

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 4, 2008

1:03 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Ralph Samuels  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Bob Lynn  
Representative Max Gruenberg

**OTHER LEGISLATORS PRESENT**

Representative Mike Doogan

**COMMITTEE CALENDAR**

**HOUSE JOINT RESOLUTION NO. 28**

Proposing an amendment to the Constitution of the State of Alaska relating to the production tax revenue fund, dedicating a portion of the petroleum production tax to the fund, and limiting appropriations from the fund.

- HEARD AND HELD

**HOUSE BILL NO. 292**

"An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 28

SHORT TITLE: CONST. AM: PRODUCTION TAX REVENUE FUND

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

01/11/08	(H)	PREFILE RELEASED 1/11/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS

01/15/08 (H) JUD, FIN  
01/25/08 (H) JUD AT 1:00 PM CAPITOL 120  
01/25/08 (H) -- MEETING CANCELED --  
01/28/08 (H) JUD AT 1:00 PM CAPITOL 120  
01/28/08 (H) Heard & Held  
01/28/08 (H) MINUTE(JUD)  
02/04/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 292

SHORT TITLE: AGGRAVATING FACTOR: HOMELESSNESS  
SPONSOR(S): REPRESENTATIVE(S) DOLL, KERTTULA

01/04/08 (H) PREFILE RELEASED 1/4/08  
01/15/08 (H) READ THE FIRST TIME - REFERRALS  
01/15/08 (H) JUD  
02/04/08 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

TAMARA COOK, Director  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Spoke as the drafter of HJR 28.

JERRY BURNETT, Director  
Administrative Services Division  
Department of Revenue (DOR)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to a question during discussion of HJR 28.

LAURA ACHEE, Research and Communications Liaison  
Alaska Permanent Fund Corporation (APFC)  
Department of Revenue (DOR)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HJR 28.

REPRESENTATIVE ANDREA DOLL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Spoke as a joint prime sponsor of HB 292.

SUSAN HARGIS, Staff  
to Representative Andrea Doll  
Alaska State Legislature

**POSITION STATEMENT:** Assisted with the presentation of HB 292 on behalf of Representative Doll, one of the bill's joint prime sponsors.

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

**POSITION STATEMENT:** Testified in support of HB 292 and responded to questions.

GEORGE BRIGGS, Executive Director  
Juneau Cooperative Christian Ministry  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

DANIEL UNGIER, Affordable Housing Advocate  
United Way of Southeast Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

DIANE SLATER  
(No address provided)

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

CHRIS ASHENBRENNER, Executive Director  
Council on Domestic Violence and Sexual Assault (CDVSA)  
Department of Public Safety (DPS)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

STAN MARSTON  
Juneau Homeless Coalition  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

SUSAN BOMALASKI  
Catholic Social Services (CSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

KRIS DUNCAN, Coordinator  
Alaska Housing Finance Corporation (AHFC)  
Department of Revenue (DOR)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

STEVEN WASSON  
Homeward Bound  
Rural Alaska Community Action Program, Inc. (RurAL CAP)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 292.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:03:46 PM](#). Representatives Holmes, Dahlstrom, Coghill, Samuels, Ramras were present at the call to order. Representative Doogan was also in attendance.

#### HJR 28 - CONST. AM: PRODUCTION TAX REVENUE FUND

[1:04:08 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 28, Proposing an amendment to the Constitution of the State of Alaska relating to the production tax revenue fund, dedicating a portion of the petroleum production tax to the fund, and limiting appropriations from the fund.

[1:04:53 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HJR 28, Version 25-LS1217\E, Cook, 1/29/08, as the work draft.

REPRESENTATIVE SAMUELS objected. Speaking as the sponsor of HJR 28, he explained that some of questions raised at the resolution's last hearing are addressed via Version E. Version E of the proposed constitutional amendment requires that production tax revenue be appropriated directly into [what will be a newly created] separate account in the Constitutional Budget Reserve Fund (CBRF) up until January 1, 2015, and allows for voluntary appropriations into that separate account after

that date. Version E, specifically proposed subsection (g) located on page 3, now describes which monies shall be placed into the aforementioned separate account and does so without a statutory reference. He announced that should Version E be adopted as the work draft, he would be offering an amendment to specify that monies placed into that separate account be considered "payback" of the [current] debt owed to the CBRF.

REPRESENTATIVE SAMUELS mentioned that he still favors establishing a fund completely separate from the CBRF, as the original version of HJR 28 proposes, rather than just creating two separate accounts in the CBRF, as Version E proposes. He noted that under Version E, all of the language being deleted from subsection (a) of Article IX, Section 17, of the Alaska State Constitution, is being inserted into a new subsection (b); this language describes the existing CBRF, and would refer to what would become another separate account. In response to a question, he explained that subsection (g) contains the language stipulating the timeframe during which appropriations of the production tax revenue into the aforementioned separate account shall be mandatory.

CHAIR RAMRAS said he is pleased that the proposed constitutional amendment no longer contains a statutory reference.

[1:10:15 PM](#)

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter of HJR 28, said that if the committee decided it did want to establish a separate fund, as the original resolution proposed, a CS could be drafted that doesn't include a statutory reference but that does include a limit regarding how long the legislature would be mandated to appropriate monies into that fund. With regard to how Version E was drafted, she relayed that in subsection (a), she kept only the language that would apply to both of the two separate accounts - language stating that the money will be invested and that the income from each account will be retained separately in each of the accounts. Subsection (b) now contains language creating the separate account that is currently considered to be the CBRF; this language is essentially the language that she removed from subsection (a). Subsections (c), (d), and (e) all deal with the provisions that can be seen in the existing CBRF except that they now refer to and apply only to the account established in subsection (b) rather than to the CBRF as a whole; subsection (e), incidentally, now contains the existing "sweep" language.

MS. COOK explained that Section 2 of the proposed constitutional amendment establishes the new account for the production tax revenue and consists of two new subsections; specifically, subsection (f) establishes the account and contains the percent of market value (POMV) payout formula, and subsection (g) addresses which monies get appropriated into that account and specifies the timeframe during which appropriations to the account shall be mandatory. In subsection (g), it is the language on page 3, lines 13-16, that describes production tax revenue without referring to a specific statute, and the last sentence in subsection (g) references Section 7 of Article IX of the Alaska State Constitution - the prohibition against dedicated funds - and ensures that the automatic deposits outlined in this subsection won't be prohibited by another article in the Alaska State Constitution.

MS. COOK surmised that the problem with Version E is that it appears to be making drastic changes to the CBRF even though it's just been converted into an account. In response to a question, she said she'd not attempted to give the two accounts separate names, but together they will be known as the CBRF. In response to another question, she said that any money that's still owed to the CBRF [if and when HJR 28's proposed constitutional amendment is approved by the voters] shall be owed only to the account established via subsection (b); all of the provisions that currently apply to the CBRF have been preserved in Version E but, again, will only apply to the account established via subsection (b).

REPRESENTATIVE SAMUELS said that one of the reasons he objects to Version E is that establishing two accounts in the CBRF will create confusion. He again said his preference would be to establish a completely separate fund for production tax revenue, and simply include Version E's timeframe for mandated deposits and description of which monies shall go into the fund.

[1:18:17 PM](#)

REPRESENTATIVE SAMUELS, in response to a question, indicated that he's not yet come up with a name for the account created via subsection (f) - it's a savings account for the state different than the CBRF.

CHAIR RAMRAS asked what language would appear on the ballot if HJR 28 passes the legislature, and how would the proposal be described to the public.

REPRESENTATIVE SAMUELS, regarding the latter issue, offered, "In very simply terms you could say 'the windfall profits tax are going to a savings account and it becomes an annuity'; ... it's a long-term savings account but you'll never be able to spend the corpus of [it]."

MS. COOK, regarding the former issue, indicated that all of the resolution's proposed changes to the Alaska State Constitution would appear on the ballot as they appear in the resolution.

REPRESENTATIVE COGHILL surmised that the policy question is whether the legislature wants to set up the proposed separate account and then, if so, how to go about doing so. He observed that it might be better to set up a separate [fund] rather than doing something within the CBRF.

REPRESENTATIVE SAMUELS indicated agreement, adding that the public could get distrustful of language that at first glance appears to alter the CBRF. He again relayed the approach he'd prefer to take.

REPRESENTATIVE COGHILL said taking out the reference to statute was an important point for him.

[1:25:14 PM](#)

MS. COOK, in response to questions, indicated that she could draft a CS for HJR 28 that establishes a separate fund, doesn't include a statutory reference, limits how long the legislature would be mandated to appropriate monies into that fund, and wouldn't effect any changes to the existing sweep provision of the existing CBRF - thus precluding any concerns being raised by voters about the sweep provision. Such a CS would look a lot like the original HJR 28 but include the language currently incorporated into subsections (f) and (g) of Version E. She noted that the original version of HJR 28 called the proposed fund the "production tax revenue fund".

REPRESENTATIVE COGHILL question whether, under Version E, the two separate accounts would be earning income at different rates.

MS. COOK said that although the two accounts would be managed as separate accounts and so could be managed differently, the language currently in the CBRF provision of the Alaska State Constitution requires that the money in the CBRF be invested so

as to yield competitive market rates, and in Version E, she'd stipulated that that same requirement would apply to both accounts; she'd also stipulated in the original version of HJR 28 that that same requirement apply to monies in the production tax revenue fund.

REPRESENTATIVE COGHILL surmised that putting the language currently in Version E before the voters could result in more questions than easily-given answers.

CHAIR RAMRAS expressed a preference for not making conceptual amendments to Version E - he'd rather have a new CS brought before the committee.

REPRESENTATIVE SAMUELS agreed, and indicated that the new CS would include the desired provisions Ms. Cook described earlier. He then asked: "On the payout methodology, ... do you want a five-year average looking back on the 4.5 percent rather than just ... one year?"

REPRESENTATIVE HOLMES said she too would prefer to have a separate fund rather than having two accounts in the CBRF, and is in favor of the all the aforementioned provisions including a four- or five-year rolling average.

REPRESENTATIVE COGHILL, on the issue of a five-year average, noted that mandatory appropriations to the fund will end on January 1, 2015.

REPRESENTATIVE SAMUELS pointed out, though, that the fund itself will exist beyond the year 2015 - that's the whole point of it - and so 30 years from now a five-year average could still be used to calculate the payout.

[1:32:14 PM](#)

JERRY BURNETT, Director, Administrative Services Division, Department of Revenue (DOR), remarked that market volatility can be addressed via some form of "backwards averaging," and suggested that members consider legislation introduced several years ago regarding a POMV calculation for the permanent fund.

CHAIR RAMRAS opined that the voting public will find a 5 percent payout easier to understand than a 4.5 percent payout because 5 percent is a whole number.

REPRESENTATIVE SAMUELS warned that having a payout of 5 percent increases the risk that the value of the principal will decrease over time; again, the point of establishing this fund is to have long term cash flow. He characterized 4.5 percent as a more conservative number in that regard.

REPRESENTATIVE DAHLSTROM acknowledged that sometimes the wording of a ballot measure can create confusion.

CHAIR RAMRAS reiterated his belief that a whole number is simpler to understand than a fraction of a number.

MR. BURNETT, in response to a question, offered his belief that the language in subsection (f) regarding the proposed payout percentage would allow for an asset allocation that would optimize the return within the constraints of the proposed fund, and mentioned that the commissioner [with advice from an outside consulting firm] would determine the appropriate asset allocation.

[1:36:25 PM](#)

LAURA ACHEE, Research and Communications Liaison, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), relayed that back when the Board of Trustees of the Alaska Permanent Fund Corporation proposed a POMV payout, it was at 5 percent averaged over the [previous five years] to smooth out market volatility. Such a calculation often works out to about 4.5 percent, she noted, adding that studies illustrate that over time, one gets a little bit more out of a fund long term if the payout is 4 percent versus if the payout is 5 percent. However, if a "smoothing provision" is added into the calculation, then the averaged percentage would be a little bit less than the stated average because of rising movement in the market over the averaged years.

REPRESENTATIVE SAMUELS noted that the proposed fund is different than the permanent fund in that there may not be any more appropriations made to it after the year 2015, and so in order for the proposed fund to sustain itself, it will have to rely on an appropriate payout percentage. In response to a question, he offered his understanding that the legislature could start [appropriating] the proposed payout immediately and then do what it wanted to with it, though he acknowledged that transitional language might be needed since a five-year average couldn't be applied for the first four years. In response to comments, he

said he would prefer to see the payout [stay in] the proposed fund.

[1:40:34 PM](#)

MS. COOK, in response to a question, said that as the resolution is currently drafted, in order for the legislature to receive the proposed payout, an appropriation would be required, just as is required of funds from the CBRF. So if the legislature doesn't act to appropriate the payout from the proposed fund, it would just stay there. Also, under the resolution as currently drafted, the amount appropriated from that fund, should the legislature choose to do so, cannot exceed 4.5 percent.

CHAIR RAMRAS asked whether the legislature could choose not to appropriate the payout one year and then appropriate two-years' worth of payout the next year.

REPRESENTATIVE SAMUELS indicated that it could not; rather, since the payout wasn't appropriated the one year, a larger amount could be appropriated the next year because the appropriation calculation would then be based on a larger principal amount.

MS. COOK concurred.

CHAIR RAMRAS posited that that could act as an inducement for the legislature to appropriate the payout from the fund every year so as not to lose access to it.

REPRESENTATIVE SAMUELS indicated, then, that he would prefer for the payout to go directly into the general fund (GF) every year; then, if the legislature wishes to, it could appropriate the payout back into the proposed fund.

MS. COOK observed that it would be easy to draft language that would require the payout to flow directly into the GF without an appropriation.

CHAIR RAMRAS expressed favor with that concept.

REPRESENTATIVE SAMUELS concurred.

MS. COOK asked whether the committee would like the automatic payout to begin later than July 1 of this current fiscal year.

CHAIR RAMRAS suggested having the automatic payout start in five years, be no greater than 5 percent, and be based on a five-year average. In response to a comment, he opined that the issue of what oil production and price will be in the next five years is not relevant to the discussion of whether to establish the proposed fund.

REPRESENTATIVE SAMUELS argued that it is relevant if the payout is needed to balance the budget before the first five years has elapsed. Five years ago, for example, the price of oil was \$20 per barrel and production was at 1 million barrels per day.

CHAIR RAMRAS acknowledged that point.

MR. BURNETT remarked, "Zero in."

[1:46:11 PM](#)

REPRESENTATIVE SAMUELS said, "Let's ... have the draft at five and then we can just discuss what the number should be."

REPRESENTATIVE DAHLSTROM said it is important to her that the forthcoming CS contain nothing that could be used to abolish the legislature's duty to pay back the CBRF.

REPRESENTATIVE SAMUELS indicated that it would not.

[HJR 28 was held over with the motion of whether to adopt Version E as the work draft left pending.]

The committee took an at-ease from 1:48 p.m. to 2:17 p.m.

HB 292 - AGGRAVATING FACTOR: HOMELESSNESS

[2:18:10 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 292, "An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

[2:18:46 PM](#)

REPRESENTATIVE ANDREA DOLL, Alaska State Legislature, speaking as one of the bill's joint prime sponsors, relayed that HB 292 would add "homelessness" to the list of aggravating factors outlined in AS 12.55.155(c)(22); as a result, a defendant who

knowingly directs his/her criminal conduct at a victim because of the victim's homelessness would be subject to an aggravating factor at sentencing. Although HB 292 won't end all assaults against the homeless, she acknowledged, it will send a message that although homeless people are vulnerable, they are important as human beings and their lives have value. The bill is meant to address those who look at a homeless person and think that they will be able to perpetrate a crime against him/her and no one will care or notice; in essence the legislation says, "Yes, we do care, and, by the way, we notice, too."

[2:20:43 PM](#)

SUSAN HARGIS, Staff to Representative Andrea Doll, Alaska State Legislature, added on behalf of Representative Doll, one of the bill's joint prime sponsors, that HB 292 will do two things. It will help protect [homeless] victims of violence, and will provide a method of accountability to those who perpetrate such crimes. Alaska has a significant homeless population. The Alaska Interagency Council on Homelessness established by Governor Murkowski found that more than 14,000 individuals experience homelessness each year in Alaska, that about 3,500 people per night are homeless, that about 1,600 of them constitute families with children, and that 4,000 Alaska households are on the waiting list for public housing.

MS. HARGIS relayed that a lot of the homeless population is made up of youth, women, and veterans; furthermore, veterans account for 11 percent of the country's population, but account for 25 percent of the country's homeless population. Ms. Hargis said that as a veteran, she wants to see her fellow veterans and women taken care of, as well as youths. She noted that the National Coalition for the Homeless (NCH) conducted a study which illustrates that the violence HB 292 is meant to address really are hate crimes because the perpetrators are specifically targeting the homeless simply because of their homeless status.

CHAIR RAMRAS asked whether the proposed aggravating factor would apply in situations in which one homeless person commits a crime against another homeless person.

MS. HARGIS acknowledged that sometimes crimes against the homeless are perpetrated by other homeless people, but suggested that the bill is not designed to address those situations because the majority of violence against the homeless is perpetrated by those who are not homeless - certain people are specifically targeting those who are homeless. She added that

about 25 percent of homeless people have had violence perpetrated against them, as compared to 1 percent of non-homeless people.

[2:25:40 PM](#)

REPRESENTATIVE DAHLSTROM asked how "homeless" is defined.

MS. HARGIS said that there are two definitions available - one used in the NCH's model legislation, and one used by the Alaska Housing Finance Corporation (AHFC) - but staff at Legislative Legal and Research Services had pointed out that a lot of common-use terms in the criminal code are not defined. However, she relayed, the sponsor would be amenable to including either of the aforementioned definitions in the bill, though the NCH's definition is shorter and simpler.

CHAIR RAMRAS observed that homeless people aren't limited with regard to the physical characteristics they have.

REPRESENTATIVE DAHLSTROM questioned how hard it would be to prosecute someone under the standard of "knowingly", and remarked that the term "homeless" seems very broad.

MS. HARGIS acknowledged that including one of the aforementioned definitions might be helpful. Discussions with law enforcement, she relayed, have indicated that how easy it will be to prosecute someone for the proposed hate crime depends on a lot of factors. Sometimes homeless people won't report a crime because they believe they are not always seen in the best light. But in some of the incidents that have come to light, the perpetrators have been boasting about the fact that they've gone out and beaten up a homeless person, or have boasted that they are going to go out and beat up a homeless person; again, these people are purposely targeting the homeless, and it is these people whom the bill is meant to address. In response to a question, she said that although there might be other types of people that are experiencing hate crimes, the sponsor chose to focus on the issue of violence specifically directed at the homeless, because statistics illustrate that there has been a significant increase in such crimes nationwide.

REPRESENTATIVE SAMUELS asked whether under the bill a separate trial will be required as a result of the decision in the U.S. Supreme Court case, Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004).

2:30:30 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), said that the aggravating factor would have to be proven to a jury beyond a reasonable doubt unless the defendant agreed to the aggravating factor.

REPRESENTATIVE SAMUELS asked how many times the aggravating factor [outlined in existing AS 12.55.155(c)(22)] has been used. He surmised that it would be hard to prove that the crime was motivated by fact that the victim was homeless.

MS. CARPENETI said that although the proposed aggravating factor would not be easy to prove, it could be proven just as any other case requiring a specific mental state is proven - through the acts and words of the perpetrator. Furthermore, there have been some egregious cases in which an aggravating factor has been proven when the perpetrators were specifically victimizing a particular racial group, for example. So although use of the aggravating factor is uncommon because it is difficult to prove, sometimes it is proven, and it is worthy of the effort to do so. She also pointed out that the bill is not proposing to establish a separate crime; rather, it is simply proposing an aggravating factor that could be used when sentencing someone for an existing felony crime.

REPRESENTATIVE SAMUELS said that an option would be to stiffen the penalty for certain crimes, and have that penalty apply regardless of whom the crime is directed at. He questioned why someone who rapes a homeless woman, for example, should be punished more severely than someone who rapes a woman who is not homeless. He also observed that vulnerable people become victims more often than those who aren't as vulnerable; therefore, since homeless people are more vulnerable than those who are not homeless, they are also more likely to become victims. Regardless that a crime is a crime of opportunity, the crime is still the same.

2:33:41 PM

MS. HARGIS acknowledge that for the victim of a crime, the impact of the crime on him/her isn't different depending on whether he/she is homeless. However, the legislature has already chosen to say that there are particular groups that are victimized on an all-too-regular basis. She characterized HB 292 as addressing a public safety issue, and said it will

both protect those [who are being victimized just because they are homeless] and establish a boundary for those perpetrating such crimes; the bill will send a message that such behavior is unacceptable. She offered her belief that the targeting of homeless people to perpetrate crimes upon has become a problem, but acknowledged that establishing such a boundary is a policy call for the legislature to make.

REPRESENTATIVE DAHLSTROM characterized the intent of the bill as worthy, but offered her belief that some could argue that a crime perpetrated against a person in his/her home violates the person even more because the home is supposed to be a safe haven. Committing a crime against a person is wrong regardless of whether the victim is homeless, she remarked, adding that she doesn't know how a particular crime could be considered more wrong just because of a victim's homeless status.

MS. CARPENETI, in response to a question, said that the DOL supports HB 292 because it believes that there is good social value in saying that it is unacceptable to target particular groups of people that may be less able to protect themselves and others. She again acknowledged that the aggravating factor outlined in AS 12.55.155(c)(22) is difficult to prove, and [isn't pursued] very often, usually in just the horrifying cases.

CHAIR RAMRAS recalled that one such case occurred in Fairbanks.

MS. CARPENETI, in response to a request, explained that Alaska law has established maximum terms of imprisonment for various levels of crimes, and within those maximum terms are presumptive sentencing ranges, and when an aggravating factor is proven beyond a reasonable doubt to a jury as being present, then the judge, when imposing the sentence, may exceed those ranges and impose a longer sentence - up to the maximum sentence - for a particular offense. In response to a question, she explained that although the question of whether an aggravating factor at sentencing should be applied is dealt with in a separate proceeding, the issue is heard by the same jury that determined the verdict.

MS. CARPENETI, in response to questions, explained that in order for the proposed aggravating factor to apply, the prosecution would have to prove that the perpetrator knowingly directed his/her conduct at a homeless person simply because that person was homeless, and that it is not mandatory for the court to impose a higher sentence for an aggravating factor - the court

may simply consider it when determining the sentence and then may chose to impose a sentence beyond the presumptive sentencing range.

2:40:00 PM

GEORGE BRIGGS, Executive Director, Juneau Cooperative Christian Ministry, after relaying that his organization is currently doing business as the Glory Hole, characterized HB 292 as one of the most important legislative Acts affecting the homeless. He offered his understanding that the aggravating factor proposed by HB 292 won't apply in situations where homeless people are committing violence against other homeless people, and that it is instead meant to apply in situations where people who aren't homeless are targeting those who are homeless just for fun, just for sport, and committing violence against them. Homeless people, regardless of how they come to be homeless, are vulnerable, in some cases even more vulnerable than children [who aren't homeless]. He noted that 85 percent of those using services provided by the Glory Hole are mentally challenged.

CHAIR RAMRAS pointed out, though, that existing AS 12.55.155(c)(22) already provides an aggravating factor for crimes directed at those with a mental disability, and thus those people are already covered.

MR. BRIGGS noted, however, that the Glory Hole only provides services monthly to about 175 of the 850 homeless individuals in Juneau. He relayed that two Saturdays ago, a group of people poured gasoline on a homeless Native man and lit him on fire simply because he was homeless and a Native - he was targeted because he was homeless and a Native.

CHAIR RAMRAS pointed out that existing AS 12.55.155(c)(22) would already apply in that situation as well because it provides an aggravating factor for crimes directed at a person because of his/her race.

MR. BRIGGS argued that not all homeless people are going to be covered by existing AS 12.55.155(c)(22), adding that the attacks that have been occurring are always directed at someone who is homeless and because he/she is homeless. Between June and October of last year, six homeless people were beaten up because they were homeless, and three of those individuals filed police reports. When homeless people don't file a police report, it could be for any number of reasons, a couple of which may be that they fear they will not be treated fairly by law

enforcement or that they see that when their attackers are arrested, they are simply released from jail after just a few of days.

2:45:29 PM

MR. BRIGGS, in response to a question, opined that homeless people are more vulnerable and thus need something that will show them that they are part of the community. Homeless people understand that they need community protection when they are being beaten up for no other reason than that they are homeless, and so there should be something in Alaska law that says attacking the homeless simply because they are homeless warrants a stiffer penalty. He posited that adoption of HB 292 will help police and encourage them to arrest the perpetrators of such crimes if they know that such perpetrators could be prosecuted to the maximum extent of the law. On the issue of how easy it will be to prove the proposed aggravating factor, he surmised that since homeless people don't have any thing of value on their persons, then attacks on homeless people are probably motivated by the fact that they are homeless.

REPRESENTATIVE SAMUELS asked how much over the presumptive sentencing range adoption of HB 292 would allow a sentence to be.

CHAIR RAMRAS offered his belief that it would allow for a substantial increase in sentencing. Acknowledging that homeless people face unique challenges, he relayed that one concern is that HB 292 would have law enforcement be more aggressive in protecting the rights of the homeless than the rights of those who are not homeless. On any given day, anyone could find himself/herself in a vulnerable situation susceptible to having some type of crime perpetrated against him/her, and law enforcement should be treating everyone the same with regard to trying to solve those crimes and arresting the perpetrators.

MR. BRIGGS agreed, but offered his belief that currently law enforcement authorities aren't treating the homeless the same way they do those who are not homeless, and without the adoption of HB 292, which might provide them with the extra impetus to pursue those who are assaulting the homeless, they never will.

CHAIR RAMRAS posited that whenever police see someone being hurt they stop that event regardless of whether the victim is homeless. The perceived lack of pursuit of those specifically targeting and perpetrating crimes against the homeless could

instead be the result of decisions made at the district-attorney level.

[2:53:05 PM](#)

DANIEL UNGIER, Affordable Housing Advocate, United Way of Southeast Alaska, after relaying that he chairs the Juneau Homeless Coalition and offering a bit of information about it, shared his belief that the distinction between an assault perpetrated against a homeless person and an assault perpetrated against someone else is not that the crime is worse, but that it has become a crime of a different nature that deserves to be recognized. People who would not normally be committing any other crime are now going out and assaulting homeless people specifically because they are homeless and thus easy targets. He noted that the sponsor statement has indicated that from 1999 to 2006, the numbers of violent crimes against the homeless has increased 170 percent.

MR. UNGIER went on to say:

There is a series [of] private videos on the Internet, called "Bum Fights" - and these are mostly targeted at teenagers - and essentially all they are is, somebody shouts out "Bum Fights" at the beginning of the video and people run out and attack a homeless person in the video. And this has become mainstream enough that this was referenced in a full-length, major-budget film ..., so it is hardly something that's on the fringe of society, and, in fact, in ... [another case] where a homeless person has been killed, the person who [was] being charged with that crime admitted that he was inspired by "Bum Fights."

MR. UNGIER opined that such videos have the specific effect of degrading a homeless person to the point where he/she can be targeted just for sport: homeless people aren't really human beings, it's not a big deal, and it's fun to go after them. In response to comments and a question, he opined that the bill is not saying that a person who attacks someone who is not homeless should be given a lesser penalty; rather, the bill is saying that when someone attacks a homeless person for sport, a crime of a different nature is being committed. Furthermore - according to statistics outlined in the sponsor statement - a disproportionate number of homeless people are experiencing violent attacks. Again, adoption of HB 292 will not result in lesser sentences being applied to those perpetrating violence

against those who are not homeless - the bill is merely attempting to address a different issue.

REPRESENTATIVE COGHILL agreed that such crimes are of a different nature, but opined that judges have already been given enough flexibility with regard to sentencing ranges. The aggravating factor outlined in AS 12.55.155(c)(22) seems to make the question of why someone committed a crime more important than the question of what crime was actually committed. To attack someone just because he/she is homeless is egregious, but so is attacking anyone, and so if a lack of prosecution is the problem or if the existing sentencing ranges aren't being applied to those attacking the homelessness, then those issues should be discussed with the appropriate agencies, rather than simply resorting to adding another subgroup to the existing aggravating factor.

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DIANE SLATER indicated that the key issue to be addressed is the "sport" of attacking the homeless. It's not that the homeless are any better than other victims of violent crime, it's that there are a significantly increasing number of homeless people being attacked. A hate crime of the sort HB 292 is meant to address, she offered, can be likened to the hate crime perpetrated against Matthew Shepard simply because he was homosexual. Noting that she is familiar with the clientele at the Glory Hole and that she has even stayed there, she pointed out that the homeless are often treated as outcasts, and that homelessness can occur to anyone, including someone like herself, because obtaining housing can be quite a feat, particularly under federal housing guidelines. According to the Alaska Housing Finance Corporation (AHFC), one is homeless if one is either living in a car, in a tent, or at a shelter. Homeless people often don't have the tools to get the help they need, and HB 292, she opined, will give authorities the extra power to protect this group of people, and will act as a preventative measure. Homeless people are vulnerable and they need someone to advocate for them, and that's what HB 292 can help do, she concluded.

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CHRIS ASHENBRENNER, Executive Director, Council on Domestic Violence and Sexual Assault (CDVSA), Department of Public Safety (DPS), relayed that members' packets include some statistics she'd provided. She said she finds it ironic that once people,

particularly women [and children], become homeless due to domestic violence (DV), they are then assaulted - both physically and sexually - at a higher rate [simply for being homeless]. She said she would hope that legislators would want to add extra protection for those members of society who are the weakest, the most vulnerable. Women and children who are homeless are very vulnerable and become easy prey for those looking for an opportunity to sexually assault someone. In response to comments, she pointed out that crimes of DV are usually [prosecuted as] misdemeanors, and that her concern centers on those who are preying specifically on homeless people in order to sexually assault them.

REPRESENTATIVE HOLMES offered her belief that what HB 292 is proposing is consistent with other steps the legislature has taken to protect the most vulnerable members of society, including the establishment of some other aggravating factors.

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STAN MARSTON, Juneau Homeless Coalition, said he would echo what other testifiers have said thus far. The point he wishes to make is that people are being targeted because they are homeless. He surmised that if one were to ask a homeless person who is attacked in the middle of the afternoon out of sight of the general public, why he/she was attacked, the person would say he/she was attacked only because he/she was homeless. These sorts of assaults don't often happen late at night, and although they are crimes of opportunity, the perpetrators are specifically targeting the homeless because they are less able to defend themselves. According to what a victim of such an assault told him, Mr. Marston indicated, the victim was targeted solely because he was homeless and the police didn't take that assault as seriously as the victim felt it should have been. People can become homeless for a variety of reasons, but they are now being targeted simply because they are homeless - people are specifically hunting the homeless.

REPRESENTATIVE SAMUELS surmised that no victim of any crime ever feels that law enforcement is doing enough.

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SUSAN BOMALASKI, Catholic Social Services (CSS), said the CSS supports Representative Doll in introducing HB 292. The CSS operates the Brother Francis Shelter, which annually serves over 3,000, and about twice a month shelter staff see victims of

attacks so violent that they warrant emergency room treatment. Although victims of such crimes are reluctant to report the crimes, homelessness is seen as the aggravating factor by these victims. She went on to say:

It is our job as a just society to protect the poor and vulnerable and give voice to their concerns; ... homeless individuals have no voice and we have to speak up for them. Being homeless puts people in a very vulnerable category. These individuals are usually struggling against many obstacles in their recovery from homelessness, including being viewed as a target for violent crime because they are homeless. It is no longer acceptable to see this crime as merely a hardship but in fact it does deserve a harsher punishment. Passage of ... [HB 292] will make these violent attacks on the homeless unacceptable. It's an important statement for a just society to make.

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KRIS DUNCAN, Coordinator, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), relayed that as a homeless youth awaiting the start of the fishing season, she was living in a tent and was sexually assaulted at knifepoint. She said she knows that the reason she was raped was because she was homeless, because over time she learned that the perpetrator - a person stationed at a military base - had been bragging about targeting homeless women, knowing that his victims were homeless and as such were trying to stay out of the public eye. Homeless people know that they are viewed as not being worthy of justice or worthy of having any of the rights that normal citizens have. Property owners have far more credibility with law enforcement than do disadvantaged populations such as the homeless. She said that had she known that people perpetrating crimes specifically against the homeless might receive a severe penalty, she maybe would have trusted the system and reported her sexual assault.

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STEVEN WASSON, Homeward Bound, Rural Alaska Community Action Program, Inc. (RurAL CAP), relayed that when he was homeless, he was attacked and stabbed numerous times, and although he reported the incident to the police, they didn't do anything, and the perpetrators were back out on the streets the next day. He ventured that a lot of homeless people don't want to speak up

about their assaults because they fear they won't receive any protection and will simply get targeted again by their perpetrators.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 292.

REPRESENTATIVE DOLL relayed that when she first took office, she'd been visited by many people living on the streets, most of whom were women, who spoke to her about their vulnerability, and she began to realize how difficult it must be to be constantly exposed, constantly vulnerable. More and more society is coming out with greater penalties for crimes perpetrated against the vulnerable members of society, but there is still a long ways to go. She spoke briefly about crimes that have been perpetrated against her in the past, and pointed out that homeless people can't barricade themselves in their homes for protection against predators. "Somehow we've got to be able to move forward and talk for these people, somehow we've got to do something that says that we will do what we can to protect them in whatever small fashion we're able to," she added.

REPRESENTATIVE DAHLSTROM expressed concern that the proposed aggravating factor could result in unintended consequences for other citizens.

CHAIR RAMRAS acknowledged that more crimes occur than there are adequate resources to properly deal with them. He then relayed that HB 292 would be held over.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.