

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 2, 2006

8:45 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 414(RLS) am

"An Act relating to the interception of the private communications of a minor."

MOVED SCS CSHB 414(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 190(FIN)

"An Act relating to the purchase of alcoholic beverages and to access to licensed premises; relating to civil liability for certain persons accessing licensed premises; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole and relating to fees for the marked license; and requiring the surrender and cancellation of driver's licenses under certain circumstances."

HEARD AND HELD

CS FOR HOUSE BILL NO. 258(JUD)

"An Act relating to aggravating factors at sentencing for sexual assault and sexual abuse."

MOVED SCS CSHB 258(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 442(JUD) am

"An Act relating to the validity of advance health care directives, individual health care instructions, and do not resuscitate orders; relating to the revocation of advance health care directives; relating to do not resuscitate orders; relating to resuscitative measures; relating to the liability and discipline of health care providers, institutions, and

facilities; relating to proceedings for judicial relief; relating to an individual's capacity for making health care decisions; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 414

SHORT TITLE: INTERCEPTION OF MINOR'S COMMUNICATIONS

SPONSOR(S): REPRESENTATIVE(S) KOTT

02/01/06	(H)	READ THE FIRST TIME - REFERRALS
02/01/06	(H)	HES, JUD
02/14/06	(H)	HES AT 3:00 PM CAPITOL 106
02/14/06	(H)	Moved CSHB 414(HES) Out of Committee
02/14/06	(H)	MINUTE(HES)
02/17/06	(H)	HES RPT CS(HES) 4DP 1NR 2AM
02/17/06	(H)	DP: GARDNER, KOHRING, SEATON, WILSON;
02/17/06	(H)	NR: CISSNA;
02/17/06	(H)	AM: ANDERSON, GATTO
02/23/06	(H)	JUD AT 10:00 AM CAPITOL 120
02/23/06	(H)	Scheduled But Not Heard
02/24/06	(H)	JUD AT 2:00 PM CAPITOL 120
02/24/06	(H)	Heard & Held
02/24/06	(H)	MINUTE(JUD)
03/15/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/15/06	(H)	-- Meeting Canceled --
03/20/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/20/06	(H)	-- Meeting Canceled --
03/22/06	(H)	JUD AT 1:00 PM CAPITOL 120
03/22/06	(H)	Moved CSHB 414(JUD) Out of Committee
03/22/06	(H)	MINUTE(JUD)
03/28/06	(H)	JUD RPT CS(JUD) 3DP 2NR 2AM
03/28/06	(H)	DP: KOTT, ANDERSON, MCGUIRE;
03/28/06	(H)	NR: GARA, COGHILL;
03/28/06	(H)	AM: WILSON, GRUENBERG
04/11/06	(H)	RLS AT 1:30 PM CAPITOL 106
04/11/06	(H)	Moved CSHB 414(RLS) Out of Committee
04/11/06	(H)	MINUTE(RLS)
04/12/06	(H)	RLS RPT CS(RLS) 3DP 4NR
04/12/06	(H)	DP: COGHILL, MCGUIRE, KOHRING;
04/12/06	(H)	NR: BERKOWITZ, HARRIS, GUTTENBERG, ROKEBERG
04/12/06	(H)	RETURNED TO RLS COMMITTEE
04/24/06	(H)	TRANSMITTED TO (S)
04/24/06	(H)	VERSION: CSHB 414(RLS) AM
04/25/06	(S)	READ THE FIRST TIME - REFERRALS

04/25/06 (S) JUD
04/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
04/27/06 (S) Scheduled But Not Heard
04/28/06 (S) JUD AT 9:30 AM BUTROVICH 205
04/28/06 (S) Scheduled But Not Heard
05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 190

SHORT TITLE: REQUIRED ID FOR PURCHASING ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) FOSTER

03/01/05 (H) READ THE FIRST TIME - REFERRALS
03/01/05 (H) L&C, JUD
03/22/05 (H) L&C AT 1:00 PM CAPITOL 17
03/22/05 (H) Heard & Held
03/22/05 (H) MINUTE(L&C)
04/20/05 (H) L&C AT 3:15 PM CAPITOL 17
04/20/05 (H) Moved CSHB 190(L&C) Out of Committee
04/20/05 (H) MINUTE(L&C)
04/22/05 (H) L&C RPT CS(L&C) NT 3DP 2NR
04/22/05 (H) DP: CRAWFORD, LYNN, KOTT;
04/22/05 (H) NR: LEDOUX, GUTTENBERG
04/22/05 (H) FIN REFERRAL ADDED AFTER JUD
02/10/06 (H) JUD AT 1:00 PM CAPITOL 120
02/10/06 (H) Moved CSHB 190(JUD) Out of Committee
02/10/06 (H) MINUTE(JUD)
02/13/06 (H) JUD RPT CS(JUD) NT 1DP 4NR
02/13/06 (H) DP: WILSON;
02/13/06 (H) NR: GARA, KOTT, GRUENBERG, MCGUIRE
03/14/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/14/06 (H) Heard & Held
03/14/06 (H) MINUTE(FIN)
03/24/06 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/24/06 (H) Moved CSHB 190(FIN) Out of Committee
03/24/06 (H) MINUTE(FIN)
03/27/06 (H) FIN RPT CS(FIN) NT 3DP 5NR
03/27/06 (H) DP: WEYHRAUCH, KERTTULA, FOSTER;
03/27/06 (H) NR: HAWKER, KELLY, MOSES, STOLTZE,
MEYER
04/24/06 (H) TRANSMITTED TO (S)
04/24/06 (H) VERSION: CSHB 190(FIN)
04/25/06 (S) READ THE FIRST TIME - REFERRALS
04/25/06 (S) JUD, FIN
04/27/06 (S) JUD AT 8:30 AM BUTROVICH 205
04/27/06 (S) Scheduled But Not Heard
04/28/06 (S) JUD AT 9:30 AM BUTROVICH 205
04/28/06 (S) Scheduled But Not Heard

05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 258

SHORT TITLE: SEXUAL ASSAULT BY PERSON WITH HIV/AIDS

SPONSOR(S): REPRESENTATIVE(S) LYNN

04/06/05 (H) READ THE FIRST TIME - REFERRALS
04/06/05 (H) HES, JUD
02/23/06 (H) HES AT 3:00 PM CAPITOL 106
02/23/06 (H) <Bill Hearing Rescheduled to 2/28/06>
02/28/06 (H) HES AT 3:00 PM CAPITOL 106
02/28/06 (H) Scheduled But Not Heard
03/21/06 (H) HES AT 3:00 PM CAPITOL 106
03/21/06 (H) Moved CSHB 258(HES) Out of Committee
03/21/06 (H) MINUTE(HES)
03/24/06 (H) HES RPT CS(HES) 7DP
03/24/06 (H) DP: CISSNA, GATTO, GARDNER, KOHRING,
ANDERSON, SEATON, WILSON
04/10/06 (H) JUD AT 1:00 PM CAPITOL 120
04/10/06 (H) Moved CSHB 258(JUD) Out of Committee
04/10/06 (H) MINUTE(JUD)
04/12/06 (H) JUD RPT CS(JUD) NT 5DP 1NR
04/12/06 (H) DP: GARA, WILSON, KOTT, GRUENBERG,
MCGUIRE;
04/12/06 (H) NR: COGHILL
04/19/06 (H) TRANSMITTED TO (S)
04/19/06 (H) VERSION: CSHB 258(JUD)
04/20/06 (S) READ THE FIRST TIME - REFERRALS
04/20/06 (S) HES, JUD
04/26/06 (S) HES AT 1:30 PM BUTROVICH 205
04/26/06 (S) Moved CSHB 258(JUD) Out of Committee
04/26/06 (S) MINUTE(HES)
04/27/06 (S) HES RPT 4DP 1NR
04/27/06 (S) DP: DYSON, WILKEN, GREEN, OLSON
04/27/06 (S) NR: ELTON
05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: HB 442

SHORT TITLE: HEALTH CARE DECISIONS

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

02/10/06 (H) READ THE FIRST TIME - REFERRALS
02/10/06 (H) HES, JUD
02/21/06 (H) HES AT 3:00 PM CAPITOL 106
02/21/06 (H) Scheduled But Not Heard
02/23/06 (H) HES AT 3:00 PM CAPITOL 106
02/23/06 (H) Heard & Held

02/23/06 (H) MINUTE(HES)
 02/28/06 (H) HES AT 3:00 PM CAPITOL 106
 02/28/06 (H) Moved CSHB 442(HES) Out of Committee
 02/28/06 (H) MINUTE(HES)
 03/03/06 (H) HES RPT CS(HES) NT 4DP 1NR
 03/03/06 (H) DP: SEATON, GARDNER, KOHRING, WILSON;
 03/03/06 (H) NR: CISSNA
 03/24/06 (H) JUD AT 1:00 PM CAPITOL 120
 03/24/06 (H) Scheduled But Not Heard
 03/27/06 (H) JUD AT 1:00 PM CAPITOL 120
 03/27/06 (H) Moved CSHB 442(JUD) Out of Committee
 03/27/06 (H) MINUTE(JUD)
 03/29/06 (H) JUD RPT CS(JUD) NT 5DP
 03/29/06 (H) DP: GARA, COGHILL, GRUENBERG, KOTT,
 MCGUIRE
 04/10/06 (H) TRANSMITTED TO (S)
 04/10/06 (H) VERSION: CSHB 442(JUD) AM
 04/12/06 (S) READ THE FIRST TIME - REFERRALS
 04/12/06 (S) HES, JUD
 04/21/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/21/06 (S) -- Meeting Canceled --
 04/24/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/24/06 (S) POSTSECONDARY TUITION FOR FOSTER
 CHILDREN
 04/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 04/25/06 (S) Scheduled But Not Heard
 04/28/06 (S) HES AT 1:30 PM BUTROVICH 205
 04/28/06 (S) Moved CSHB 442(JUD) am Out of Committee
 04/28/06 (S) MINUTE(HES)
 04/29/06 (S) HES RPT 5DP
 04/29/06 (S) DP: DYSON, ELTON, WILKEN, GREEN, OLSON
 05/02/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Representative Pete Kott
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 414

Michael O'Hare, Legislative Aide
 Staff to Representative Kott
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions on HB 414

Annie Carpeneti, Assistant Attorney General

Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on HB 414 and HB 190

Paul LaBolle, Legislative Aide
Staff to Representative Richard Foster
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 190

Representative Harry Crawford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions regarding HB 190 for the sponsor

Susan Parkes, Deputy Attorney General
Criminal Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding HB 258

Jacqueline Tupou, Legislative Aide
Staff to Representative Bruce Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 442

John Dawson, Attorney
Davis Wright Tremaine LLC

POSITION STATEMENT: Commented and answered questions regarding HB 442

Mike Schneider, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 442

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:45:56 AM](#). Present were Senators Hollis French, Gene Therriault, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

HB 414-INTERCEPTION OF MINOR'S COMMUNICATIONS

8:46:57 AM

CHAIR RALPH SEEKINS announced CSHB 414(RLS) to be up for consideration.

MICHAEL O'HARE, Staff to Representative Pete Kott, introduced the bill. It is a simple bill that intends to protect children from predators by allowing parents to monitor their child's conversations. Parents who currently listen in on their children's conversations are breaking the law and are subject to criminal prosecution. The bill would allow for a court to enter into an ex parte order to authorize a wiretap if the court determines probable cause. Section 1 contains a definition of "probable cause." The bill would also allow the parent or guardian of a minor to intercept private communications except for any communications between the minor's attorney, guardian ad litem, or child custody investigator.

8:48:35 AM

The information could be considered as evidence by a judge and admitted in an official proceeding if it is found that the parent was acting in good faith and had a reasonable belief that the interception was necessary for the welfare of the minor.

8:49:44 AM

REPRESENTATIVE PETE KOTT, bill sponsor, added that it is currently illegal for a parent to listen in on a telephone conversation in his or her own home. He emphasized the importance of giving parents tools to lawfully monitor their children for their own welfare. The bill would "cut the mischief off at the pass", he said, and would allow the parents to monitor, under reasonable situations, the oral conversations between their minor child and another party.

8:52:23 AM

SENATOR GUESS commented that lines 10-15 on page 1 appear to be out of sync with what the bill was trying to do.

MR. O'HARE responded that the paragraph in question merely defines "probable cause."

CHAIR SEEKINS asked how the bill would tie in with federal law.

REPRESENTATIVE KOTT replied it would not violate the federal eavesdropping statutes.

CHAIR SEEKINS asked whether the definition of parent includes stepparents.

MR. O'HARE referred to the definition of "parent" on page 4, line 12.

CHAIR SEEKINS noted that the definition didn't specify stepparents.

ANNIE CARPENETI, Assistant Attorney General, Department of Law (DOL), testified that the stepparent would have to be the adoptive parent in order to be covered under the law.

[8:56:36 AM](#)

REPRESENTATIVE KOTT consented that an adoptive stepparent should be included in the definition of parent.

SENATOR GRETCHEN GUESS asked whether the bill could be used for one parent to gain access to a child talking to the other parent.

MS. CARPENETI responded that concern was addressed on page 3. The bill puts many limitations on the circumstances to when a parent could put a wiretap on a child. She said the DOL has additional concerns that she would like to address at the proper time.

SENATOR GENE THERRIAULT referred to page 3, line 21 and questioned the meaning of "acting in good faith."

[8:58:57 AM](#)

REPRESENTATIVE KOTT replied the court would have to determine what that means. After review of all the evidence, the judge will have to determine whether the parent acted on good faith in behalf of the minor. The parents would have to legitimize their claim.

MS. CARPENETI added that was also a concern of the DOL. It is not a very clear hurdle.

SENATOR GUESS referred to page 2, line 4 and asked Ms. Carpeneti to define the term "objectively reasonable belief."

MS. CARPENETI explained "objectively reasonable person" is an often-used term in legal interpretations and it means a reasonable person's standard and not necessarily a subjective belief.

CHAIR SEEKINS asked Ms. Carpeneti to describe the concerns that the DOL has with the bill.

MS. CARPENETI said the criminal division supported the bill in its process through the House Judiciary version, but were concerned with the House Rules Committee Substitute (CS) that was amended during the House Floor Session.

[9:02:20 AM](#)

MS. CARPENETI stated the main concerns are with the subjectivity of the phrase "acting in good faith" and in the limits placed on the provision of when it is allowable to wiretap a child. She posed an example of a parent who has a hunch that their child is in danger and wants to overhear a conversation. She said it is in everyone's best interest that the parent be able to listen to that telephone conversation on less than probable cause and that the evidence should be admissible in a court of law if necessary. Short of probable cause, it is the parent's duty to interfere when a person is preying on their child, she said.

MS. CARPENETI reiterated the Department's concern with the limits placed on the provision. "Whatever evidence the parent gathers ought to be admissible in court", she said.

CHAIR SEEKINS asked the reason behind the amendment that incorporated the strict limitations.

REPRESENTATIVE KOTT informed the committee it was an amendment by Representative Max Gruenberg and his argument was "vehemently persuasive."

CHAIR SEEKINS asked Representative Kott how he would amend the bill.

REPRESENTATIVE KOTT deferred to Ms. Carpeneti.

MS. CARPENETI said the DOL would like to go back to House Judiciary version and then add the stepparent in.

CHAIR SEEKINS called a brief at ease at [9:04:53 AM](#).

[9:08:16 AM](#)

CHAIR SEEKINS called the meeting back to order and asked Mr. O'Hare to describe the differences between the House Judiciary Committee version and the amended House Rules Committee version.

MR. O'HARE advised that Section 1 in version L does not contain the probable cause definitions. The ninth exception on page 3 does not include the evidentiary definitions nor does it have the inclusion of a child custody investigator.

9:10:02 AM

SENATOR GUESS asked Ms. Carpeneti whether there was a reason to state the definition of "probable cause" in the bill.

MS. CARPENETI informed her that it is a very common standard in the courts and indicated that it didn't need to be defined.

CHAIR SEEKINS expressed a preference to work from version 24-LS1565\L.

SENATOR CHARLIE HUGGINS made a motion to move the language contained in version L to be considered a Senate Judiciary Standing Committee Substitute and to be the working document before the committee. Hearing no objections, the motion carried.

CHAIR SEEKINS posed a hypothetical example of a stepparent who believed his stepchild was in danger and said he should have the opportunity to protect that child and be covered by the law.

SENATOR GUESS said part of her supports that and part of her does not since those situations tend to be very delicate and complex.

9:14:03 AM

SENATOR HOLLIS FRENCH shared Senator Guess's concern but stated so long as the stepparent was living in the same home as the natural parent and the child he was agreeable to it. He said he sees this as a defensive measure and not offensive.

SENATOR FRENCH moved Amendment 1. Include "stepparent" in the definition of "parent." Hearing no objections, Amendment 1 was adopted.

REPRESENTATIVE KOTT noted that page 3 lists exceptions and he suggested adding "child custody investigator" to that list of exceptions.

SENATOR FRENCH moved Amendment 2. Page 3, line 15, after the word "attorney" insert "child custody investigator." Hearing no objections, Amendment 2 was adopted.

9:16:36 AM

SENATOR FRENCH asked whether the bill would protect older brothers and sisters who eavesdropped.

MS. CARPENETI said it would depend on the circumstances. She said, "This is a private over-hearing of conversations and I think it would be addressed based on the circumstances. I think it would be admissible if it were a brother."

SENATOR FRENCH asked whether the older brother or sister would be allowed to testify in court.

MS. CARPENETI believed so. She said evidence gathered by a private person is not subject to the Fourth Amendment [of the United States Constitution] and depending on the circumstances, should be admissible.

SENATOR FRENCH clarified that the bill would allow for a listening device to be put on a telephone to capture all the conversations of a minor child.

MS. CARPENETI added that it would also allow for taping of cell phone conversations as well, provided the parent had a warrant.

[9:19:16 AM](#)

MS. CARPENETI commented that the House Rules Committee version restricted when the law could be used and said that with the working version, anything overheard could be admissible in court so long as the police weren't involved.

SENATOR FRENCH asked Ms. Carpeneti whether the bill was in conformity with federal law.

MS. CARPENETI deferred to the chairman but said she would assume that all Title 42 wiretap exceptions do comply.

REPRESENTATIVE KOTT asserted the bill was in compliance.

[9:22:16 AM](#)

SENATOR HUGGINS asked Ms. Carpeneti to explain the amendment that Representative Gruenberg added to the House Rules Committee version.

MS. CARPENETI said she was not present and did not know his stated intentions but his words limit the interception and made for reasonable belief that the child was in danger. The DOL's position was that a parent should be able to act on "less than probable cause." They should be able to act on a suspicion or a

hunch that their child is in danger. The amendment limited the circumstances under which the evidence gathered would be admissible in a court of law. The DOL's response is that it seems reasonable that when a parent stumbles over evidence that their child is potentially in danger, that evidence ought to be admissible.

[9:24:58 AM](#)

SENATOR HUGGINS moved SCS CSHB 414(JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

HB 190-REQUIRED ID FOR PURCHASING ALCOHOL

[9:33:24 AM](#)

CHAIR RALPH SEEKINS announced CSHB 190(FIN) to be up for consideration.

PAUL LABOLLE, Staff to Representative Richard Foster, introduced the bill. Alaska has some of the strictest drunk driving laws in the nation and yet approximately 30 percent of fatal collisions involved DUI's. The bill would attempt to decrease alcohol-related accidents by requiring that drunk drivers have a stamp on their license or identification card that would alert those who sell alcohol that it is illegal for that individual to purchase or consume alcohol. The bill would also allow a financial incentive for the vendors but would not make the program mandatory for them to comply.

SENATOR CHARLIE HUGGINS speculated about the practicality of a restaurant owner refusing to serve a paying customer.

MR. LABOLLE said that was addressed in the first hearing of the bill and is the reason that it is voluntary.

REPRESENTATIVE HARRY CRAWFORD aired a number of proprietors would like the ability to restrict patrons from consuming alcohol.

[9:37:13 AM](#)

SENATOR HOLLIS FRENCH expressed support for the bill but agreed with Senator Huggins that requiring restaurants to perform the license check doesn't make sense.

MR. LABOLLE said the main problem with requiring them to check is with liability. If an employee decided not to check the ID,

that person might have recourse to sue the vendor for not preventing them from drinking.

CHAIR SEEKINS said the bill seems to provide a double standard. He pointed out that a vendor could run an entrapment scheme and collect \$1,000 while allowing the person to consume alcohol.

REPRESENTATIVE CRAWFORD responded that the \$1,000 incentive was the reason for the bill. The offender would have that \$1,000 hanging over his head anywhere (s)he goes.

[9:40:04 AM](#)

REPRESENTATIVE CRAWFORD asserted that Alaska is not making a dent in alcohol-related crimes and he hopes the bill will have a positive impact.

CHAIR SEEKINS agreed with the intent of the bill.

[9:41:31 AM](#)

SENATOR FRENCH said the bill would have the most effect on people who are under 30 years old and get "carded". He expressed support for the bill.

SENATOR GRETCHEN GUESS expressed support for the bill and asked the reason it would pertain only to DUI's and not other drinking issues.

[9:43:36 AM](#)

REPRESENTATIVE CRAWFORD said the bill started out pertaining to all alcoholic offenses but was tailored due to a lack of solid communication through the different branches and systems of government. The DUI notification is already set up and, to keep the costs down, the bill pertains only to the DUI conviction. "Consider it a pilot program," he said.

SENATOR HUGGINS asked whether it would still be legal for a restricted person to drink at home.

REPRESENTATIVE CRAWFORD said no.

MS. CARPENETI concurred that when a judge orders a person not to consume alcohol, that carries over into the home.

SENATOR HUGGINS expressed concern that the bill would not do anything substantive.

REPRESENTATIVE CRAWFORD responded that the same model has been used for underage drinkers and has made an enormous impact. He urged the committee to move the bill.

SENATOR HUGGINS responded that anyone could use a fake ID to get alcohol. He said he supports the concept but the bill has loopholes.

[9:48:52 AM](#)

SENATOR GUESS commented it is extremely difficult to police everyone but the bill provides speed bumps and could prevent people from drinking and driving.

CHAIR SEEKINS said if it were up to him, anyone who has been convicted of an alcohol-related crime would be prevented from purchasing and consuming alcohol.

DUANE BANNOCK, Director, Division of Motor Vehicles (DMV), said the Division has spent much time discussing implementation if the bill were to become law. The DMV has contact with the court systems in cases of DUI's and failures to submit to chemical testing. They have existing established communications but will need additional contact so that they will be able to know exactly which person is subject to the marked license. Practically speaking, it would take minimal effort to provide a special mark on the license or ID card.

The arresting officer is the one who takes the offender's driver's license away but often times a person has already received a new license before the DMV is notified of the DUI conviction.

CHAIR SEEKINS asked the kind of notification that DMV gets when an officer confiscates a license.

MR. BANNOCK admitted that it takes a couple of days for them to receive notification.

[10:00:26 AM](#)

SENATOR FRENCH asked Mr. Bannock where the mark would be placed on the license.

MR. BANNOCK said probably at the top near the mountains.

[10:02:51 AM](#)

CHAIR SEEKINS said he would like to spend more time with the sponsors and so he held CSHB 190(FIN) in committee.

HB 258-SEXUAL ASSAULT BY PERSON WITH HIV/AIDS

10:05:25 AM

CHAIR RALPH SEEKINS announced HB 258 to be up for consideration. [Although not mentioned or formally adopted, the committee used SCS CSHB 258, \Y Version Work Draft, as the working document.]

REPRESENTATIVE BOB LYNN introduced the bill, which would make a rape or sexual assault by anyone infected with HIV/AIDS an aggravating factor at sentencing. The issue is not about sexual orientation and has support from a variety of agencies, he stated.

Twenty-four states have similar laws and, considering Alaska leads the nation in rapes and sexual assault, is time that Alaska joined them. The bill is a proactive measure that acknowledges the additional pain and suffering of the victims.

A new section was recently added at the request of Senator Con Bunde to correct an error in the statutes made by SB 218, which the governor has signed into law. The new section clarifies that the crime of "sexual abuse of a minor in the second degree when engaging in consensual sexual penetration" is committed when the age difference is at least three years and the offender is in a position of authority.

10:09:38 AM

SENATOR GRETCHEN GUESS stated for the record that Senator Con Bunde and she both asked Representative Lynn to add that new section to the bill. She questioned using the word "fear" on page 2, line 26 and suggested that could be misconstrued and used as an aggravating factor.

MIKE SICA, Staff to Representative Lynn, responded that the word was added in the House Judiciary Committee due to the fear factor during the extended time span that a victim has to wait to find out whether or not they contracted the disease from the assault.

10:12:39 AM

SENATOR HOLLIS FRENCH referred to Section 1 and asked the reason for setting the bar at 18 years old.

SUSAN PARKES, Deputy Attorney General, Department of Law (DOL), advised the committee that Senator French is correct in that the arithmetic doesn't make sense but the statute prior to SB 218

reads that way and the bill would return the statute to the previous law.

SENATOR FRENCH moved Amendment 1. Page 2, line 15, delete "18" and insert "19." Hearing no objections, Amendment 1 was adopted.

MS. PARKES noted there would be a title change on the bill since it adds Section 1. She expressed support for the bill on behalf of the DOL.

[10:17:26 AM](#)

SENATOR FRENCH asked how assaults by persons infected with HIV/AIDS have been handled in the past.

MS. PARKES said the DOL tries to use the aggravator "most serious" and that has become more difficult to use since the case *Washington v Blakely*.

SENATOR FRENCH asked whether the DOL had concerns over the use of the word "fear" on page 2, line 26.

MS. PARKES responded she was not at the hearing where it was added on but it would have to be a reasonable fear. Part of the DOL's concern involving penetration is that there are cases where a jury may find an "attempt" or they hang on "penetration" but convict on "contact." They would be able to use the aggravator because of the "fear" risk. She said she was not concerned that it would cause problems.

SENATOR FRENCH asked whether the offender would have to have AIDS for the aggravator to be used.

MS. PARKES responded they would have to have been previously diagnosed. A judge would not allow the aggravator to be used if the person didn't have the disease.

CHAIR SEEKINS noted there was no opposition to the bill.

SENATOR GUESS asked the Chair to hold the bill so that the committee could make sure it was correct before moving it out.

CHAIR SEEKINS said he had no problem holding CSHB 258(JUD) until the next day so the committee could "see the clean language."

HB 442-HEALTH CARE DECISIONS

[10:22:50 AM](#)

CHAIR RALPH SEEKINS announced CSHB 442(JUD) to be up for consideration.

JACQUELINE TUPOU, Staff to Representative Bruce Weyhrauch, introduced the bill. HB 442 would make a minor change to the Health Care Decisions Act ("Alaska Act") of 2004 and would provide clearer direction to those implementing health care decisions.

Current law imposes a duty of investigation upon doctors when carrying out the health care directives of their patients. The bill would amend current statute to conform the language in the Alaska Act to that of the Uniform Act, thus requiring a doctor to act in "good faith" when time is critical for the patient. The bill substitutes the word "physician" for "attending physician." It clarifies when CPR can be used, and indicates under what circumstances a "Do Not Resuscitate" (DNR) order may be revoked.

[10:25:03 AM](#)

SENATOR GRETCHEN GUESS asked Ms. Tupou to explain the new additions in Section 5.

MS. TUPOU reported that was to address a specific situation, such as a person with terminal cancer with a DNR order. She posed a hypothetical situation where that person breaks their hip and during anesthesia and surgery the person "flatlines." The bill would allow for the doctor to administer CPR in that case because he would be just "correcting his own mistake." Section 5 identifies that in a secondary matter, and nothing to do with the initial qualifying condition; the healthcare provider could perform resuscitation.

SENATOR HOLLIS FRENCH asked whether there was a cleaner way to write subsection (i).

MS. TUPOU said she thought it was relatively clear. She suggested that a representative from Providence Alaska Medical Center could explain it further. She added that (i) was clarifying that a healthcare provider could perform CPR if it has nothing to do with the initial condition and (j) says that an emergency medical technician is not held to making that decision.

[10:28:48 AM](#)

JOHN DAWSON, Attorney with Davis, Wright, Tremaine, LLC, testified that he represents Providence Anchorage Anesthesia

Medical Group. He said that provision (j) under Section 5 is an exception to an exception to an exception and the reason for that structure is that the original exception referenced in (e) simply says that a physician may not, for reasons of conscience, refuse to abide by DNR orders.

In other circumstances, the physician may refuse to abide by an individual instruction based on conscience but DNR orders were not one of those types of instructions. Subsection (i) basically says notwithstanding what (e) says a physician may refuse to abide by DNR instructions if necessary to remedy complications arising out of the physician's services. Subsection (j) is an exception to that exception and was a request by the people in the field who do not want to have that discretion.

[10:30:54 AM](#)

SENATOR FRENCH said for the record, people in the field (paramedics, firefighters, police officers) are always allowed to perform CPR on an ailing person but once the person gets to the hospital, the DNR order kicks in.

MR. DAWSON countered that a person in the field must abide by a DNR order as well unless an online physician indicates otherwise.

SENATOR FRENCH asked how a person in the field would know about a DNR order.

MR. DAWSON said there is generally a bracelet or other identifying item on the person.

MS. TUPOU interrupted to inform the committee that Alaska participates in the "Comfort One Program" and people wear bracelets to make healthcare officials aware of their wishes.

[10:32:28 AM](#)

MIKE SCHNEIDER, Attorney, testified that he practices law in Anchorage, mainly with personal injury. He said he has done very few medical negligence cases in over 30 years in practice and there have been about a dozen plaintiff's verdicts cases in the history of the State and Territory of Alaska. He said the bill was basically a "solution in search of a problem" and speculated what the sponsor's intent was. He stated that he has never heard of a verdict based on the kinds of liability theories that the bill seeks to address.

[10:35:18 AM](#)

MR. SCHNEIDER criticized Section 8 and said if a healthcare provider, through a medical screw up, makes an error that initiates a life saving effort, that provider could choose to allow that person to die and be immunized if that decision is made on a "good faith basis." He took issue with deleting the language in AS 13.52.080(a) and suggested that it lessens a healthcare provider's responsibilities to the patient.

[10:37:45 AM](#)

CHAIR SEEKINS said the way he reads it the phrase "good faith basis" refers to determining the validity of the advanced healthcare directive and not in how the provider delivers the medical services.

MR. SCHNEIDER agreed but said as he reads Section 9 it gives a healthcare provider the ability to allow a patient to die in order to cover up a negligent act, and under Section 8 their interpretation is subject only to a good faith standard.

CHAIR SEEKINS said he interprets Section 9 to say if a DNR prevents them from attempting to resuscitate a patient because of complications, there is no criminal or civil liability. But subsection (c) doesn't apply if the complications suffered by the patient are caused by gross negligence or reckless actions.

MR. SCHNEIDER agreed but suggested the committee add the word "negligence" in front of "gross negligence" on line 16.

MR. DAWSON added Section 9 begins with a premise that there is in place a valid DNR order. A physician should not be sued if he honors a DNR order that has been put in place by the patient, he said. The "good faith" requirement pertains to whether the DNR order is valid or not.

[10:43:41 AM](#)

SENATOR FRENCH asked Mr. Dawson to comment on a hypothetical situation of a simple act of negligence that results in the death or impairment of a patient. He asked the reason for excluding that scenario from a DNR action.

MR. DAWSON responded:

If we were to include the exception for negligence we would essentially swallow up the ability of a doctor ever to comply with a DNR order. The very nature of the Act to begin with is that we want doctors to honor the wishes of their patients. At the same time we want them to honor that, we don't want them to be worried

about liability when they do so. The reason why we allow this particular scenario where you have mere negligence is so that a doctor will not be worried about getting sued every time that there is a DNR order in place.

MS. TUPOU argued that Representative Weyhrauch is very aware of the need for litigation and protecting the consumer and the bill is not a "doctor exoneration bill." It is meant to address the existing problem that people who have DNR's can't find doctors who will operate on them. She contended that a doctor would never want to perform surgery on a DNR person due to the excessive liability.

[10:47:43 AM](#)

MR. SCHNEIDER replied, "Name one verdict. Name two claims. Ain't there."

SENATOR GUESS said she could not formulate her response yet but she could not support the bill on that premise.

CHAIR SEEKINS held CSHB 442(JUD) in committee.

HB 258-SEXUAL ASSAULT BY PERSON WITH HIV/AIDS

[10:49:20 AM](#)

CHAIR RALPH SEEKINS brought discussion back to HB 258. [Although not formally adopted, before the committee was the amended SCS CSHB 258, \Y Version Work Draft.]

SENATOR GRETCHEN GUESS indicated that the earlier amendment was causing drafting problems that the Department of Law would articulate.

SUSAN PARKES, Deputy Attorney General, Department of Law (DOL), advised the committee that the drafter noted that although the math does not appear to make sense, the use of the age "18" is simply an indicator of the age of adulthood and is the reason for the use. The drafter does not recommend replacing the age 18 with 19 as suggested in Amendment 1 of the bill.

SENATOR FRENCH said he would have to take issue with the drafter.

MR. SICA offered to re-check with the drafter but said his other point was that being 18 years of age "or older" helps the mathematics work out.

SENATOR GUESS agreed.

SENATOR FRENCH disagreed. He said the way the math charts out is that no 18 year old can violate this law.

SENATOR GUESS said there are nine other places in the statute that refer back to it and it will work out.

CHAIR SEEKINS agreed.

10:52:07 AM

SENATOR FRENCH moved to rescind the committee action. [The committee previously adopted Amendment 1 to SCS CSHB 258, Version \Y.] Hearing no objection, the motion carried.

CHAIR SEEKINS asked for a motion to move the bill without amendment.

SENATOR FRENCH moved SCS CSHB 258(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objection, the motion carried.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 10:53:29 AM.