ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 6, 2008
4:00 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg

MEMBERS ABSENT

Representative Lindsey Holmes

COMMITTEE CALENDAR

HOUSE BILL NO. 323
"An Act relating to the crimes of assault in the fourth degree and of resisting or interfering with arrest; relating to the determination of time of a conviction; relating to offenses concerning controlled substances; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation and to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and providing for an effective date."

- MOVED CSHB 323(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 323
SHORT TITLE: CRIMINAL LAW/PROCEDURE: OMNIBUS BILL
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/17/08	(H)	READ THE FIRST TIME - REFERRALS
01/17/08	(H)	JUD, FIN
01/30/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/30/08	(H)	Heard & Held
01/30/08	(H)	MINUTE(JUD)

03/28/08	(H)	JUD AT 1:00 PM CAPITOL 120
03/28/08	(H)	Heard & Held
03/28/08	(H)	MINUTE(JUD)
03/31/08	(H)	JUD AT 1:00 PM CAPITOL 120
03/31/08	(H)	<Bill Hearing Canceled>
04/04/08	(H)	JUD AT 1:00 PM CAPITOL 120
04/04/08	(H)	Heard & Held
04/04/08	(H)	MINUTE(JUD)
04/06/08	(H)	JUD AT 3:00 PM CAPITOL 120

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 323.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska
POSITION STATEMENT: Testified in support of HB 323.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 323.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting, which had been recessed on 4/4/06, back to order at 4:00:37 PM. Representatives Samuels, Lynn, Dahlstrom, Coghill, and Ramras were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Holmes was excused.

HB 323 - CRIMINAL LAW/PROCEDURE: OMNIBUS BILL

4:00:52 PM

CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 323, "An Act relating to the crimes of assault in the fourth degree and of resisting or interfering with arrest; relating to the determination of time of a conviction; relating to offenses concerning controlled substances; relating to issuance of search warrants; relating to persons found incompetent to stand trial concerning criminal conduct; relating to probation and to restitution for fish and game violations; relating to aggravating factors at sentencing; relating to criminal extradition authority of the governor; removing the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 323, Version 25-GH2038\K, Luckhaupt, 4/2/08, which had been adopted as the work draft on 4/4/08.]

4:00:58 PM

REPRESENTATIVE DAHLSTROM moved [to adopt] the proposed committee substitute (CS) for HB 323, Version 25-GH2038\L, Luckhaupt, 4/6/08, [as the work draft]. There being no objection, Version L was before the committee.

CHAIR RAMRAS indicated that Sections 1 and 2 of Version L will change AS 04.16.051(a) and AS 04.16.052, respectively, such that a licensee or an agent or employee of a licensee who - while working on the licensed premises - furnishes or delivers an alcoholic beverage to someone under the age of 21 will be subject to a class A misdemeanor instead of a class C felony. He offered his belief that this change will provide a distinction between those who accidentally serve alcohol to someone under the age of 21 and those who do it "with malicious intent."

REPRESENTATIVE GRUENBERG, pointing out that Section 2 uses the phrase, "may not with criminal negligence", asked what level of crime it would be when the licensee or agent or employee of the licensee - while working on the licensed premises - "intentionally" or "knowingly" serves alcohol to a person under the age of 21. He opined that if someone is knowingly or intentionally furnishing alcohol to a person under the age of 21, it shouldn't make a difference whether he/she is a licensee/agent/employee or just another customer of the establishment. He surmised that the change proposed by Sections

1 and 2 will let someone off the hook for serving alcohol to a minor just because he/she happens to be an employee.

CHAIR RAMRAS said that that person would still be charged with a class A misdemeanor. In response to a question, he offered his understanding that the same would be true if the person was not [a licensee/agent/employee] unless it was his/her second or subsequent offense. He acknowledged, though, that the change proposed by Sections 1 and 2 will create a gap through which licensees/agents/employees who continue to intentionally serve alcohol to minors can fall through - such a person would still only be charged with a class A misdemeanor [regardless of how many times he/she breaks the law].

REPRESENTATIVE GRUENBERG asked how they should deal with that gap.

REPRESENTATIVE SAMUELS said he is assuming that that person would lose his/her job.

REPRESENTATIVE GRUENBERG said he is merely considering this gap from a criminal-law point of view, and asked Chair Ramras whether he wants to address repeat offenders who continue to offend in their capacity as a licensee/agent/employee.

CHAIR RAMRAS said he doesn't want to.

REPRESENTATIVE DAHLSTROM said her view is that the legislature is simply setting up the guidelines with regard to what the consequences will be when a person makes certain choices.

4:11:48 PM

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to a question, explained that under Sections 1 and 2, a licensee/agent/employee who - while working on the licensed premises - serves alcohol to a minor would only be subject to a class A misdemeanor regardless of whether he/she does it with criminal negligence, or knowingly, or intentionally, and that's because the culpable mental state of "criminal negligence" also includes "knowingly" and "intentionally." In response to questions, she said that a repeat offender who is not a licensee/agent/employee would be subject to a class C felony, whereas a repeat offender who is a licensee/agent/employee would only be subject to a class A misdemeanor.

REPRESENTATIVE GRUENBERG asked why shouldn't repeat offenders be subject to the same penalty regardless of where they work.

CHAIR RAMRAS - characterizing the penalties associated with a class A misdemeanor as not insignificant - opined that because a licensee/agent/employee has far more opportunity to serve alcohol to a minor, the licensee/agent/employee shouldn't be subject to a class C felony.

REPRESENTATIVE GRUENBERG said he doesn't see why the consequences should be different just because the repeat offender committed the offense while on the job. Why should a repeat offender be protected just because he/she is an employee of an establishment that serves alcohol?

4:17:29 PM

REPRESENTATIVE SAMUELS asked who determines that the licensee/agent/employee should have known that he/she was being presented with a fake identification (ID).

MS. CARPENETI explained that the State would have to decide whether there is enough evidence to prove criminal negligence, which means being so unaware as to not recognize the risk that is there. One reason the DOL is happy with [the change proposed by Sections 1 and 2], she relayed, is that it will help servers make "that" decision even when they're busy, and the State will have a better chance of proving criminal negligence or at least recklessness because a fake ID was seen by the licensee/agent/employee but then ignored.

REPRESENTATIVE SAMUELS indicated that the penalty should be a class C felony if it is obvious that the person being served alcohol is underage.

REPRESENTATIVE GRUENBERG offered his understanding that in order for the State to prove a mens rea of "knowing," the state would have to show that that particular person knew something - not just that a reasonable person would know something.

MS. CARPENETI clarified that in proving "knowingly," the State merely has to show either that one did know or that one should have known. Particularly when a circumstance is so obvious that one should have known, the State doesn't have to prove that that particular person did know.

REPRESENTATIVE GRUENBERG posited that borderline situations wouldn't be prosecuted.

CHAIR RAMRAS disagreed.

REPRESENTATIVE GRUENBERG surmised, then, that if the State were to prosecute a licensee/agent/employee in a borderline situation, then the State would also prosecute someone in a borderline situation who isn't a licensee/agent/employee. He said his concern is that there might be an equal protection issue raised if the average person is subject to a felony for knowingly or willfully serving alcohol to an underage person but a licensee/agent/employee isn't. What societal interest is there that's compelling, or under any constitutional standard, to protect the licensee/agent/employee, since normally the licensees/agents/employees are held to a higher standard? Doesn't that raise a constitutional problem?

4:22:55 PM

MS. CARPENETI said she's not yet researched that issue, but could do so. She added that although the change proposed by Sections 1 and 2 would treat people differently, it recognizes that the circumstances would be different as well, depending on who the person is, because the existing provisions of law use different culpable mental states. Under the bill, the mens rea for a licensee/agent/employee would be criminally negligent, whereas currently the mens rea for a licensee/agent/employee is knowingly. She said she is not sure whether the change proposed via Sections 1 and 2 would raise a constitutional issue.

CHAIR RAMRAS said that the distinction he is making is that for a licensee/agent/employee, the behavior is occurring in a licensed premise, where there is more oversight by the Alcoholic Beverage Control Board ("ABC Board"). He said he is questioning whether someone who serves alcohol as part of his/her job should be held to the same level of culpability as one who doesn't.

REPRESENTATIVE GRUENBERG said it seems to him, however, that when speaking about a second willful or knowing offense, the higher penalty ought to apply regardless of where the person works; it's not about where the offense occurs, but about who is committing the offense.

CHAIR RAMRAS argued that where the offense occurs creates a different dynamic.

REPRESENTATIVE GRUENBERG said he thinks the penalty should be the same - a class C felony - adding that he still hasn't heard any good reason for [the penalty to be different based on where one works].

CHAIR RAMRAS said he doesn't want to hold someone who serves alcohol as part of his/her job to the same standard as a member of the general public.

REPRESENTATIVE GRUENBERG pointed out that Section 2 only applies to someone who is acting with criminal negligence, whereas he is speaking about the licensee/agent/employee who willfully - for a second or subsequent time - serves alcohol to a minor. He indicated that he might offer an amendment to address a licensee/agent/employee who is willfully/knowingly - while working on the licensed premises - serving alcohol to a minor for a second or subsequent time. He said he has a problem with only charging a repeat offender who is a licensee/agent/employee with a class A misdemeanor but charging a repeat offender who is not a licensee/agent/employee with a class C felony - both types of willful/knowing, repeat offenders should be charged with a class C felony.

4:33:00 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said the DPS supports Version L of HB 323, particularly those provisions dealing with search warrants, because they will increase the DPS's productivity, and the mandatory minimum sentencing provisions pertaining to the importation of alcohol, because they will assist the DPS's efforts to keep alcohol out of communities that prohibit it.

MS. CARPENETI explained that Sections 3 and 4 would change the statutes pertaining to bootlegging. Currently the crime of bootlegging is a felony if a person brings alcohol in excess of certain amounts into a community in violation of a local option, and a misdemeanor if the amounts are less than those certain amounts. Under Section 3 of the bill, it would be a felony if the amount of alcohol being brought in is less than those certain amounts but it is the person's third or subsequent conviction within the last 10 years. She explained that Section 4 would impose mandatory minimum sentences and fines for bootleggers that are almost the same as the mandatory minimum sentences and fines pertaining to driving under the influence (DUI) crimes and the crime of refusing to take a chemical test

for purposes of establishing blood alcohol concentration (BAC); the only difference is that under Section 4, the look-back period for bootlegging crimes is 10 years, whereas the look-back period for DUI crimes is 15 years.

REPRESENTATIVE SAMUELS referred to Section 4's proposed subsection (g)(1)(B), said he is assuming that bootlegging is a lucrative business, and asked what the DOL would think of making the mandatory minimum fine for a second offense $10,000 or $20,000 instead of just $3,000, which he characterized as not being very much money and perhaps an amount that's just viewed as part of the cost of doing business.

MS. CARPENETI said that the DOL considers the sentences and fines listed in Section 4 as a really good start, particularly given that currently it is very difficult to get a significant sentence applied to bootlegging convictions, and given that the mandatory minimum sentences and fines proposed in Section 4 are much greater than what they currently are. She added, though, that she doesn't have any philosophical disagreement with the suggestion to increase the fines to $10,000 or $20,000, and does agree that deciding to be a bootlegger is an economic decision whereas deciding to drive drunk is not.

4:39:08 PM

REPRESENTATIVE SAMUELS, in response to a question, indicated that he would be willing to raise the fines listed in proposed subsection (g)(1) to $10,000.

CHAIR RAMRAS asked Representative Samuels whether he is thinking to leave the sentences listed in proposed subsection (g)(1) as they are.

REPRESENTATIVE SAMUELS characterized raising the fines as a commercial disincentive, and bootlegging as just a business out to make money.

REPRESENTATIVE GRUENBERG sought clarification that the suggestion to increase the fines would not apply to proposed subsection (g)(1)(A) - which pertains to a first offense - but would instead start with changing proposed subsection (g)(1)(B) - which pertains to a second offense.

REPRESENTATIVE SAMUELS concurred.

MS. CARPENETI reminded members that Section 4 is only proposing mandatory minimum sentences and fines, and so the fines and sentences a judge orders could actually end up being higher. In response to a question, she said that currently the maximum fine is $10,000 for a class A misdemeanor and $50,000 for a class C felony.

4:41:09 PM

REPRESENTATIVE GRUENBERG referred to Section 4's proposed subsection (h), and suggested that the committee might wish to look at the $10,000 fine outlined on line 6. He then referred to Section 4's proposed subsections (i), (j), and (k) and asked what the difference is between subsections (i) and (j).

MS. CARPENETI said that subsection (i) defines what is meant by the term "previously convicted" with regard to subsection (g) - the misdemeanor provisions - and that subsection (j) defines what is meant by that same term with regard to subsection (h) - the felony provisions.

REPRESENTATIVE GRUENBERG asked what the consequences are for a person who is convicted of a felony for the first time but has a previous misdemeanor conviction.

MS. CARPENETI offered her understanding that one wouldn't be convicted of a felony unless he/she already has two prior misdemeanor convictions; so if one has not yet been convicted of a felony, then only the misdemeanor provisions of [subsection (g)] would apply.

REPRESENTATIVE GRUENBERG asked how Section 4's subsection (k) would work.

MS. CARPENETI said subsection (k) simply tells the court what standard to use when determining whether a third felony conviction within the 10 preceding years has a occurred; the court would look at the sentencing date of prior convictions as the conviction date.

REPRESENTATIVE GRUENBERG asked why the court shouldn't consider the date the offense occurred instead.

MS. CARPENETI explained that under common law in Alaska, the court generally - for future consequences - counts the conviction as occurring on the date of sentencing. Court decisions have held that that is the date that the judge looks

the defendant in the face and says, "You have violated our laws, now is the time to accept the consequences of it." Setting this standard out in subsection (k) will ensure that the courts understand that this is what the legislature intends.

4:46:31 PM

REPRESENTATIVE SAMUELS offered a hypothetical example in which a person throws a party at which several underage persons consume alcohol, and asked whether each instance of an underage person consuming alcohol at that party would be considered a separate offense for purposes of constituting a prior conviction.

MS. CARPENETI indicated that they would not because the person would have had to have been convicted and sentenced for a first offense prior to having committed the current offense.

CHAIR RAMRAS pointed out that that hypothetical example has no bearing on the change proposed by Sections 1 and 2 of Version L.

REPRESENTATIVE GRUENBERG referred to serial arsonists, and offered his understanding that even though they've generally set three or four fires before they're charged for a first offense, they can't be charged with a felony until after they've been previously convicted, and surmised that Section 4 is merely outlining a similar standard.

MS. CARPENETI concurred, and added, "Generally these statutes say, 'on two or more separate occasions' when you're looking at prior strikes." In response to questions about the crime of theft, she said that theft of $500 [or more] on one occasion is a felony, and that theft of $100 is a misdemeanor. In response to a question about whether a series of thefts would warrant a felony charge, she said that although it would depend on whether the DOL - under the circumstances of the particular case - could prove the behavior constituted a course of conduct, a series of thefts [for amounts under $500] would simply be misdemeanors.

REPRESENTATIVE GRUENBERG said he would not be offering an amendment addressing Sections 1 and 2 at this time, but would research the issue raised by those sections further and let members know if he develops something.

4:51:56 PM

MS. CARPENETI - referring to Section 11, which establishes the crime of criminally negligent burning in the first degree -

suggested that the words, "on two separate occasions" be added after the word, "convicted" on page 6, lines 11. Such a change would ensure that the proposed enhancement of a misdemeanor to a felony-level crime would occur for a third offense instead of a second offense.

REPRESENTATIVE GRUENBERG indicated that although such a change would not be his first choice, he recognizes that it could be helpful to those who must enforce Section 11.

REPRESENTATIVE GRUENBERG then made a motion to adopt Conceptual Amendment 1, such that the words, "on two separate occasions," be added after the word, "convicted" on page 6, lines 11. There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE SAMUELS referred to Section 4, and asked whether someone convicted of proposed AS 04.16.200 would be subject to forfeiture of the equipment used to transport bootleg alcohol.

MS. CARPENETI explained that such equipment would be subject to forfeiture under AS 04.16.220(a)(3).

4:56:23 PM

REPRESENTATIVE SAMUELS made a motion to adopt Conceptual Amendment 2, which read [original punctuation provided]:

pg 3 line 3
line 13 delete 3000,
insert 10,000

line 15 delete 4000
insert 15,000

line 18 delete 5000
insert 20,000

line 21 delete 6000
insert 25,000

line 13 delete 7000,
insert 30,000

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE SAMUELS offered his belief that if a person has been convicted of bootlegging once and has therefore already

forfeited the equipment used, already paid a minimum fine of $1,500, and already spent a minimum of three days in jail but still chooses to engage in bootlegging, it must still be worth the person's while to be bootlegging as a business.

CHAIR RAMRAS offered his understanding, though, that the maximum fine for a misdemeanor is $10,000.

MS. CARPENETI clarified that Title 12 actually allows for higher fines as long as they are specified in statute; the maximum fine is $10,000 only if no other amount is specified.

REPRESENTATIVE SAMUELS opined that if someone has previously been convicted of bootlegging [more than] four times and still chooses to engage in bootlegging, the fine "probably can't get high enough for me."

REPRESENTATIVE COGHILL asked whether Conceptual Amendment 2 would make prosecution more difficult, and, if so, whether they should instead just [decrease] the amount of alcohol that warrants only a misdemeanor charge, as opposed to increasing the fines.

CHAIR RAMRAS asked whether [Conceptual Amendment 2] would place an additional burden on the court system.

4:59:14 PM

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said he didn't know whether Conceptual Amendment 2 would make bootlegging crimes more difficult to prosecute, since issues related to prosecution fall under the purview of the DOL. and that the ACS merely imposes whatever penalty the legislature mandates. He noted, however, that under Conceptual Amendment 2, only the misdemeanor fines [proposed under subsection (g)] would be increased, whereas the felony fine [proposed under subsection (h)] would stay at $10,000; if that remains the case, then conceivably under Conceptual Amendment 2, there could be a $30,000 misdemeanor fine but only a $10,000 felony fine.

MS. CARPENETI said that Conceptual Amendment 2 shouldn't impede the DOL's prosecution of bootlegging cases, since the fine amount is not an element of the offense - it's not something that has to be proven in order to get a conviction. She added, however, that she would like to discuss this issue with the DOL's prosecutors.

CHAIR RAMRAS expressed a preference for amending Conceptual Amendment 2 such that the fines listed on page 3, lines 13, 15, 18, 21, and 24 all be raised to $10,000. He characterized a fine of $10,000 as a significant deterrent, and said he is not sure that having the fine escalate as Conceptual Amendment 2 currently proposes would be that much more of a deterrent, particularly given that the terms of imprisonment [outlined in subsection (g)] are still increasing with each subsequent conviction.

REPRESENTATIVE SAMUELS indicated that he is unsure whether a fine of only $10,000 will be sufficient to deter repeat offenders.

REPRESENTATIVE DAHLSTROM relayed that when the House Community and Regional Affairs Standing Committee heard legislation with provisions similar to Sections 3 and 4, some members from the Bush had expressed a strong desire for having the fines and periods of imprisonment for bootlegging crimes increased, as well as for having bootleggers forfeit absolutely anything and everything that they use in the commission of their crimes. She offered her belief that an increase in the fines will act as a deterrent for those who bootleg as a business.

REPRESENTATIVE COGHILL offered his understanding that even a fourth bootlegging conviction warrants a felony charge and thus he isn't sure why they should be including subparagraphs (E) and (F) in Section 4's subsection (g)(1).

MS. CARPENETI, in response to comments, acknowledged that the maximum amounts of alcohol that only warrant a misdemeanor bootlegging charge are still large amounts of alcohol. Beyond those amounts, the charge becomes a felony and there is then also the presumption that the person is intending to sell the alcohol. Furthermore, [under Section 3], a third conviction within 10 years warrants a felony charge, and subparagraphs (C)-(F) of Section 4's subsection (g)(1) addresses previous convictions that occur outside of [Section 3's] 10-year look-back period.

5:05:42 PM

MS. CARPENETI, in response to questions, said that currently bootlegging amounts of alcohol under 10.5 liters of distilled spirits, or 24 liters of wine, or 12 gallons of malt beverage warrants a class A misdemeanor charge with a maximum of one year

of imprisonment and a $10,000 fine; that bootlegging amounts of alcohol over the aforementioned limits warrants a class C felony charge with a maximum of five years of imprisonment and a $50,000 fine; that currently there are no mandatory minimum sentences or fines set out in statute; and that the bill is setting out those mandatory minimum sentences and fines.

REPRESENTATIVE DAHLSTROM offered her understanding that under Version L, particularly if Conceptual Amendment 2 is adopted, the bootlegging provisions of statute will become much stronger, something many people want to see happen. The amounts of alcohol being bootlegged is of secondary concern compared to the fact that that bootlegged alcohol is being transported into communities that have voted themselves "damp" or "dry."

CHAIR RAMRAS expressed an interest in seeing an amendment that would make bootlegging a felony sooner; that would provide for greater fines; and that would ensure that bootlegging offenses are prosecutable.

MS. CARPENETI suggested providing for a longer look-back period - perhaps a 15-year look-back as is the case with DUI crimes; this would ensure that more prior convictions are being counted towards a third conviction, which would warrant a felony charge. She said she doesn't have any philosophical objections to raising the fines, but wants to ask the DOL's prosecutors to consider that issue.

5:10:30 PM

REPRESENTATIVE SAMUELS made a motion to amend Conceptual Amendment 2 such that the fines listed on page 3, lines 13, 15, 18, 21, and 24 would all be raised to $10,000. There being no objection, Conceptual Amendment 2 was amended.

REPRESENTATIVE COGHILL withdrew his objection.

CHAIR RAMRAS announced that Conceptual Amendment 2, as amended, was adopted.

5:12:25 PM

REPRESENTATIVE COGHILL made a motion to adopt Amendment 3, to delete subparagraphs (E) and (F) from page 3, lines 21-26.

CHAIR RAMRAS objected for the purpose of discussion.

REPRESENTATIVE COGHILL asked whether Amendment 3 would allow someone to be charged with a felony sooner.

MS. CARPENETI said she doesn't think it would because there are some prior convictions that would have occurred outside of [Section 3's] proposed 10-year look-back period, [and eliminating Section 4's subparagraphs (E) and (F) would simply result in some fifth and subsequent misdemeanor convictions not being subject to the proposed escalating mandatory minimum terms of imprisonment]. Again, changing the look-back period to 15 years would gather more misdemeanor convictions that could be applied towards a third, and therefore felony, conviction.

REPRESENTATIVE COGHILL withdrew Amendment 3.

5:13:43 PM

REPRESENTATIVE COGHILL again questioned whether they should decrease the quantity of alcohol that warrants only a misdemeanor charge. He asked the DOL to consider this issue further as the bill moves through the process.

MS. CARPENETI, in response to a comment, clarified that bootlegging amounts of alcohol lower than the amounts currently outlined in statute still warrants prosecution as a class A misdemeanor.

REPRESENTATIVE COGHILL concurred, but added, "I also understand how misdemeanors get treated in so many rural areas."

MS. CARPENETI agreed to research the issue further. In response to a question, she explained that [under Section 3], bootlegging amounts of alcohol lower than the amounts currently outlined in statute is a class A misdemeanor if it is a first or second offense within 10 years.

CHAIR RAMRAS asked what the minimum amount of alcohol is that would result in a class A misdemeanor bootlegging charge.

REPRESENTATIVE COGHILL offered his understanding that very small amounts would be acceptable. His concern, he relayed, is that the behavior of bootlegging only misdemeanor-level amounts of alcohol will simply continue because misdemeanors aren't prosecuted as vigorously as felonies. He characterized the maximum amounts warranting only a misdemeanor charge as enough to supply a whole village in some cases.

MS. CARPENETI again agreed to research the issue further.

CHAIR RAMRAS expressed a preference for addressing this issue before the bill moves to its next committee of referral.

REPRESENTATIVE COGHILL, in response to comments and a question, offered his belief that lowering the maximum amounts of alcohol that warrant only a misdemeanor charge would result in more felony charges and thus more prosecutions.

CHAIR RAMRAS said he is amenable to that concept, and surmised that such a change would address the concerns of those who spoke on this issue in the House Community and Regional Affairs Standing Committee. He asked what the amounts currently listed in statute translate to in terms of commonly referenced amounts.

REPRESENTATIVE SAMUELS offered his understanding that 24 liters of wine would be two cases of wine assuming that there are 12 bottle of wine to a case; that 10.5 liters of distilled spirits would be roughly a case of distilled spirits; and that 12 gallons of malt beverage would perhaps be three-fourths of a keg but he is not sure how many cans of beer that would be. He surmised that bootleggers aren't going to be transporting kegs of beer, but will instead be transporting cans of beer.

CHAIR RAMRAS, after attempting to calculate how many cases of beer 12 gallons would result in, asked what the threshold amounts listed in statute should be changed to.

5:24:47 PM

REPRESENTATIVE COGHILL suggested changing the amounts to half of what they currently are. He surmised that the issue of enforcement also needs to be addressed.

REPRESENTATIVE COGHILL then made a motion to adopt Conceptual Amendment 4 such that [throughout proposed AS 04.16.200(e)], 10.5 liters of distilled spirits be changed to 5 liters of distilled spirits, 24 liters of wine be changed to 12 liters of wine, and 12 gallons of malt beverage be changed to 6 gallons of malt beverage.

CHAIR RAMRAS objected for the purpose of discussion. He surmised that Conceptual Amendment 4 will address the concern that misdemeanors [are sometimes not prosecuted as often as felonies].

REPRESENTATIVE COGHILL concurred.

CHAIR RAMRAS removed his objection. After ascertaining that there were no further objections, he relayed that Conceptual Amendment 4 was adopted.

5:26:53 PM

REPRESENTATIVE SAMUELS drew attention to Section 3's 10-year look-back period outlined on page 3, line 5. He asked why a period of 10 years was chosen.

MS. CARPENETI said that some look-back periods, such as for theft and furnishing alcohol to a minor, are for 5 years, and some, such as for DUI, are for 15 years. So when considering HB 323, the DOL viewed a 10-year look-back period as being good middle ground; furthermore, there are 10-year look-back periods for other crimes as well.

REPRESENTATIVE GRUENBERG added that the bill's proposed crime of criminally negligent burning in the first degree has a 10-year look-back period.

MS. CARPENETI noted that at one point in time there was no look-back period for DUI but then the legislature decided to establish a 15-year look-back period. The longer the look-back period is, she offered, the harsher it is because there is "more time to gather up your misdemeanors."

REPRESENTATIVE COGHILL said he objects to changing the look-back period because they've already increased the minimum mandatory penalties and have decreased the amounts alcohol that warrant a felony charge, and he is not sure what ramifications even just those changes will have on prosecution efforts.

REPRESENTATIVE SAMUELS asked how often the bootleg transportation of just one bottle of alcohol is prosecuted. He said he is assuming that only commercial bootlegging enterprises get prosecuted.

MS. CARPENETI said that that is her understanding as well.

MR. WOOLIVER added:

> When I look back at our prosecutions, all I see from our numbers is how many times ... the crime [was] charged, and, absent looking at the details of each

individual case, that's not something that we gather. Although these could be in conjunction with another prosecution, too - you [could get] prosecuted for assault and they find that you've got the alcohol, so that can be an add-on - so even small amounts of alcohol can become part of a prosecution even when it's not the primary underlying [crime].

5:30:58 PM

REPRESENTATIVE SAMUELS made a motion to adopt Conceptual Amendment 5, to delete "10" on page 3, line 5, and insert "15".

REPRESENTATIVE COGHILL objected. He said he is just not sure what the ramifications of such a change, in addition to the ones already made, will be.

REPRESENTATIVE GRUENBERG noted that he'd once defended a person engaged in a commercial bootlegging operation.

A roll call vote was taken. Representatives Lynn, Dahlstrom, Samuels, and Ramras voted in favor of Conceptual Amendment 5. Representatives Gruenberg and Coghill voted against it. Therefore, Conceptual Amendment 5 was adopted by a vote of 4-2.

CHAIR RAMRAS asked Representative Gruenberg whether he is satisfied with the bill's 10-year look-back provision regarding [criminally negligent burning in the first degree].

REPRESENTATIVE GRUENBERG said he is, but is somewhat concerned about [Conceptual Amendment 1's] requirement that there be two previous convictions instead of just one, because that might result in some serial arsonists not getting charged with a felony when they should be.

MS. CARPENETI said she thinks that it is a reasonable approach to make a third class A misdemeanor conviction within a 10-year period a felony.

REPRESENTATIVE GRUENBERG indicated that he is now satisfied with that provision as well.

5:34:50 PM

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 323, Version 25-GH2038\L, Luckhaupt, 4/6/08, as amended, out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSHB 323(JUD) was reported from the House Judiciary Standing Committee.

CHAIR RAMRAS [made a motion to adopt] the letter of intent dated April 6, 2008. There being no objection, the letter of intent was adopted.

[CSHB 323(JUD) was reported from committee.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:36 p.m.