

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 13, 2006
1:21 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics

Lindsey S. Holmes - Anchorage
Herman G. Walker, Jr. - Anchorage
Dennis E. "Skip" Cook - Fairbanks

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 353

"An Act relating to sentences for sexual offenses."

- HEARD AND HELD

HOUSE BILL NO. 400

"An Act relating to disasters and confiscation of firearms."

- HEARD AND HELD

HOUSE BILL NO. 384

"An Act relating to fines and offenses; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

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
02/08/06 (H) Heard & Held
02/08/06 (H) MINUTE(JUD)
02/13/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 400

SHORT TITLE: CONFISCATION OF FIREARMS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/27/06 (H) READ THE FIRST TIME - REFERRALS
01/27/06 (H) JUD, FIN
02/13/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 384

SHORT TITLE: FINES AND OFFENSES

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/20/06 (H) READ THE FIRST TIME - REFERRALS
01/20/06 (H) JUD, FIN
02/13/06 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

LINDSEY S. HOLMES, Appointee
to the Select Committee on Legislative Ethics
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke in support of the appointment of
Lindsey S. Holmes to the Select Committee on Legislative Ethics;
spoke as one of the prime sponsors of HB 353.

HERMAN G. WALKER, JR., Appointee
to the Select Committee on Legislative Ethics
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

DENNIS E. "SKIP" COOK, Appointee
to the Select Committee on Legislative Ethics
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Select
Committee on Legislative Ethics.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during the
confirmation hearings pertaining to the Select Committee on
Legislative Ethics.

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

POSITION STATEMENT: During hearing of HB 353, provided a
presentation regarding sex offender containment.

CHRIS ASHENBRENNER, Training, Policy and Research Project
Coordinator
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Offered to provide information when HB 353
is next heard in the House Judiciary Standing Committee.

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

POSITION STATEMENT: Presented HB 400 on behalf of the sponsor,
Representative Coghill.

ALLEN STOREY, Captain
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 400; responded to questions during discussion of HB 384.

BRIAN JUDY, Senior State Liaison
National Rifle Association - Institute for Legislative Action
(NRA-ILA)
Sacramento, California

POSITION STATEMENT: During discussion of HB 400, provided comments, responded to questions, and urged support of the bill.

TODD SHARP, Lieutenant
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 384.

CLIFF STONE, Special Assistant
Office of the Commissioner
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 384.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [1:21:56 PM](#). Representatives McGuire, Wilson, Kott, Anderson, and Gruenberg were present at the call to order. Representatives Gara and Coghill arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

Select Committee On Legislative Ethics

[1:24:09 PM](#)

CHAIR McGUIRE announced that the committee would first consider the appointment of Lindsey S. Holmes to the Select Committee on Legislative Ethics.

[1:24:17 PM](#)

LINDSEY S. HOLMES, Appointee to the Select Committee on Legislative Ethics, in response to the question of why she wished to serve on the Select Committee on Legislative Ethics, relayed that she grew up in a household that believed it was

important to be involved in the community, and so when she was asked to serve, it seemed like doing so would be a very good way to be involved in government and her community. She offered her belief that it is very important for people to trust that there is a fair process and that the rules will be clear.

CHAIR McGUIRE noted that the House Judiciary Standing Committee has spent a lot of time working on the structure and procedures of the Select Committee on Legislative Ethics, and has had oral input into how the Select Committee on Legislative Ethics functions. She emphasized that the Select Committee on Legislative Ethics is important and provides a venue to vet concerns that the public may have. In order to preserve the functioning of the Select Committee on Legislative Ethics, the procedures must emphasize due process, fairness, and transparency. Noting that a Select Committee on Legislative Ethics hearing that took place in 2002 raised issues that were of concern to the legislature, she offered her hope that as a public member Ms. Holmes will keep in mind that those who come before the Select Committee on Legislative Ethics must be treated fairly because even if wrongly accused, ethics complaints can be harmful to one's political career and financial wellbeing.

[1:29:18 PM](#)

REPRESENTATIVE ANDERSON thanked Ms. Holmes for [being willing to] serve, and remarked on her resume and the broad experience listed.

REPRESENTATIVE COGHILL thanked Ms. Holmes for being willing to serve. He remarked that it is important for the public to know that people will be held accountable in cases of ethics wrongdoing, but cautioned against allowing the Select Committee on Legislative Ethics to be used inappropriately.

CHAIR McGUIRE noted that one of the issues the House Judiciary Standing Committee had asked the Select Committee on Legislative Ethics to research was the issue of whether the person serving as counsel to the Select Committee on Legislative Ethics should then be allowed to also serve as the prosecutor in an ethics complaint hearing. She suggested that such a situation would result in a conflict of interest at least in appearance if not in fact. She said she hopes that the Select Committee on Legislative Ethics will be proactive when it sees similar potential problems with its procedures.

[1:34:33 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, relayed that he'd had an opportunity to work with Ms. Holmes on the Conference of Alaskans and has found her to be an exemplary [co-worker], and he recommended that the committee approve her confirmation.

[1:35:20 PM](#)

REPRESENTATIVE GRUENBERG made a motion to advance from committee the nomination of Lindsey S. Holmes as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

[1:35:37 PM](#)

CHAIR MCGUIRE announced that the committee would next consider the appointment of Herman G. Walker, Jr., to the Select Committee on Legislative Ethics.

[1:35:53 PM](#)

HERMAN G. WALKER, JR., Appointee to the Select Committee on Legislative Ethics, in response to the question why he wishes to continue serving on the Select Committee on Legislative Ethics, said he enjoys doing so, considers it to be very beneficial and enlightening, and feels it is a commitment to be able to give back to the community in this manner. He said he would echo the comments of both Ms. Holmes and Chair McGuire regarding the importance of the role that the Select Committee on Legislative Ethics plays, particularly in providing a venue for public input.

REPRESENTATIVE GRUENBERG, speaking as a member of the Select Committee on Legislative Ethics, said he has found Mr. Walker to be a fair chair who has an open mind.

[1:37:38 PM](#)

REPRESENTATIVE ANDERSON made a motion to advance from committee the nomination of Herman G. Walker, Jr., as appointee to the Select Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

1:38:03 PM

CHAIR McGUIRE announced that the committee would next consider the appointment of Dennis E. "Skip" Cook to the Select Committee on Legislative Ethics.

DENNIS E. "SKIP" COOK, Appointee to the Select Committee on Legislative Ethics, in response to the question of why he wishes to continue serving on the Select Committee on Legislative Ethics, remarked on the turnover the Select Committee on Legislative Ethics has experienced and the fact that he is one of the longest tenured person currently serving, and relayed that some of the other members, believing continuity to be important, encouraged him to continue serving. He said he feels that the work of the Select Committee on Legislative Ethics is important, and noted that fascinating and complex questions come before them.

MR. COOK mentioned that the Select Committee on Legislative Ethics essentially does three things: provides informal advice to legislators and legislative staff seeking it; provides formal advisory opinions; and adjudicates complaints. He opined that the first two functions, along with the training the Select Committee on Legislative Ethics provides to the legislature at the beginning of each session, are very important and are designed to avoid complaints. He said that he feels strongly about ethics and ethics matters, enjoys serving on the Select Committee on Legislative Ethics and being part of the process, and is willing to continue serving.

REPRESENTATIVE GARA thanked all the appointees to the Select Committee on Legislative Ethics, and remarked on its importance and the level of commitment needed to serve on it. He asked whether appointees serve a three-year term.

CHAIR McGUIRE said they do.

REPRESENTATIVE GRUENBERG, speaking as a member of the Select Committee on Legislative Ethics, noted that he has also served with Mr. Cook and has found him to be of exemplary character and a very valuable member who acts judicially and fairly, and he highly recommends him.

1:42:03 PM

REPRESENTATIVE GARA made a motion to advance from committee the nomination of Dennis E. "Skip" Cook as appointee to the Select

Committee on Legislative Ethics. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG noted that until the aforementioned appointees are confirmed, the Select Committee on Legislative Ethics lacks a quorum and so can't conduct business, and requested that the confirmations be scheduled for consideration on the House floor soon. He asked when the next meeting of the Select Committee on Legislative Ethics is scheduled to be held.

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics, Alaska State Legislature, said a meeting will be scheduled once it is possible to establish a quorum.

REPRESENTATIVE GRUENBERG surmised, then, that it would help if the appointees could be confirmed as soon as possible.

REPRESENTATIVE GARA reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

REPRESENTATIVE COGHILL questioned whether it is necessary for members of the Select Committee on Legislative Ethics to be attorneys.

REPRESENTATIVE GRUENBERG noted that one of the public members is not an attorney.

REPRESENTATIVE COGHILL asked that the Select Committee on Legislative Ethics remember to view complaints from a common sense viewpoint rather than from a legal or criminal viewpoint.

CHAIR MCGUIRE said that's a good point.

REPRESENTATIVE COGHILL indicated that he would be interested in adjusting the terms so that the Select Committee on Legislative Ethics would always be able to assemble a quorum. At the point at which that issue is addressed, he added, he would also be interested in considering the question of whether the public seats should be filled with attorneys.

REPRESENTATIVE GRUENBERG, on that first point, noted that the Select Committee on Legislative Ethics has discussed possibly

revising its procedures in order to address the issue of maintaining a quorum.

MS. ANDERSON confirmed that the Select Committee on Legislative Ethics has discussed changing the members' terms, staggering them, so as to be able to maintain a quorum; having three seats up for appointment at once puts the Select Committee on Legislative Ethics at a disadvantage.

CHAIR McGUIRE thanked the appointees to the Select Committee on Legislative Ethics for their willingness to serve.

HB 353 - SENTENCING FOR SEXUAL OFFENSES

[1:46:24 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 353, "An Act relating to sentences for sexual offenses." [Before the committee was the proposed committee substitute (CS) for HB 353, Version 24-LS1449\G, Luckhaupt, 2/2/06, which had been adopted as the work draft on 2/8/06.]

[1:46:45 PM](#)

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), referred to the PowerPoint presentation entitled, "Sex Offender Containment" included in committee packets. She highlighted that 45 percent of state prisoners participating in the 1991 Bureau of Justice Statistics Survey committed a [sexual assault] while on probation or parole.

REPRESENTATIVE GARA inquired as to whether there is any information regarding how Alaska fares with its probation system [for sex offenders].

MS. PARKER informed the committee that such data for Alaska isn't collected in a central location. However, she offered to provide the committee with data regarding how many times Alaska's prisoners or even just Alaska's sex offenders have been booked, convicted, or issued a Petition to Revoke Probation (PTRP).

MS. PARKER continued with her presentation by relaying that the goal of the containment model is to [provide] information and ensure public safety. She then informed the committee that Alaska has twice the national average of rape per capita. In

response to Representative Coghill, Ms. Parker specified that the aforementioned data relates to forcible rape.

[1:50:51 PM](#)

REPRESENTATIVE GARA inquired as to the percentage of rapes that are uninvestigated at the Anchorage Police Department (APD).

MS. PARKER said she didn't have statistics for APD. However, she relayed that both in Alaska and in other jurisdictions, the general rule is that a small percent of rapes are reported, of those a small percent are investigated, and of those an even smaller percent of the perpetrators are convicted.

REPRESENTATIVE GARA expressed the need for improvement in that regard.

MS. PARKER continued by relaying that reported forcible rapes in Alaska increased 21.7 percent from 2000 to 2003. Reiterating that forcible rapes are greatly underreported, she noted that there were 521 forcible rapes and 54 attempted rapes reported in 2003.

REPRESENTATIVE COGHILL asked whether something happened in Alaska to cause that increase.

CHAIR MCGUIRE asked whether more people are beginning to report rape.

MS. PARKER said that there are several possibilities. She opined that education and advocacy group interventions are probably leading to an increase in reporting. Furthermore, the increase may be due to increased law enforcement efforts in an area.

REPRESENTATIVE GARA opined that a large part of the solution has to be more law enforcement officers and prosecutorial resources in this area, both of which cost money. He further opined that if the number of cases being investigated [doesn't increase], then "we're missing the boat."

REPRESENTATIVE ANDERSON concurred, recalling discussions with his father who believes that since his retirement from the Alaska State Troopers in 1983, the number of troopers has decreased by half.

[1:54:26 PM](#)

REPRESENTATIVE COGHILL noted that although there was an appropriation last year for trooper positions, it could not be filled this year.

MS. PARKER interjected that use of polygraphs, treatment, and supervision in the [community] would really help. Furthermore, sharing information regarding the number of crimes committed, the relapse patterns, and the number of victims with law enforcement agencies will help prevent assaults. This sharing of information in Oregon has prevented a number of assaults and assisted law enforcement in its efforts to address the assaults that have occurred.

MS. PARKER informed the committee that more than half of the victims of sexual assault have been raped more than once. Furthermore, the victims are six times more likely to develop posttraumatic stress disorder (PTSD), three times more likely to develop major depression, and thirteen times more likely to attempt suicide. She noted that the aforementioned doesn't address the drug and alcohol abuse [that can result as well]. Alaska's cost of victimization, in relation to the known 521 victims, totals about \$45 million a year. She noted that the "Making Sense of Rape in America: Where Do the Numbers Come From and What Do They Mean?" report indicated that only 16 percent of victims reported being raped.

REPRESENTATIVE COGHILL surmised that rape victims are probably a large portion of the suicide population. He asked whether Ms. Parker has worked with [the groups studying suicide and rape] in compiling statistics.

MS. PARKER replied no, adding that most of the studies [she has referenced] are national, but they produce similar findings to those in Alaska. In further response to Representative Coghill, Ms. Parker said that the groups studying suicide and rape nationally haven't spoken with her directly.

REPRESENTATIVE COGHILL suggested, then, that the nexus [between those groups and Alaskan groups] should be made.

MS. PARKER clarified that although those groups don't work with her directly, they do work with the providers in DOC and others who provide health services for victims as well as offenders. Ms. Parker then turned to the question of who reports, and relayed that victims of a younger age and who know the perpetrator delay reporting the crime. However, those victims

who have their life threatened, receive physical injury, and the perpetrator is a stranger are more likely to report the crime. She then informed the committee that of the 16 percent of reported sexual crimes, only 27 percent of those result in an arrest. The aforementioned is one of the reasons why the sex offender recidivism rate is so low; it is actually artificially low. In fact, with regard to sexual abuse of a minor, a minor victim is less likely to report again when the perpetrator is from a position of trust, such as a relative.

[Chair McGuire turned the gavel over to Representative Anderson.]

[1:59:59 PM](#)

REPRESENTATIVE GRUENBERG asked whether anyone has ever asked what can be done to make it more comfortable for [underage rape victims] to report an incident.

MS. PARKER opined that [underage rape victims not reporting a repeated sexual abuse] is related more to concerns regarding what society as a whole and the their family will think. She said she wasn't sure how that could be remedied.

REPRESENTATIVE GRUENBERG relayed his belief that generally, with regard to crime, things are made tougher by increasing sentences or creating new crimes. However, it seems that less often encouragement is given to people to do the right thing and report the crime.

MS. PARKER, in response to a question, said that the DOC doesn't specifically work with victims, save obtaining information and helping them through the process.

[Representative Anderson returned the gavel to Chair McGuire.]

[2:04:01 PM](#)

CHRIS ASHENBRENNER, Training, Policy and Research Project Coordinator, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), began by informing the committee that the ANDVSA is a nonprofit organization that consists of 20 member programs that address domestic violence and sexual assault. Therefore, the ANDVSA works directly with many victims. In response to an earlier question, Ms. Ashenbrenner offered to provide information to the committee when the bill is heard next.

MS. PARKER continued with the PowerPoint presentation and returned to the matter of delayed disclosure with regard to victims who are children. She informed the committee that often 50-70 percent of the victims are children 17 years of the age or younger. With regard to adult victims, 71 percent are concerned about the family knowing, 68 percent about others knowing, and 69 percent about being blamed by others. Therefore, the goal of the containment approach is to obtain and share information. She highlighted the slide that detailed the policies of the containment approach, which are modeled after the containment programs of Oregon and Colorado. The most important part of ensuring that things "stay in check" are the consequences provide by the criminal justice system. Therefore, the consequences for a failed polygraph must be immediate, linked to the risk, include increased surveillance, involve obtaining corroborative information, [and include informing others of the polygraph results]. She assured the committee that [the DOC] won't revoke [probation] based solely on a deceptive polygraph. Currently, the treatment provider, the probation officers, and the polygraph examiner all work together to ensure that the information is accurate, and so the question of whether to revoke [probation] is addressed as a team decision.

[2:09:17 PM](#)

REPRESENTATIVE GARA asked whether the results of a polygraph would be used in a probation revocation hearing.

MS. PARKER stated that it wouldn't be cited as the reason for revocation. She explained that [the DOC] obtains independent verification or evidence that something occurred, although "we may have been tipped off to it." She confirmed that at the [probation revocation] hearing, the polygraph isn't used and would remain so under the terms of HB 353.

MS. PARKER pointed out that the next few slides of the PowerPoint presentation, specifically the one entitled, "Secrets Revealed", relate shocking information with regard to the information discovered through treatment and the polygraph versus what is available in criminal justice records. She relayed that the polygraph is used [with sexual offenders] in 38 other jurisdictions. She emphasized that the DOC is only proposing use of the polygraph with sex offenders because it has been the most valuable tool with such offenders. Through the use of the polygraph in other jurisdictions, it has been learned that the traditional rapist doesn't really exist and

perpetrators are very willing to cross over into various populations of victims. The most startling finding for treatment providers is that according to court records, only 7 percent of [sex offenders] have both adult and child victims, whereas according to polygraph reports, 70 percent [of sex offenders] have both adult and child victims. The aforementioned information is of particular importance to the criminal justice system, especially in relation to probation and parole [of a sex offender] and reuniting the offender with his/her family, including children, when one doesn't know whether the offender has assaulted children.

[2:12:57 PM](#)

MS. PARKER relayed that although the crime of incest supposedly has the lowest recidivism rate, children who are victims of incest are most likely to say they would never report it again. She then turned attention to the PowerPoint slide that specifies that 35 percent [of the sex offenders in Texas, Wisconsin, and Oregon] assaulted strangers; while 57 percent assaulted from a position of trust and 36 percent also assaulted adults. She then relayed that the average age at which a sex offender begins to [sexually offend] is between 12 and 16 years of age. The lag time in detection, from the first sexual offense to the time the offender is caught, is fairly high.

CHAIR MCGUIRE asked whether the question of why people commit sexual offenses is being addressed at all.

MS. PARKER opined that the risk assessment and treatment processes provide much of the background data on offenders. However, there is a broad range of offenders.

CHAIR MCGUIRE relayed her understanding that the DOC attempts to look at more than just the punishment of an offender by trying to rehabilitate when possible. She expressed hope that the [polygraph] can be used in Alaska to discover what leads to a 12-year-old committing a sexual offense and what "we" might be able to do better.

REPRESENTATIVE GARA offered his recollection that during the first year of the current administration, it ended in-prison sex offender treatment programs. He inquired as to what programs were ended and what programs were put in place for felony convictions.

MS. PARKER clarified that only the one program at Hiland Mountain Correctional Center was stopped. The aforementioned was a small program that was only able to take minimum and "low-medium" custody offenders, most of which were motivated and amenable to treatment. The program treated about 10 percent of sex offenders and thus 90 percent of the sex offenders weren't receiving treatment at all. In the four years that that sex offender treatment program was in operation, only 38 offenders completed the program. The overall cost of the program, about \$500,000 a year, was being spent on low risk offenders. Therefore, those resources were put into community treatment where there were more providers. Ms. Parker explained that through that change the department was able to provide more treatment in the community as well as better services to more offenders. In response to Representative Gara, Ms. Parker confirmed that [under that program], sex offenders weren't receiving treatment until they were released into the community, and that's the case now as well.

[2:19:09 PM](#)

MS. PARKER informed the committee that most sex offenders were not sexually assaulted as children, although they may have been beaten, abused, or [otherwise] assaulted during their childhood. Most people who are sexually assaulted do not become sex offenders themselves.

CHAIR MCGUIRE inquired as to what it would take to anonymously assess and identify patterns of sexual offenders.

MS. PARKER relayed that the DOC has started a risk assessment program such that every sex offender receives an in-depth risk assessment prior to release from prison. Currently, two sex offender treatment providers are on contract and travel to the facilities where most sex offenders are housed, and are performing the aforementioned assessments prior to the offender's release.

REPRESENTATIVE COGHILL offered his belief that much of the behavior of sexual offenders is a result of Internet pornography.

MS. PARKER said that the Internet makes it easier for sex offenders to access victims and materials, and engage in behavior toward which they already have a tendency.

[2:22:33 PM](#)

MS. PARKER, in further response to Representative Coghill, said that the department has statistics regarding whether a sex offender was convicted of a crime involving the Internet. However, what to attribute increased rates of [sexual offenses] is more difficult to ascertain.

REPRESENTATIVE COGHILL indicated the need for part of the questioning to include what behaviors lead up to the sexual offense.

MS. PARKER said that is addressed in the questionnaire that each offender must complete. She explained that the next step is to catalogue all the information for each offender and, as is done in other states, enter the information into the criminal justice database.

MS. PARKER relayed that the post-conviction polygraph with sex offenders is one of the most accurate polygraphs because it is controlled, specific, and limited. Furthermore, most of the information is obtained during the pre- and post-interview rather than from the polygraph. She then reviewed the various types of exams, which include the sex history exam, the specific issue exam, and the maintenance exam. She then reviewed the purpose of maintenance polygraph. She relayed that in Colorado, 69 percent of those sex offenders under supervision with the polygraph were in compliance with probation. However, only 26 percent of those sex offenders who had supervision without the polygraph were compliant with probation conditions.

MS. PARKER reminded the committee that [HB 353] proposes to adopt standards similar to those of Colorado such that the examiner would have graduated from an Alaska Psychological Association (APA) accredited polygraph school, had a minimum of 150 criminal issue exams and a minimum of 50 clinical exams in a 12-month period, and 40 hours of specialized training every three years. The department is in the process of developing procedures; in fact, most of the treatment providers are excited about the prospect of using the polygraph as a tool in treatment. She informed the committee that all [polygraph] exams will be videotaped in order to ensure that all procedures are followed. She then relayed that polygraph testing should never be used in isolation, and that multiple methods should always be used. She also relayed that the use of the polygraph and treatment provides more information than use of the polygraph or treatment alone.

MS. PARKER concluded by emphasizing that the goal of combining treatment with the use of the polygraph is to provide more information such that offenders become more successful in completing probation and parole as well as not re-offending for the rest of their lives. The ultimate goal, she stated, is public safety. She then reviewed the PowerPoint slide entitled, "The Containment Approach: Quality Control", and said that after the program has been in place, the DOC will report back its findings to the legislature.

[2:29:11 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, one of the prime sponsors of HB 353, offered to obtain answers to any questions the committee may have. Representative Neuman relayed his belief that there is a thought process [on behalf of the sex offender] that he/she can get away with these assaults, and so he wanted to send a strong message that "Alaska will not put up with this."

[HB 353, Version G, was held over.]

HB 400 - CONFISCATION OF FIREARMS

[2:30:29 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 400, "An Act relating to disasters and confiscation of firearms."

[2:30:47 PM](#)

REPRESENTATIVE KOTT moved to adopt the proposed committee substitute (CS) for HB 400, Version 24-LS1543\F, Luckhaupt, 2/9/06, as the work draft. There being no objection, Version F was before the committee.

[2:31:02 PM](#)

REPRESENTATIVE COGHILL, speaking as the sponsor of HB 400, relayed that his staff will present the bill, which was engendered by the news from Louisiana that during the aftermath of Hurricane Katrina, law enforcement officials were confiscating firearms. [House Bill 400] proposes to prohibit the taking of firearms from law-abiding citizens, though such action would be acceptable to him, he relayed, if [enough] probable cause for doing so could be demonstrated. He suggested

that the policy question is whether to make a violation of this proposed statute a class A felony, as is currently provided for in HB 400, particularly given that a violation would involve disregarding a citizen's constitutional right; in other words, the question is, should such behavior result in a high penalty. Keeping order in times of [emergency] is important, he opined, but during times when the government can't protect everyone, it shouldn't take away a citizen's ability to protect himself/herself. Under HB 400, he suggested, citizens will have the right [to keep and bear arms] unless they have somehow done something to forfeit that right.

CHAIR McGUIRE asked that the use of the term, "law-abiding citizen" be addressed by staff, since she not seen that term used in statute before and isn't aware that its even been defined. Might it be better, she queried, to instead use the phrase, "from a citizen who is not in the process of committing a crime".

[2:34:31 PM](#)

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, sponsor, relayed on behalf of Representative Coghill that according to a conversation she'd had with Representative Gruenberg, he was concerned that the original bill was a little too broad; therefore, Version F proposes a narrower focus in that firearms could still be confiscated from those who are committing illegal or unlawful acts. To address that concern, Legislative Legal and Research Services offered the term, "law-abiding citizens".

MS. LIDSTER pointed out that Section 1 of Version F proposes to add language to AS 26.23.200, which limits the authority given to the governor and his assigns during disaster situations, thereby precluding authorizing the confiscation of lawfully owned, possessed, or carried firearms by law-abiding citizens. Section 2 of Version F proposes to add a new section of law to AS 26.23 such that the knowing confiscation, attempt at confiscation, or the ordering of confiscation of a firearm during a disaster emergency would result in a person being guilty of a class A felony.

REPRESENTATIVE GARA suggested that they also provide a defense to the proposed crime such that a firearm could be confiscated if there is a reasonable suspicion that a person is about to commit a crime with the firearm. However, he is not sure what level of proof would be required for the term, "reasonable

suspicion", nor what language should be used to ensure that law enforcement can protect the public without fear of committing the proposed crime.

MS. LIDSTER acknowledged that point, and offered to raise this issue with the Department of Law (DOL), which, when initially contacted, was neutral about HB 400.

REPRESENTATIVE COGHILL surmised that if there is a reasonable suspicion of foul play, law enforcement will have some authority anyway. He remarked that they may not be able to envision every circumstance that could arise in a disaster emergency, and so warned against attempting to list specific situations in the bill.

REPRESENTATIVE GARA offered his understanding that in a criminal context, in emergency situations, there is a specific threshold that must be met [before action is taken]. He said he'd like to find out [from the DOL] what that threshold is, as it may be appropriate to put [a similar threshold] in the bill.

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ALLEN STOREY, Captain, Division of Alaska State Troopers, Department of Public Safety (DPS), relayed that from law enforcement's point of view, in large-scale disasters there will be property owners who want to defend their property and they should have the right to do that, but there may also be people who want to take that property away from its rightful owner or who may otherwise seek to take advantage of the situation or who may have emotional issues because of the stress placed upon them, and such people may harm themselves or others. In such disaster situations, where there is a breakdown in public process, law enforcement agencies should have the ability to referee such situations. In order to prevent looting or bullying, law enforcement must take control of the situation, and this might include taking away someone's firearm. He said he certainly agrees with the spirit of the bill as long as it includes sideboards that could address as yet unforeseen circumstances in which law enforcement personnel need to have some discretion regarding this issue.

REPRESENTATIVE COGHILL said he is amenable to looking at that issue, but pointed out that occasionally the government can also be as much of a bad actor as those seeking to take advantage of emergency situations, and offered examples. Therefore, he said he doesn't know that confiscating firearms as part of a blanket

approach is really the right answer in emergency situations. The right to keep and bear arms has to stand strong in situations wherein there is a breakdown in public safety mechanisms and law enforcement can't protect everybody; one must be able to protect oneself. He indicated that he is not willing to entertain the concept of establishing martial law and confiscating everyone's firearms simply to create order in emergency situations, though he is sensitive to the balance that must be maintained. He opined that there are enough laws currently on the books to provide law enforcement with the ability to confiscate someone's firearms in situations where it is truly called for.

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REPRESENTATIVE GARA noted that a law enforcement officer may have a legitimate fear that someone who is a law-abiding citizen at that point in time will soon perpetrate a crime, and according to the language currently in the bill, the law enforcement officer would be precluded from confiscating that person's firearm. Therefore, the committee should come up with language that says a law enforcement officer is not liable for confiscating a firearm from a person who is about to use it to shoot someone, for example.

REPRESENTATIVE COGHILL noted that such a situation could occur now; a law enforcement officer could fear that someone is about to use a firearm to commit a crime. However, even now, unless the officer has probable cause, he/she can't act. In a disaster emergency, a law enforcement officer will have to make a judgment call as to whether to violate someone's constitutional right in the interest of possibly preventing a crime. He characterized this as dangerous ground.

CHAIR McGUIRE noted that the original bill had no exceptions, whereas Version F at least specifies that the person must be a law-abiding citizen.

REPRESENTATIVE GRUENBERG relayed that he has some of the same concerns as were expressed by Representative Gara. He noted that according to the briefing provided to the House State Affairs Standing Committee by the Department of Military & Veterans' Affairs (DMVA) regarding emergency services and disaster preparedness, most such services and preparedness will pertain to villages and to flooding. However, he added, most villages have no law enforcement personnel because the Village Public Safety Officer (VPSO) [program] has been "defunded." He

suggested that in such a situation in such locations, it will be total chaos, and under HB 400, any law enforcement officials who come onto the scene will face the possibility of being charged with a class A felony if they confiscate a firearm from someone about whom they have no way of knowing whether he/she is a law-abiding citizen.

CHAIR McGUIRE indicated that she would be willing to hold the bill over so that perhaps the issues raised could be addressed.

REPRESENTATIVE GRUENBERG opined that [in emergency disaster situations] the police - the militia - must have the authority to keep order.

[2:52:34 PM](#)

BRIAN JUDY, Senior State Liaison, National Rifle Association - Institute for Legislative Action (NRA-ILA), urged support of HB 400. He went on to say:

As has been discussed, the recent events in New Orleans, during the aftermath of the hurricane, demonstrate quite clearly that the right to keep our arms is very important during a state of emergency. ... The very basis of the Second Amendment is the empowerment of individuals with the right to provide self-protection, and when is self-protection more critical than during a time of disaster when law enforcement resources are stretched beyond their limits? This bill would protect law-abiding [Alaskan] citizens from experiencing the blatant violation of their rights that occurred in New Orleans. ...

In fact, in that situation, there was none of this lack of clarity; it was a clear case of government officials inappropriately taking people's property - their firearms - and the NRA was forced to file a lawsuit to stop the egregious violation of the rights of people who were only trying to protect their families and property. ... This bill would clarify that lawfully owned, possessed, or carried firearms cannot be seized, and then it would make accountable for their actions persons who knowingly confiscate a lawfully possessed firearm from [a] law-abiding citizen.

Now, with respect to the questions that have come up with regard to what's a law-abiding citizen, in my mind, that amendment is really unnecessary because the language of the bill as introduced refers to lawfully owned, possessed, or carried firearms. So if they're lawfully owned, possessed, or carried, then the person is obviously a law-abiding citizen.

And with respect to the question of the person who may become a person who's not lawfully owning, possessing, or carrying, off the top of my head I'm not sure how to answer that question, but ... what I do know is that that's not what this bill is trying to get at, and that's not what happened in New Orleans - what happened in New Orleans was just an egregious violation of a constitutional right, and I know that that's what this bill is attempting to address. And with that, I urge your support for the bill.

[2:54:57 PM](#)

REPRESENTATIVE GRUENBERG referred to the 1906 San Francisco Earthquake and fire, the New Orleans situation, and the volcanic eruption involving Pompeii, and asked how a law enforcement official is going to know, in a situation like one of those, who exactly is law-abiding and who isn't. He added:

The power is out, their lives are in danger, and my question is, whom should the law protect in that situation? Would you want to be a law enforcement official going into that situation if you couldn't protect yourself and disarm somebody if you thought there might be a danger you? Would you want to volunteer and go in [in] that circumstance, without the right to do that?

MR. JUDY suggested that the vast majority of government officials are responsible and are not going to commit the type of violations that were committed in New Orleans by a small, tiny percentage [of government officials], and that what this bill is targeting is that small percentage that were overzealous and took improper calculation of the risk. He reiterated his belief that what occurred in New Orleans was simply an egregious violation of citizens' rights; people who were just trying to protect their families and their property had their guns taken because they possessed guns - there was no threat of risk.

2:57:09 PM

REPRESENTATIVE GRUENBERG pointed out that the problem is that the person being criminalized via the bill and being subject to a class A felony will be a law enforcement official. How can such a person make that split second decision that may be essential to protect the lives and property of everybody in the neighborhood if he/she is faced with being charged with a class A felony?

MR. JUDY acknowledged that perhaps a class A felony is not the appropriate level of crime, but opined that the person who knowingly confiscates a lawfully owned, possessed, or carried firearm should be held accountable. He offered his understanding that under existing law, law enforcement has a certain level of authority, as long as there is probable cause, to take certain actions. He posited that if someone were to be charged with this proposed crime, the case would have to go to court, and so the whole fact pattern of the case would be reviewed; as long as probable cause can be shown, there won't be a problem, but if there is no probable cause and the law enforcement official knowingly confiscated a firearm, he/she will be held accountable. He again acknowledged that perhaps a class A felony is too steep.

REPRESENTATIVE GRUENBERG said, "I sympathize with the person who's rights are violated, [but] I sympathize, frankly, more with the person who's got to go in and clean up the mess; I'm not sure how you balance that, and tough cases make tough law."

CHAIR McGUIRE relayed that HB 400 [Version F] would be held over.

HB 384 - FINES AND OFFENSES

2:59:53 PM

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 384, "An Act relating to fines and offenses; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date." [In committee packets was a proposed committee substitute (CS) for HB 384, Version 24-LS0985\Y, Luckhaupt, 1/30/06.]

REPRESENTATIVE ANDERSON, speaking as the sponsor of HB 384, relayed that the bill in part proposes to raise - to \$750 - the maximum amount a person may be fined when found guilty of an

infraction or a violation as currently provided for in statute. However, Section 2 sets \$750 as the new minimum fine for a violation of AS 02.40.020. Additionally, HB 384 will bring language regarding penalties pertaining to fish and game statutes - Title 16 - into alignment with the current statutory definition of a class A misdemeanor. Regarding this latter proposed change, he explained that in 2002 the legislature doubled the fines for class A misdemeanors - from \$5,000 to \$10,000 - but several important Title 16 penalties still list a maximum fine of \$5,000.

REPRESENTATIVE ANDERSON characterized HB 384 as a housekeeping bill, and opined that the proposed increase in fine amounts is consistent with "today's values," begins to allow for inflation, and will serve as a further deterrent to those contemplating an action that might lead to an infraction or violation. He concluded by saying that in today's society, the most serious infractions and violations are the types of offenses that the public observes daily and expects that enforcement action will be taken to ensure its safety, and so by increasing the fines levied against those that are found guilty, the [greater] good will be served.

REPRESENTATIVE ANDERSON noted that two changes to the bill have been recommended.

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 384, Version 24-LS0985\Y, Luckhaupt, 1/30/06, as the work draft. There being no objection, Version Y was before the committee.

[3:02:32 PM](#)

TODD SHARP, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), said simply that the DPS supports HB 384, and has been attempting to get infractions and violations in line and consistent for a couple of years; it was simply an oversight that some of the fines pertaining to violations of Title 28 were left out during the last major change to those violations.

REPRESENTATIVE GARA said it appears that Sections 1 and 2 of Version Y reduce what are now crimes to mere violations.

CLIFF STONE, Special Assistant, Office of the Commissioner, Department of Public Safety (DPS), explained that although the DPS was particularly interested in Title 28, as the drafter in

Legislative Legal and Research Services went through the bill, he found other inconsistencies in the statutes and the language that Sections 1 and 2 propose to change struck the drafter as being inconsistent within Title 2.

[3:05:01 PM](#)

ALLEN STOREY, Captain, Division of Alaska State Troopers, Department of Public Safety (DPS), added that Sections 1 and 2 affect statutes that are not specifically tied to the DPS, but according to his discussions with the drafter, putting a monetary cap on a misdemeanor makes it a mere violation.

[Chair McGuire turned the gavel over to Representative Anderson.]

REPRESENTATIVE GARA pointed out, though, that if the legislature decided that particular conduct is worthy of being a crime and engendering jail time, then reducing it to a violation eliminates the possibility of jail time.

MR. STOREY offered his understanding that in the statutes that Sections 1 and 2 propose to alter, the legislature didn't intend for there to be jail time - simply a fine; so the drafters were merely trying to correct that by calling the behaviors involved violations.

REPRESENTATIVE GRUENBERG noted that Section 1 alters the Uniform Air Licensing Act, which in part contains provisions regarding emergency rations and equipment; therefore, he doesn't want to make a violation of that Act a mere violation, and would instead prefer to strengthen it. He opined that there should either be substantial testimony and discussion on the different sections of the bill so that members understand what statutes are being altered, or those sections should be deleted from the bill. He asked that members be given copies of the different statutes that the bill is proposing to alter.

[Representative Anderson returned the gavel to Chair McGuire.]

REPRESENTATIVE GRUENBERG suggested that each part of HB 384 should be reviewed carefully, and that perhaps the bill might be a good vehicle via which to create a class C misdemeanor, a violation of which would engender 30 days in jail.

CHAIR MCGUIRE relayed that the bill would be held over, and remarked that having a sectional analysis would be helpful.

REPRESENTATIVE ANDERSON indicated that he would obtain that for members.

[HB 384, Version Y, was held over.]

ADJOURNMENT

3:13:06 PM

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:13 p.m.