPRESENTATIVE NEUMAN responded that what he tried to provide for proportionality in the sentencing structure, adding HB 353 is meant to send a strong message.

REPRESENTATIVE GARA explained that the court currently has the flexibility to reduce the sentence, if it's really minor, down to two years. He said that he agrees with the concept that the court should be able to apply it to the factual circumstance of

a case, but HB 353 would take that flexibility away and would mandate a minimum sentence of at least four years.

CHAIR McGUIRE explained that what's difficult in establishing mandatory minimum sentences is that [legislators] don't get the opportunity to sit as judges in front of each of these cases with unique circumstances. Instead [the committee] is simply saying what the minimum sentence will be in every circumstance and not allowing a judge or a jury to consider other factors.

REPRESENTATIVE KOTT referred to [proposed AS 12.55.125(i)(4)], which pertains in part to sexual assault in the third degree. He noted that the proposed maximum term of imprisonment is "not more than 30 years", triple the current maximum sentence.

[2:17:43 PM](#)

REX SHATTUCK, Staff to Representative Mark Neuman, Alaska State Legislature, one of the prime sponsors of HB 353, noted on behalf of Representative Neuman that one of the key things that Legislative Legal and Research Services pointed out during drafting was that proportionality was critical, and so doubling the minimum sentencing range was the only scheme that they could come up with that allowed proportionality throughout.

REPRESENTATIVE GARA remarked that he doesn't "buy" Legislative Legal and Research Services' analysis about proportionality. He said he doesn't think that the sentences for all sexual offenses should be increased.

MR. SHATTUCK noted that at the present time, the courts have acknowledged present presumptive sentencing as acceptable.

REPRESENTATIVE GARA remarked that how long someone is sentenced for a certain kind of conduct is a policy call. He added that just because the sentence for the most significant crime was increased, it doesn't have to be increased for the least significant crime.

CHAIR McGUIRE interjected that those are two separate arguments. She said that if there are proportionality arguments that the drafter is advancing, the committee should know what those are. However, if it's a policy call that's being made, that's a separate issue. She asked whether judges in Alaska are failing to provide serious sentences for very serious [sexual] predators. If such is the case, that's where mandatory minimum sentencing plays a role.

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REPRESENTATIVE COGHILL requested information regarding past sentencing and the use of sentencing mitigators. If the courts are continually using mitigators or aggravators, the legislature should know about it.

REPRESENTATIVE GARA distributed a chart which lists what HB 353 would do in the various crimes compared to what has been done over the last few years as the sentencing laws have changed. He informed the committee that he had talked to State of Alaska employees who work in the prison system with sexual predators, and his understanding is that in the youth system, the success rate of treating people so that they don't reoffend is around 30 percent.

2:29:32 PM

SUSAN A. PARKES, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), informed the committee that the DOL supports increasing sentences for sex offenders mainly for the reason that in general, it appears that rehabilitation efforts don't work; [the bill] will make the streets safer, though the debate on what would be the right number of years to sentence someone for the aforementioned crimes is a policy call for the legislature to make. The DOL has been working with Senators Bunde and Guess on SB 218, which also increases felony sentences for sexual offenses, and the proportionality has been discussed.

MS. PARKES explained that proportionality means that as the offenses become more serious, the penalties becomes more serious, and so the DOL is concerned that the legislature keep in mind how increasing sentences for sexual offenses interacts with the sentencing for other offenses. For example, murder in the second degree has a mandatory minimum sentence of 10 years and a maximum sentence of 99 years. When the legislature decides on a minimum number of years for an unclassified sexual offense, there needs to be a clear policy statement made on why the legislature feels that that offense should have a higher mandatory minimum sentence than the crime of murder in the second degree. Those are the issues the court is going to be looking at in reviewing the bill's increased sentences.

MS. PARKES noted that the sentencing for class B and C felony sexual offenses needs careful review because those offenses

involve a lot of different conduct, including consensual conduct and teacher/student relationships. The DOL's recommendation, therefore, is to have a wide range of sentences.

CHAIR MCGUIRE requested that Ms. Parkes provide the committee with an official response, including suggestions. Chair McGuire asked Ms. Parkes whether she is more comfortable with [SB 218] or HB 353.

MS. PARKES expressed her support for the polygraph provision of SB 218 that is now included in HB 353, Version G. She opined that that's a very important provision because it's "the one little bit of preventative medicine."

CHAIR MCGUIRE requested the guidance of Ms. Parkes in tracking what things the DOL believes are better in one bill versus the other.

REPRESENTATIVE GARA remarked that just because the sentence for the most serious [crime] is increased, that doesn't mean that the sentence for the least serious has to be increased.

MS. PARKES concurred.

REPRESENTATIVE GARA mentioned that he is sympathetic to giving judges more discretion in increasing the ranges for the more serious crimes. He added that he'd be more sympathetic to a bill that increased the [upper ranges of the minimum mandatory sentences], but left the [lower ranges] as they are currently.

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CHAIR MCGUIRE suggested that [the committee] may want to [increase the sentences] for more serious offenses and maintain the judge's discretion to use the current sentencing range for less serious offenses.

REPRESENTATIVE COGHILL concurred, adding that as a result of the range of issues [the court] will be dealing with, a one-size answer won't fit all circumstances.

REPRESENTATIVE GARA noted that even the least serious [sexual offenses the bill addresses] are still felonies.

[2:39:39 PM](#)

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), informed the committee that the DOC supports HB 353 and is pleased with the provisions that have been [inserted] into Version G. She clarified that HB 353 in no way impacts juvenile sex offenders, rather it only impacts adult sex offenders. With regard to treatment issues, it's very difficult to determine what works and what doesn't work with particular offenders. Adult sex offenders are an incredibly diverse group - low-risk, medium-risk, high-risk, extremely high-risk. The danger that a sex offender presents to society is based on how many crimes he/she will commit, or may commit, or has committed, and the harm he/she does to the victim, which can range drastically. She relayed that there are things the DOC is able to do to mitigate that risk upon release, one of them being treatment in the community with intensive supervision, including using the polygraph as a component of treatment to try to control and alter the behavior of offenders. She added that this is "very, very difficult to do."

MS. PARKER remarked that there has been some success with lower-risk offenders or offenders who are highly motivated to change. Those who are not motivated to change are much more difficult to influence. Most sex offender treatment providers will never say that treatment will cure a sex offender, because it's not possible. A sex offender is engaged in a relapse prevention plan and cognitive-behavioral [therapy]. Increasing the mandatory minimum sentences for repeat Class A and unclassified felony sex offenders is how the public is protected. With lower-risk sex offenders, there's a chance that current prevention programs that focus specifically on those offenders will be much more cost-effective for the state.

[2:43:16 PM](#)

MS. PARKER, in response to a question, assured the committee that [the polygraph testing] referred to in the bill will not be used in legal proceedings; polygraph testing will only be used for post-conviction sex offender supervision and management in the community. In response to comments, she explained that it will be used similar to the way urine analysis is used in substance abuse treatment. It's to verify what is happening in treatment, whether conditions are being met, and to determine if any relapse behavior is occurring or whether the sex offender is engaging in high-risk behaviors; in this way the DOC will be able to intervene more quickly and get the offender back on track, or increase the number of visits or treatment sessions if the DOC feels that such is warranted.

[2:45:46 PM](#)

CHAIR McGUIRE announced that committee will hold HB 353 [Version G] over, and requested a presentation regarding the polygraph program and how the DOC intends to implement it as a part of HB 353.

HB 363 - ADDITIONAL JUDGES FOR THIRD DISTRICT

[Contains brief mention of SB 237, companion bill to HB 363.]

[2:46:34 PM](#)

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 363, "An Act increasing the number of superior court judges designated for the third judicial district, to provide additional superior court judges at Anchorage, Palmer, and Kenai; and providing for an effective date."

[2:47:00 PM](#)

SUSAN A. PARKES, Deputy Attorney General, Criminal Division, Office of the Attorney General, Department of Law (DOL), relayed that after visiting the state's judicial district offices, the attorney general was moved to request introduction of HB 363, a bill that proposes to add four superior court judges to the third judicial district: one judge each for Kenai and Palmer, and two judges for Anchorage. She went on to briefly describe how backlogs in any part of Alaska's judicial system create backlogs in all parts of the system, though some things are not easy to quantify, how the increasing complexity of cases and evidence is contributing to increases in the workloads of all who play a part in the judicial system, and listed various types of cases that the system now deals with.

MS. PARKES said that although superior court caseloads have increased, as have the staffing levels in other parts of the criminal justice system, there has not been a commensurate increase in court resources, and this has resulted in a trailing trial calendar wherein there are more cases than there are judges to try the cases. She pointed out that although most cases settle, they won't unless there is a threat that a case will go to trial. Since 1995, the felony case referrals for the superior court have increased over 60 percent whereas misdemeanor referrals have only increased 15 percent;

additionally, felony petitions to revoke probations have increased [in number] by 148.

MS. PARKES explained that the number one priority is the judge slated for Palmer, which has experienced an explosion in both population and crime. For example, in 2002 there were 595 felony referrals in Palmer, whereas in 2005, that number increased to 869. Furthermore, not only has the number of cases increased in Palmer, so has the seriousness of those cases; in 2005 there were 12 homicide referrals as well as other referrals for manslaughter and negligent homicide. Those 12 homicide cases are more than the two judges currently in Palmer could try in a year.

[2:55:39 PM](#)

MS. PARKES noted that currently there are 161 superior court cases set for trial in Palmer; that 167 felony cases are set for trial in Kenai; and that the district attorney in Anchorage can supply the committee with statistics regarding the 3rd Judicial District - for example, 17 homicide and 5 manslaughter and negligent homicide cases have been referred to that court. Ms. Parkes, in conclusion, urged the committee to support HB 363.

REPRESENTATIVE GARA referred to what he termed "the speedy trial rule," and asked how adding more judges will reduce the aforementioned backlog.

MS. PARKES explained that currently, most people have "waived a lot of time" and a lot of people are willing to "waive time," and so most cases don't go to trial within 120 days anyway. Therefore the aforementioned trailing calendars are "rolling" cases, and so if there were more judges available those cases would get resolved then and there.

REPRESENTATIVE GARA asked whether people are "doing open waivers."

MS. PARKES said that usually "limited" waivers are used, but if a defense attorney files a motion to suppress, for example, and the judge says he/she won't have the time to hear that motion for another three months, then the defendant is forced to waive those three months because it is his/her motion.

REPRESENTATIVE COGHILL noted that Fairbanks is not slated to get one of the aforementioned judges, and that Bethel is part of that same judicial district. He asked whether the "preemption

process" creates calendaring problems in Anchorage, whether "minimizing" [the preemption process] would provide "calendar relief," and whether [the preemption process] is really helping the courts administer justice.

MS. PARKES noted that the [SB 237] contains an amendment adding a judge for Fairbanks, and concurred that Bethel does fall within that judicial district's jurisdiction. She offered her understanding that both side of a case, in both criminal cases and civil cases, can "preempt" a judge. In situations where each side "bumps" a judge in locations where there are only two judges, then a third superior court judge must be [called in]. And while Fairbanks "covers" Bethel, Anchorage covers both Palmer and Kenai. Although the concept of doing away with the preemption process [has been discussed], practitioners appear to like it and so would be opposed to getting rid of it; she acknowledged that the use of this process can be tactical.

CHAIR McGUIRE pointed out, though, that its use is legitimate when a judge may have a potential conflict of interest.

REPRESENTATIVE COGHILL opined that adding judges simply adds complexity to the situation, and indicated that he is sympathetic to the needs of the courts but is also questioning whether there are policy issues that could be addressed as well.

CHAIR McGUIRE said she doesn't sense any opposition to HB 363.

LEONARD M. LINTON, JR., District Attorney, 3rd Judicial District(Anchorage), District Attorneys, Department of Law (DOL), in response to a question, simply indicated that he has no objection to the passage of HB 363.

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REPRESENTATIVE GARA suggested that they alter the bill such that two of the aforementioned judges would be appointed by the current governor and the other two would be appointed by the next governor.

REPRESENTATIVE COGHILL expressed disfavor with that concept.

REPRESENTATIVE KOTT asked Representative Coghill whether he wanted to alter the bill such that another judge would be added to Fairbanks.

REPRESENTATIVE COGHILL said he would prefer that that issue be addressed in the House Finance Committee.

[3:05:02 PM](#)

LARRY COHN, Executive Director, Alaska Judicial Council (AJC), asked whether the committee had received the AJC's fiscal note.

CHAIR McGUIRE confirmed that the committee does have the AJC's fiscal note.

[3:05:36 PM](#)

REPRESENTATIVE COGHILL moved to report HB 363 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 363 was reported from the House Judiciary Standing Committee.

ADJOURNMENT

[3:05:52 PM](#)

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.