

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 5, 2006

1:04 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

HOUSE BILL NO. 316

"An Act extending the termination date for the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- MOVED CSHB 316(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 134(JUD)

"An Act relating to a pilot project to review and investigate certain complaints from victims of sexual assault in the first degree or sexual abuse of a minor in the first degree concerning actions of justice agencies."

- MOVED HCS CSSB 134(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 206(FIN)

"An Act relating to contempt of court and to temporary detention and identification of persons."

- MOVED HCS CSSB 206(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 316

SHORT TITLE: EXTEND BOARD OF GOVERNORS ABA

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, GRUENBERG

01/09/06 (H) PREFILE RELEASED 12/30/05
 01/09/06 (H) READ THE FIRST TIME - REFERRALS
 01/09/06 (H) JUD, FIN
 04/26/06 (H) JUD AT 1:00 PM CAPITOL 120
 04/26/06 (H) Heard & Held
 04/26/06 (H) MINUTE(JUD)
 05/04/06 (H) JUD AT 3:00 PM CAPITOL 120
 05/04/06 (H) Meeting Postponed to 5/5/06
 05/05/06 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 05/05/06 (H) <Pending Referral>
 05/05/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 134

SHORT TITLE: PILOT PROJECT: SEX OFFENSE VICTIMS RIGHTS
 SPONSOR(S): SENATOR(S) BUNDE

03/08/05 (S) READ THE FIRST TIME - REFERRALS
 03/08/05 (S) STA, JUD
 03/17/05 (S) STA AT 3:30 PM BUTROVICH 205
 03/17/05 (S) Heard & Held
 03/17/05 (S) MINUTE(STA)
 04/05/05 (S) STA AT 3:30 PM BELTZ 211
 04/05/05 (S) Moved CSSB 134(STA) Out of Committee
 04/05/05 (S) MINUTE(STA)
 04/06/05 (S) STA RPT CS 4NR 1DP NEW TITLE
 04/06/05 (S) NR: THERRIAULT, ELTON, HUGGINS, DAVIS
 04/06/05 (S) DP: WAGONER
 04/06/05 (S) FIN REFERRAL ADDED AFTER JUD
 04/18/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/18/05 (S) Scheduled But Not Heard
 04/12/06 (S) JUD AT 8:30 AM BUTROVICH 205
 04/12/06 (S) Moved CSSB 134(JUD) Out of Committee
 04/12/06 (S) MINUTE(JUD)
 04/12/06 (S) JUD RPT CS 5DP NEW TITLE
 04/12/06 (S) DP: SEEKINS, FRENCH, THERRIAULT,
 HUGGINS, GUESS
 04/13/06 (S) FIN REFERRAL WAIVED
 04/20/06 (S) TRANSMITTED TO (H)
 04/20/06 (S) VERSION: CSSB 134(JUD)
 04/21/06 (H) READ THE FIRST TIME - REFERRALS
 04/21/06 (H) STA, JUD
 05/02/06 (H) STA AT 8:00 AM CAPITOL 106
 05/02/06 (H) Moved Out of Committee
 05/02/06 (H) MINUTE(STA)
 05/02/06 (H) STA RPT 5DP

05/02/06 (H) DP: GATTO, ELKINS, RAMRAS, GRUENBERG,
SEATON
05/04/06 (H) JUD AT 3:00 PM CAPITOL 120
05/04/06 (H) Meeting Postponed to 5/5/06
05/05/06 (H) FIN AT 8:30 AM HOUSE FINANCE 519
05/05/06 (H) <Pending Referral>
05/05/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 206

SHORT TITLE: DETENTION /I.D. OF PERSONS;CONTEMPT OF CT
SPONSOR(S): SENATOR(S) BUNDE

01/09/06 (S) PREFILE RELEASED 12/30/05
01/09/06 (S) READ THE FIRST TIME - REFERRALS
01/09/06 (S) JUD, FIN
02/16/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/16/06 (S) Heard & Held
02/16/06 (S) MINUTE(JUD)
02/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
02/27/06 (S) Scheduled But Not Heard
03/08/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/08/06 (S) Heard & Held
03/08/06 (S) MINUTE(JUD)
03/15/06 (S) JUD AT 8:30 AM BUTROVICH 205
03/15/06 (S) Moved CSSB 206(JUD) Out of Committee
03/15/06 (S) MINUTE(JUD)
03/15/06 (S) JUD RPT CS 2DP 2AM NEW TITLE
03/15/06 (S) DP: SEEKINS, HUGGINS
03/15/06 (S) AM: FRENCH, GUESS
03/20/06 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/20/06 (S) Heard & Held
03/20/06 (S) MINUTE(FIN)
03/23/06 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/23/06 (S) Moved CSSB 206(FIN) Out of Committee
03/23/06 (S) MINUTE(FIN)
03/24/06 (S) FIN RPT CS 5DP 2NR NEW TITLE
03/24/06 (S) DP: WILKEN, GREEN, BUNDE, DYSON,
STEDMAN
03/24/06 (S) NR: HOFFMAN, OLSON
04/12/06 (S) TRANSMITTED TO (H)
04/12/06 (S) VERSION: CSSB 206(FIN)
04/13/06 (H) READ THE FIRST TIME - REFERRALS
04/13/06 (H) JUD, FIN
04/26/06 (H) JUD AT 1:00 PM CAPITOL 120
04/26/06 (H) Heard & Held
04/26/06 (H) MINUTE(JUD)
05/04/06 (H) JUD AT 3:00 PM CAPITOL 120

05/04/06 (H) Meeting Postponed to 5/5/06
05/05/06 (H) FIN AT 8:30 AM HOUSE FINANCE 519
05/05/06 (H) <Pending Referral>
05/05/06 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

LAUREN RICE, Staff
to Senator Con Bunde
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 134 on behalf of the sponsor, Senator Bunde; responded to questions on behalf of the sponsor, Senator Bunde, during discussion of the proposed HCS for SB 206, Version R, and amendments to it.

MARY ANNE HENRY, Director
Office of Victims' Rights (OVR)
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 134.

ANNE CARPENETI, 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 SB 134; during discussion of amendments to the proposed HCS for SB 206, Version R, expressed concerns.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [1:04:15 PM](#). Representatives McGuire, Kott, Wilson, and Coghill were present at the call to order. Representatives Gara, Anderson, and Gruenberg arrived as the meeting was in progress.

HB 316 - EXTEND BOARD OF GOVERNORS ABA

[1:04:32 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 316, "An Act extending the termination date

for the Board of Governors of the Alaska Bar Association; and providing for an effective date." [In committee packets was a proposed committee substitute (CS) for HB 316, Version 24-LS1076\I, Bullock, 5/3/06.]

CHAIR McGUIRE relayed that the committee has decided to extend the sunset date of the Board of Governors ("Board") of the Alaska Bar Association (ABA) for one year in order to allow the legislature time to work on the recommendations offered by the Alaska Division of Legislative Audit in its report released by the Legislative Budget and Audit Committee.

[1:05:21 PM](#)

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS) for HB 316, Version 24-LS1076\I, Bullock, 5/3/06, as the work draft. There being no objection, Version I was before the committee.

[1:05:29 PM](#)

REPRESENTATIVE KOTT moved to report the proposed CS for HB 316, Version 24-LS1076\I, Bullock, 5/3/06, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 316(JUD) was reported from the House Judiciary Standing Committee.

SB 134 - PILOT PROJECT: SEX OFFENSE VICTIMS RIGHTS

[1:05:43 PM](#)

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 134(JUD), "An Act relating to a pilot project to review and investigate certain complaints from victims of sexual assault in the first degree or sexual abuse of a minor in the first degree concerning actions of justice agencies."

[1:05:57 PM](#)

LAUREN RICE, Staff to Senator Con Bunde, Alaska State Legislature, sponsor, presented SB 134 on behalf of Senator Bunde. She explained that SB 134 came about because a constituent who was a sexual assault victim could not get her phone calls to the police returned. Currently, such a victim has no other recourse if she is not getting sufficient help from the police. Senate Bill 134 will [via a pilot project] expand

the responsibilities and investigation rights of the Office of Victims' Rights (OVR) in order that it may look into the investigation portion of a sexual assault in the first degree case or a sexual abuse of a minor in the first degree case, and serve as an advocate for the victim through the investigation phase and the court proceedings. She concluded by noting that [CSSB 134(JUD)] has the support of the Department of Law (DOL), the Department of Public Safety (DPS), and the OVR.

1:07:19 PM

MARY ANNE HENRY, Director, Office of Victims' Rights (OVR), Alaska State Legislature, characterizing the current version of SB 134 as a good bill, she opined that the OVR would be in the best position to [institute the proposed pilot program and] investigate complaints arising from the aforementioned type of cases not being investigated by the police in a timely or complete manner. At the end of August 2008, at the conclusion of the pilot program and its study of complaints going back to mid-2003, the OVR will provide the legislature with a report outlining any problems found as well as any potential solutions. In conclusion, she expressed her willingness to institute the pilot project and conduct the study.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 134.

REPRESENTATIVE GRUENBERG asked how victims will learn of the OVR's new responsibility to investigate the aforementioned type of complaint.

MS. RICE relayed that currently various shelters and law enforcement agencies provide victims with information about the OVR via a pamphlet, and so the hope is that information about the proposed pilot program and the OVR's new responsibilities will also be distributed in that same manner.

REPRESENTATIVE GRUENBERG surmised, then, that the bill contains no requirement that the OVR take specific action to notify the public about the pilot program and its new investigative responsibilities. He asked what steps the OVR intends to take in that regard.

MS. HENRY relayed that one option that was discussed, but not adopted, in a prior committee was for law enforcement to simply provide the OVR with a copy of all police reports involving instances of sexual assault or sexual abuse of a minor. In lieu

of that, however, the OVR intends to undertake an advertising campaign that would include providing information in the Alaska Bar Rag and various newspapers, as well as to shelter personnel, private attorneys, police academy trainees, first responders, and nurse aides so that they can advise victims of the opportunity to seek assistance from the OVR.

[1:13:14 PM](#)

MS. HENRY, in response to a question, relayed that the DOL was opposed, on the basis of protecting the privacy rights of victims, to simply having the front sheet of all police reports of the aforementioned crimes sent to the OVR - the front sheet would show that a rape had been reported and the names of the defendant and victim. Her initial thought was that without something along those lines occurring, the OVR won't have a very good statistical base for the pilot project's study if the OVR simply waits for victims to come to the OVR, particularly given that under current statute, the OVR must wait for victims to come to it for help. She noted, for example, that the aforementioned constituent who was having difficulties getting a response from the police hadn't gone to the OVR at all. She said that the OVR understands the DOL's concern about confidentiality and so would therefore only use the numbers gleaned from the front sheets for statistical purposes as they relate to the report that the OVR will be providing to the legislature.

REPRESENTATIVE GRUENBERG indicated a willingness to offer a conceptual amendment to that effect, and asked Ms. Rice whether the sponsor would be amenable to such a change.

MS. RICE said she wasn't able to answer that question, but acknowledged that there are valid points on both sides of the argument. Victims must be afforded privacy and yet doing so could make it hard for the OVR to determine how many cases are being reported versus how many cases are being investigated, particularly in rural areas, unless some action is taken to ensure that statistical information is provided to the OVR.

CHAIR MCGUIRE, in response to comments, offered her understanding that one of the DOL's concerns with having all police reports faxed to the OVR is that the OVR would then have the ability to contact the victim and that may violate the victim's privacy rights.

MS. RICE, in response to comments and questions, reiterated that law enforcement agencies currently provide victims with information about the OVR via a pamphlet.

MS. HENRY, to further clarify, explained that officers are required to give victims information about the OVR, but at the time of most assaults, victims are not thinking about what kind of future help they might need from the OVR and so that information probably goes by the wayside.

CHAIR McGUIRE indicated that she shares the DOL's concern regarding confidentiality.

MS. RICE clarified that there is no intention of allowing the OVR to contact the victim unless the victim initiates contact. Instead, the OVR could simply be provided statistical information when crimes involving sexual assault or sexual abuse of a minor occur.

CHAIR McGUIRE suggested that the front sheet of the police report could simply have certain information redacted - information such as the victim's name.

[1:20:39 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), indicated that that proposal is more acceptable than providing the OVR with victims' names.

MS. HENRY, in response to comments, attempted to assure the committee that the OVR doesn't intend to call any of the victims, and would instead only be using the statistical information to assist with its study and investigations regarding whether law enforcement adequately and in a timely fashion investigates sexual assault or sexual abuse of a minor cases. She said she would be amenable to having victims' names redacted; another option would be for law enforcement to send the OVR "everything" and the OVR would simply continue to abide by its own confidentiality requirements. She surmised, though, that law enforcement agencies are probably not going to be thrilled with having to fax sexual assault reports to the OVR.

REPRESENTATIVE GRUENBERG suggested that another option would be to encourage law enforcement officers to provide victims with an additional pamphlet of information about the OVR during a follow up visit.

MS. CARPENETI said she would have no objection to such though it would be up to law enforcement agencies to consider that option; furthermore, the OVR would have to provide law enforcement agencies with additional pamphlets.

MS. HENRY said she would be fine with such a change.

MS. CARPENETI, in response to a question, confirmed that law enforcement officers are required to provide victims with information about the OVR, and noted that they are not forbidden from giving it more than once.

MS. HENRY suggested making it a requirement that law enforcement provide the aforementioned pamphlets more than once.

REPRESENTATIVE GRUENBERG raised the issue of a possible conceptual amendment to that effect.

[1:26:12 PM](#)

MS. RICE said that that idea has merit, but pointed out that the thrust of the bill is to address the fact that Alaska has the highest rate of sexual assault and sexual abuse of a minor crimes in the nation while simultaneously having the lowest rate of arrest for such crimes - number one and number fifty, respectively. Furthermore, she remarked, she has a concern that because part of the problem appears to be that the police aren't following through with their investigations in such cases - the police aren't making any follow up visits and aren't returning a victim's phone calls - then the victim isn't going get that extra pamphlet. Therefore, in addition to requiring law enforcement officers to provide victims with OVR information more than once, it might be best to also require law enforcement agencies to fax the OVR simple statistical information such as that a rape has occurred, the time that it was reported, [and the location at which it occurred]. Such information is important for the OVR to have as it conducts its study and investigations - the OVR must have the opportunity to gather real data.

CHAIR McGUIRE concurred.

MS. CARPENETI said:

Although I think it's a good idea and I think maybe police departments do this now - follow up with

information - requiring them to do so in statute is probably not necessary because ... it probably doesn't apply in ... all cases. And the police are working pretty hard anyway - they're not going to miss a chance to inform victims, I think.

MS. HENRY, in response to the question, said she would like a conceptual amendment to say that all law enforcement in the state must fax the following information to the OVR: the report of a sexual assault in the first degree or a sexual abuse of a minor in the first degree, the date of the offense, the police report number, and the officer assigned.

MS. CARPENETI, in response to a question, expressed a preference for having that suggested conceptual amendment applied to uncodified law, since it pertains to a pilot program.

1:30:04 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to add to uncodified law the language: "All ... investigating law enforcement personnel must fax the following information to [the] OVR: ... [the report of a sexual assault in the first degree or a sexual abuse of a minor in the first degree], the date [of the offense], the police report number, and the officer assigned.

REPRESENTATIVE ANDERSON objected, characterized that language as cumbersome, and asked whether law enforcement has had a chance to weigh in on this issue.

MS. RICE relayed that the DPS and the DOL worked closely to draft the bill, and, to the best of her knowledge, both, along with the Anchorage Police Department (APD), are in support of the bill in its current form.

CHAIR MCGUIRE observed that if this committee adopted Conceptual Amendment 1, and [the APD] then voiced concern, the language could be removed in the bill's next committee of referral.

REPRESENTATIVE ANDERSON removed his objection.

REPRESENTATIVE COGHILL objected, and expressed concern over what the OVR's investigation might involve, and whether it could impede a police investigation or cause difficulty for the accused.

1:34:39 PM

MS. HENRY again pointed out that the purpose of the bill is to [authorize the OVR to] find out if there are problems with the way police investigations of the aforementioned crimes are currently being conducted, so the OVR would simply be tracking how such investigations are coming along and whether a particular case has been declined for prosecution, so there shouldn't be a concern that someone will be convicted before having a chance to go to trial or before charges are even filed. The OVR will essentially be investigating whether officers simply need more training, whether they are just dropping the ball, or whether there are other factors coming into play. She noted that particularly for crimes that occur in villages, if the police drop the investigation without good reason, even if the victim is somewhat relieved and has no interest in going forward with the case, the OVR will still want to know why the investigation was dropped but isn't going to want to start something up again with the victim.

MS. CARPENETI said she would hesitate to insert the requirement proposed by Conceptual Amendment 1 before having had a chance to consult with police agencies.

MS. RICE said that although she understands Representative Coghill concerns, if it is clear that the aforementioned information being faxed to the OVR must have the names - both of the victim and of the alleged perpetrator - and all contact information redacted, it shouldn't be cumbersome or breach confidentiality. The problem in Alaska is severe enough, she opined, that they must try alternative methods of gaining real information regarding investigations. She also mentioned that only 3 percent of reported rapes turn out to consist of false accusations.

REPRESENTATIVE COGHILL noted that there is a dearth law enforcement in certain areas of the state, and indicated that he is not willing to have attention focused on the investigation procedures of just this one type of case, particularly when the problem may stem from a lack of manpower or peer pressure within a community.

1:39:43 PM

REPRESENTATIVE GRUENBERG suggested changing Conceptual Amendment 1 such that the required information would be sent to

the OVR later in the process, since it is merely statistical information the OVR is seeking.

MS. HENRY said providing the OVR with the aforementioned types of information later in the process wouldn't alleviate situations wherein the victim never hears from the police again. In such situations, what is the likelihood that the OVR will ever be informed of the case?

REPRESENTATIVE GRUENBERG argued that the OVR would still be notified that there has been a report, the date of the report, the number of the report, and the officer assigned - notification just wouldn't occur right at the outset.

CHAIR McGUIRE spoke of a circumstance in Nome wherein a woman was murdered by a police officer, a police officer who had been involved in multiple [sexual] assaults of women in that community over a long period of time. If a woman is being assaulted by the very people she is supposed to report such an assault to, what is her recourse if those people never follow up on the investigation and she doesn't know that the OVR is available to help? Chair McGuire said she doesn't disagree that Conceptual Amendment 1 might create a ministerial burden for the police, but the state must start gathering information regarding why the state has these incredibly high rates of sexual abuse of a minor and sexual assault cases but embarrassingly low conviction rates; furthermore, SB 134 merely authorizes a pilot program with a sunset date, and so if there is a chance that [Conceptual Amendment 1] can help the state, it ought to be incorporated.

REPRESENTATIVE COGHILL removed his objection.

MS. HENRY, in response to a question, indicated that she would like to have the aforementioned information faxed to the OVR within two weeks of the date the report was made.

REPRESENTATIVE GRUENBERG called that timeframe stipulation an amendment to Conceptual Amendment 1.

CHAIR McGUIRE asked whether there were any objections to the amendment to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was amended.

CHAIR McGUIRE then asked whether there were any objections to Conceptual Amendment 1, as amended. There being none, Conceptual Amendment 1, as amended, was adopted.

1:44:30 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, to change statute such that law enforcement officers must give OVR information to victims at each subsequent contact.

MS. RICE offered her belief that having such information distributed during either the first and/or the second contact ought to be sufficient.

MS. HENRY said that would be fine.

REPRESENTATIVE GRUENBERG restated the motion to adopt Conceptual Amendment 2, to change statute such that law enforcement officers must give OVR information to victims at the first and second contact.

CHAIR McGUIRE mentioned that she is not sure what statute would be changed as a result of adopting Conceptual Amendment 2.

MS. CARPENETI said she would like to hear from law enforcement on this issue, though it seems like it wouldn't be much of a burden to give the OVR information to victims a second time.

CHAIR McGUIRE committed to contacting law enforcement agencies between now and the time the bill gets to the House Finance Committee regarding what their thoughts are on this issue, and then, if their input is that it will create too great a burden, this additional language could be removed in that committee.

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

1:48:28 PM

REPRESENTATIVE GARA made a motion to adopt Amendment 3, which read [original punctuation provided]:

Page 2, line 17

following "action"

insert:

"including recommendations, if pertinent, for action to address law enforcement personnel shortages in both urban & rural areas in this state."

REPRESENTATIVE ANDERSON objected for purposes of discussion.

REPRESENTATIVE GARA indicated that Amendment 3 pertains to the report the OVR will be presenting to the legislature, and suggested that one cause for the problem could be a shortage of law enforcement officers, adding that it would be useful if the report produced by the OVR confirmed that such is the case. He remarked: "Until you hire police officers, and until you have enough law enforcement, I don't think you're ever going to make real progress in the area of crime deterrence."

MS. RICE surmised that the sponsor would have comments regarding that issue, particularly as it relates to local governments in unorganized areas of the state. She offered her understanding, however, that the DPS has worked hard to recruit personnel and has the funding to hire more law enforcement officers; therefore it is not an issue of the state not attempting to fill positions.

REPRESENTATIVE COGHILL suggested that the OVR is not the right entity to be making law enforcement personnel recommendations, and indicated that he would be opposing Amendment 3.

REPRESENTATIVE GARA said that Amendment 3 would not be requiring the OVR to find a solution to the lack of law enforcement personnel; instead, the OVR would simply be required to provide recommendations on that issue in its report if it seems pertinent.

[1:53:53 PM](#)

REPRESENTATIVE COGHILL offered his belief that the report could contain such information anyway, and reiterated that he would not be supporting Amendment 3.

REPRESENTATIVE GRUENBERG said that Amendment 3 might be helpful and won't do any harm.

REPRESENTATIVE COGHILL indicated that he doesn't want the OVR's report to become "the report" on law enforcement personnel issues, and suggested that Amendment 3 might change the scope of the proposed study.

CHAIR McGUIRE opined that language in the bill already grants the OVR the opportunity to say why it thinks that the aforementioned types of cases aren't being investigated in a timely or complete manner, whereas Amendment 3 could be more broadly construed.

REPRESENTATIVE GARA made a motion to amend Amendment 3 such that the phrase "if pertinent" is changed to, "if the office determines it is pertinent". There being no objection, Amendment 3 was amended.

REPRESENTATIVE GARA made a motion to again amend Amendment 3, as amended, such that the phrase "urban & rural" is changed to "urban or rural". There being no objection, Amendment 3, as amended, was again amended.

MS. RICE said she is not sure that Amendment 3, as amended, fits within the intent of the bill or is in line with the OVR's original charge, which is to serve as victim advocate.

[1:59:20 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 3, as amended. Representatives McGuire, Kott, Coghill, and Anderson voted against it. Therefore, Amendment 3, as amended, failed by a vote of 2-4.

CHAIR McGUIRE, notwithstanding the failure of Amendment 3, as amended, to be adopted, indicated that the legislature would still like the OVR's report to the legislature to include information on law enforcement personnel and staffing if it finds that such issues have contributed to a lack of timely or complete investigations of the aforementioned types of cases.

[2:00:07 PM](#)

REPRESENTATIVE KOTT made a motion to adopt [Conceptual] Amendment 4, to change page 2, line 15, such that the report shall be presented to the legislature on the first day of [the first session of] the 26th legislature, [which would start in January of 2009]. There being no objection, Conceptual Amendment 4 was adopted.

[2:02:57 PM](#)

REPRESENTATIVE ANDERSON moved to report CSSB 134(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for the purpose of discussion, offered observations on what occurs in Senate committee hearings, and then removed his objection.

CHAIR McGUIRE asked whether there were any further objections to reporting CSSB 134(JUD), as amended, out of committee. There being none, HCS CSSB 134(JUD) was reported from the House Judiciary Standing Committee.

SB 206 - DETENTION /I.D. OF PERSONS;CONTEMPT OF CT

2:04:50 PM

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 206(FIN), "An Act relating to contempt of court and to temporary detention and identification of persons." [In members' packets was a proposed House committee substitute (HCS) for SB 206, Version 24-LS1197\R, Luckhaupt, 5/4/06.]

CHAIR McGUIRE mentioned that proposed amendments have been distributed and that a representative from the Anchorage Police Department (APD) was available for questions.

REPRESENTATIVE GARA referred to Amendment 1, which read [original punctuation provided along with a handwritten change]:

Page 3, line 23:

After "person is", insert "for no longer than is"

CHAIR McGUIRE noted that the proposed House committee substitute (HCS) for SB 206, Version 24-LS1197\R, Luckhaupt, 5/4/06, ought to be adopted before any amendments to it are addressed.

LAUREN RICE, Staff to Senator Con Bunde, Alaska State Legislature, sponsor, on behalf of Senator Bunde and in response to a question, relayed that Representative Gruenberg worked with the sponsor on the changes incorporated into the proposed HCS and could therefore explain the differences.

REPRESENTATIVE GRUENBERG explained that proposed AS 12.50.201(c) now contains language stipulating that a person receiving a subpoena may request the district attorney to move to quash the

subpoena; that Section 1 has been rewritten to clarify that the contempt provision now also applies to any civil or criminal court proceeding; and that at the request of the APD, proposed AS 12.50.201(d)(1) and (2) - which pertain to how fingerprints and photographs may be used and when they shall be destroyed - now also include the phrase, "unless it is determined that the person is suspected of committing the crime under investigation".

[2:10:02 PM](#)

CHAIR McGUIRE [although no formal motion had been made] determined that there were no objections to adopting the proposed HCS for SB 206, Version 24-LS1197\R, Luckhaupt, 5/4/06, as the work draft, and so announced that Version R was before the committee.

REPRESENTATIVE GARA made a motion to adopt Amendment 1 [text provided previously].

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA explained that he wants to ensure that law enforcement can get the information it needs and that innocent people are not detained for any longer than necessary.

MS. RICE relayed that the sponsor supports Amendment 1.

REPRESENTATIVE ANDERSON removed his objection.

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

[2:12:25 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment 2, which read [original punctuation provided along with a handwritten change]:

Page 2, line 14:

Delete "reasonable suspicion"

Insert: "probable cause"

REPRESENTATIVE ANDERSON objected for the purpose of discussion.

REPRESENTATIVE GARA, on the issue of detaining an innocent person because he/she is a witness, opined that law enforcement

should have to meet the higher burden of probable cause - probable cause that the person has information - before being able to detain him/her as a witness.

[2:14:24 PM](#)

MS. RICE relayed that the sponsor feels that Amendment 2 moves away from the intent of the bill and would weaken it; the situations that the bill is trying to address are often violent, emotional, fluid circumstances, and it would be too hard to prove that one had probable cause to detain someone as a witness.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said the DOL has a real concern with Amendment 2. The current standard for an investigative stop by a police officer is reasonable suspicion, and the bill simply maintains that standard. At a time when a police officer is attempting to investigate what happened, he/she should be able to stop a person if there is a reasonable suspicion that the person has information. Changing the standard to probable cause would be confusing to police officers.

REPRESENTATIVE ANDERSON relayed that he would be maintaining his objection.

REPRESENTATIVE GARA offered his understanding that law enforcement can't currently detain an innocent person and thus Amendment 2 lowers the standard such that now an innocent person can be detained.

MS. CARPENETI opined that for investigative purposes, police ought to be able to stop a person and ask him/her what he/she knows, based on a reasonable suspicion. To require the police to have probable cause is too high a burden and will defeat the purpose of the bill, and for that reason the DOL would object to the adoption of Amendment 2.

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A roll call vote was taken. Representatives Gara voted in favor of Amendment 2. Representatives Anderson, Coghill, Gruenberg, Kott, and McGuire voted against it. Therefore, Amendment 2 failed by a vote of 1-5.

[2:17:19 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment 3, which read [original punctuation provided along with a handwritten change]:

Page 2, line 21:
Delete "may have"
Insert: "has"

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE GARA opined that being able to detain someone based on a reasonable suspicion that he/she "may have" information would mean that the police would be able to detain everybody. Amendment 3 would stipulate that detaining a person can only be done if there is a reasonable suspicion that the person "has" information, so that law enforcement won't be able to simply detain everybody.

CHAIR McGUIRE characterized that as a fair requirement.

MS. CARPENETI said that as long as the standard is reasonable suspicion, stipulating "has" is okay with the DOL.

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

[2:18:59 PM](#)

REPRESENTATIVE GRUENBERG referred to Amendment 4, labeled 24-LS1197\R.1, Luckhaupt, 5/5/06, which read:

Page 1, line 8:
Delete "or"

Page 1, line 10:
Delete "(i)"

Page 2, lines 2 - 5:
Delete all material and insert:
"(C) AS 09.50.010(5) or 09.50.010(10) if the conduct involves the failure to honor a subpoena or refusal to be sworn or answer as a witness in connection with a civil or criminal court proceeding or an appearance before the grand jury;"

Page 2, line 7, following "(1)(B)":

Insert "or (1)(C)"

Page 3, line 14:

Delete "or move the court to quash the subpoena"

Page 3, line 17, following "identification.":

Insert "The person may also use other rights provided by law to respond to the subpoena."

The committee took an at-ease from 2:19 p.m. to 2:20 p.m.

[2:20:44 PM](#)

REPRESENTATIVE GRUENBERG made a motion to divide Amendment 4 into Amendment 4a and Amendment 4b. There being no objection, it was so ordered, with Amendment 4a and Amendment 4b reading as follows:

Amendment 4a:

Page 1, line 8:

Delete "or"

Page 1, line 10:

Delete "(i)"

Page 2, lines 2 - 5:

Delete all material and insert:

"(C) AS 09.50.010(5) or 09.50.010(10) if the conduct involves the failure to honor a subpoena or refusal to be sworn or answer as a witness in connection with a civil or criminal court proceeding or an appearance before the grand jury;"

Page 2, line 7, following "(1)(B)":

Insert "or (1)(C)"

Amendment 4b:

Page 3, line 14:

Delete "or move the court to quash the subpoena"

Page 3, line 17, following "identification.":

Insert "The person may also use other rights provided by law to respond to the subpoena."

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4a, which he characterized as merely making grammatical changes. There being no objection, Amendment 4a was adopted.

REPRESENTATIVE GRUENBERG asked Ms. Carpeneti to comment on Amendment 4b.

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MS. CARPENETI said that the DOL had concern with the language, "or move the court to quash the subpoena" - now contained in Version R - because it implies that a person will get the subpoena quashed as long as he/she provides his/her state ID, and so Amendment 4b removes that language and instead inserts language clarifying that the person has other rights provided by law with which to deal with the subpoena.

REPRESENTATIVE GRUENBERG said it is his intention to allow a person who provides valid government-issued ID to file a motion to quash the subpoena if the district attorney won't withdraw it.

MS. CARPENETI said that a person always has the right to move to quash a subpoena, but the language currently in Version R implies that the subpoena will automatically be quashed.

REPRESENTATIVE GRUENBERG argued that the language currently in Version R specifies that the person must first file a motion to quash - and then it would actually be up to the court to decide whether to do so - and that exactly satisfies his intention.

REPRESENTATIVE GRUENBERG said he would not be offering Amendment 4b.

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REPRESENTATIVE ANDERSON moved to report the proposed HCS for SB 206, Version 24-LS1197\R, Luckhaupt, 5/4/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 206(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:25 p.m.