

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 5, 2018

1:30 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold
Representative Louise Stutes (alternate)

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Charisse Millett (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 312

"An Act relating to arrest without a warrant for assault in the fourth degree at a health care facility; and relating to an aggravating factor at sentencing for a felony offense against a medical professional at a health care facility."

- HEARD & HELD

HOUSE BILL NO. 129

"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 312

SHORT TITLE: CRIMES AGAINST MEDICAL PROFESSIONALS

SPONSOR(s): REPRESENTATIVE(s) CLAMAN

01/26/18 (H) READ THE FIRST TIME - REFERRALS
01/26/18 (H) JUD
02/05/18 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 129

SHORT TITLE: FISH & GAME: OFFENSES;LICENSES;PENALTIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/15/17 (H) READ THE FIRST TIME - REFERRALS
02/15/17 (H) RES, JUD
03/29/17 (H) RES AT 1:00 PM BARNES 124
03/29/17 (H) Heard & Held
03/29/17 (H) MINUTE(RES)
03/31/17 (H) RES AT 1:00 PM CAPITOL 106
03/31/17 (H) Scheduled but Not Heard
04/03/17 (H) RES AT 1:00 PM BARNES 124
04/03/17 (H) Heard & Held
04/03/17 (H) MINUTE(RES)
04/05/17 (H) RES AT 1:00 PM BARNES 124
04/05/17 (H) Moved CSHB 129(RES) Out of Committee
04/05/17 (H) MINUTE(RES)
04/07/17 (H) RES RPT CS(RES) 6DP 3NR
04/07/17 (H) DP: BIRCH, PARISH, WESTLAKE, DRUMMOND,
TARR, JOSEPHSON
04/07/17 (H) NR: TALERICO, JOHNSON, RAUSCHER
01/29/18 (H) JUD AT 1:30 PM GRUENBERG 120
01/29/18 (H) Heard & Held
01/29/18 (H) MINUTE(JUD)
01/31/18 (H) JUD AT 1:30 PM GRUENBERG 120
01/31/18 (H) -- MEETING CANCELED --
02/05/18 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 321, presented the sectional analysis.

ANNE ZINC, Emergency Medicine Physician
Matanuska-Susitna Regional Hospital
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 132 offered support for the legislation.

JULIE TAYLOR, CEO
Alaska Regional Hospital
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, offered support for the legislation.

BECKY HULTBERG, President/CEO
Alaska State Hospital and Nursing Home Association
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

CHUCK BILL, CEO
Bartlett Regional Hospital
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

JOAN CLOOTIER, RN
Alaska Native Hospital Emergency Room
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

REGENA DECK, RN
Emergency Room
Bartlett Regional Hospital
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

HAROLD SUNKEL, RN
Emergency Nurses Association
Alaska Native Medical Center
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

AUDREY BUMA, RN
Bartlett Regional Hospital
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

AMBER MICHAEL

Alaska Nurses Association
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

WENDY SHACKELFORD
Eagle River, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

KATIE BALDWIN-JOHNSON, Senior Program Officer
Alaska Mental Trust Health Authority
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified.

SARA MARTIN, Nursing Director
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

JENNIFER MOORE, Chief Quality Officer
Mat-su Regional Medical Center
Palmer, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

MATT HALL, Chief Human Resources Officer
Bristol Bay Area Health Corporation
Dillingham, Alaska

POSITION STATEMENT: During the hearing of HB 312, testified in support of the legislation.

DAVID SCORDINO, MD
Alaska Regional Hospital
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 321, testified in support of the legislation.

DAN LOWDEN, Captain
Alaska State Troopers
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 312, answered questions.

RANDALL BURNS, Director
Division of Behavioral Health
Department of Health and Social Services (DHSS)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 321, answered questions.

NANCY MEADE, General Counsel

Alaska Court System

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 129, testified and answered questions.

AARON PETERSON, Assistant Attorney General

Office of Special Prosecutions

Department of Law (DOL)

POSITION STATEMENT: Anchorage, Alaska. During the hearing of CSHB 129, answered questions.

ACTION NARRATIVE

[1:30:57 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:30 p.m. Representatives Claman, Kopp, LeDoux, Stutes (alternate for Representative Fansler), and Reinbold were present at the call to order. Representatives Kreiss-Tomkins and Eastman arrived as the meeting was in progress.

HB 312-CRIMES AGAINST MEDICAL PROFESSIONALS

[1:31:26 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 312, "An Act relating to arrest without a warrant for assault in the fourth degree at a health care facility; and relating to an aggravating factor at sentencing for a felony offense against a medical professional at a health care facility."

[1:32:15 PM](#)

REPRESENTATIVE KOPP noted that it had been a privilege to work with Chair Claman on this legislation over the interim. The background, he related, is that over the last ten years, nationally and statewide, there has been a rising tide of workplace violence occurring at health care facilities. He related that throughout his years in law enforcement he escorted

a number of people to emergency rooms, stayed with them while they were being treated, and once they were stable, he escorted them to whatever facility they were going to next. It is interesting, he commented, how things have changed both in the health care environment and in public safety, with a primary drivers being the sheer numbers of people showing up in emergency rooms with severe behavioral health, alcohol, and substance abuse issues, that contribute to violent behavior. In the event an assault occurs on a fire fighter or a police officer outside of the emergency room doors, the charge is assault. Although, somehow after entering the emergency room, the culture has become that "you get a free pass on the health care worker." He explained that currently, misdemeanor assault has an exception for obtaining an arrest warrant only for domestic violence. Therefore, on a domestic violence misdemeanor level of an assault, an officer can make an arrest if they determine who was the principal aggressor and they can also consider other factors in making that determination. Except, he pointed out, in the event it is a misdemeanor level assault in an environment, such as a health care facility or an emergency room, an arrest warrant is required unless the health care provider is willing to place the person under arrest for assault and sign an affidavit as to everything that occurred. Consequently, he said, it is difficult for that arrest to take place.

[1:34:41 PM](#)

REPRESENTATIVE KOPP advised that this piece of legislation looks at the health care facility as an environment the legislature must protect and keep safe because the state considers keeping people safe in a home to be a sacred duty. This bill recognizes that health care facilities also rise to that level of a sacred place wherein the patients who are already admitted, the people that work there, and the people coming in, need to know that they are in a safe place. In the event violence occurs and the police are summoned, at their discretion, they can make an arrest if probable cause is present to charge a person for an assault that occurred in the health care work environment. Further, he advised, if the assault is at a felony level of assault where serious physical injury had occurred, this bill allows that it is an aggravator at sentencing if the assault occurred on a medical health professional during the course of their duties, and that the person knowingly carried out the assault for that purpose. In summary, he explained, this bill addresses a real need to protect workers in their workplace, and that Alaska's health care facilities, above all facilities,

represents health care providers and honors them in the same manner in which the legislature would any other person because "there is no free pass for assaults in a workplace." This legislation balances the need for accountability with the need for patient protection by requiring that "the health care professional state that they are stable for discharge before they go out the door."

[1:36:47 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, paraphrased the sectional analysis as follows:

Section 1

AS 12.25.030(b) - Grounds for arrest by private person or peace officer without a warrant.

Establishes that a peace officer may arrest a person without a warrant when the peace officer has probable cause for believing that the person has committed an assault in the fourth degree at a health care facility and the person was not seeking medical treatment at the facility or was stable for discharge.

The term "stable for discharge" comes from the federal Emergency Medical Treatment and Labor Act, also known as EMTALA. EMTALA requires anyone coming to an emergency department be stabilized and treated, regardless of their insurance status or ability to pay. The federal government has published guidelines that describes the responsibilities of hospitals in emergency cases.

The guidelines provide: "a patient is considered stable for discharge...when, within reasonable clinical confidence, it is determined that the patient has reached the point where his/her continued care, including diagnostic work-up and/or treatment, could be reasonably performed as an outpatient or later as an inpatient, provided the patient is given a plan for appropriate follow-up care with the discharge instructions." In addition, "... 'Stable for discharge' does not require the final resolution of the emergency medical condition."

Section 2

AS 12.25.030 - Grounds for arrest by private person or peace officer without a warrant.

Establishes that the definition for "health care facility" has the meaning given in AS 18.07.111.

Section 3

AS 12.55.155(c) - Factors in aggravation and mitigation.

Adds an aggravator to Alaska's felony assault statute when a defendant committed the offense at a health care facility and knowingly directed the conduct constituting the offense at a medical professional during or because of the medical professional's exercise of professional duties.

Section 4

Uncodified law

This section contains applicability provisions.

[1:39:56 PM](#)

REPRESENTATIVE LEDOUX stated that she likes the idea of the bill but was unsure about the exception here and noted that if someone was dying of a heart attack, it probably would not be a good idea to arrest the person at that time. There is the exception that if that is going to cause death or severe bodily damage, to rather not have those exceptions.

MS. KUBITZ explained that in creating those two separate incidents of the person not seeking medical treatment or the person who was stable for discharge, it attempts to capture anyone who comes into that facility, whether a patient or a family member of a patient. She advised that they worked closely with Legislative Legal and Research Services to create as much clarification as possible.

[1:41:30 PM](#)

REPRESENTATIVE LEDOUX advised that she was not following Ms. Kubitz' explanation.

REPRESENTATIVE KOPP explained that many of the assaults that occur in a health care facility are "visitors on health care givers." In other words, the person may be accompanying a

family member or a spouse, and situations can be volatile for a variety of reasons, such as a lack of understanding as to why a health care procedure was given or there was an unmet expectation. He related that violence can and does occur, and he referred to letters contained in the committee packet, as follows: Jim Lynch, CEO of Fairbanks Memorial which advised that just this last year it had over 100 assaults on its own staff; and there was a letter from Julie Taylor, Anchorage Regional Hospital. He expressed that [the problem] is not just the patients who come into the hospital, it can also be the person that accompanies them.

[1:42:36 PM](#)

REPRESENTATIVE LEDOUX agreed that Representative Kopp was correct in that it is not just the patients going into the hospital. Except, to the extent it is a patient, why would the sponsor not let the patient be arrested as long as the arrest would not cause death or severe bodily injury.

CHAIR CLAMAN explained that concerns were raised, and he used the example of someone suffering from an unstitched bleeding leg wound that continued to bleed, thereby, causing a risk to that person's health. In this scenario, the arresting police officer who started transporting the person to jail is now put in an untenable position because the jail would say that it could not sew up the wound and the offender needs to go to the emergency room. Yet, the police officer is left there saying that they just left the emergency room. Therefore, the reason for definition, "stable for discharge" essentially relates to the patients and the police officer would wait to arrest the person until after the doctor in the emergency room advised that the person was stable for discharge, stable enough to take to the jail. He explained that law enforcement does not want to be in a place in which the health care professionals release an unstable for discharge person to a police officer, and the police officer is left asking, "What do I do now?"

[1:44:12 PM](#)

REPRESENTATIVE EASTMAN asked what establishes whether someone is seeking medical treatment at the facility. He related that sometimes paramedics find people who do want medical treatment but are compelled into treatment for their own good and asked whether that person was seeking medical treatment at a facility. On the other hand, he related that someone decides to slug a

doctor and has a bruised hand, and says, "help my hand," whether that person was seeking medical treatment.

MS. KUBITZ answered that she was unsure it mattered either way simply because the legislation does capture everyone. In the event a doctor presumes a person was seeking medical treatment and it was the reason they came to the hospital, then the person falls under the "stable for discharge" language. In the event the doctor assumed the person was not seeking medical treatment and was accompanying someone with a wound, the person could fall under the first category of not seeking medical treatment. She reiterated that she was unsure that specification really mattered in that she would hope the health care professionals would realize who was, and was not, a patient and who needed care.

[1:45:41 PM](#)

CHAIR CLAMAN opened public testimony on HB 312.

[1:46:05 PM](#)

ANNE ZINC, Emergency Medicine Physician, Matanuska-Susitna Regional Hospital, advised that she is the past president of the Alaska College of Emergency Medicine Physicians. She noted that as an emergency medical provider, this bill reads "cleanly and we're doing this on a regular basis every single day" when deciding whether someone is stable for discharge, stable for jail, stable for transport, and it fits in nicely with (audio difficulties) and will be easy to follow through in practice. She related that she hopes HB 312 passes quickly and cleanly, and as mentioned previously there has been "a huge increase" in patients being served with behavioral health needs. During the last three years, at the Matanuska-Susitna Regional Hospital, there has been a four-fold increase, and oftentimes the patients are held anywhere from two days to ten days in its emergency department. These patients are oftentimes medically clear, but the hospital is awaiting some sort of behavioral health evaluation, and many of these patients will act out violently because they are in an unpredictable and chaotic environment for a long period of time. Unfortunately, she pointed out, in the emergency department it has become the norm to be threatened or attacked and many physicians or nurses have been threatened or personally attacked. She stated that it makes it hard to care for other patients when "I received a black eye in the emergency department and was held up against the wall while trying to care for a six-month old who was really struggling to breathe." She

related that being able to get these patients to a safer, calmer place outside of the emergency departments allows the staff to care for all of the other patients in the emergency department who need them at that time. She expressed hope that this bill is passed quickly and cleanly, not only for the benefit of health care workers and the other patients, but that it will benefit the violent patients because they are often stuck in a chaotic uncontrolled environment and they do better in a more controlled environment, such as jail while waiting for psychiatric treatment.

[1:48:07 PM](#)

JULIE TAYLOR, CEO, Alaska Regional Hospital, advised that she has been a nurse over 30 years, and has seen the evolution of what is being dealt with today, including the spike in the last couple of years, because she has had a front row seat. She offered concern that people may not want to be in the nursing profession any longer due to the nurses feeling unprotected, wherein, it is typical for nurses to be kicked and spit at with no consequences. She pointed out that when there is really no follow-up to the issues she had identified when asking for support, the nurses are getting used to it and becoming numb, which is "really a problem." There were 80 separate events in a short time just last year, she advised, and those events continue to escalate because there are not strong enough consequences or clear lines as to how these patients need to be managed. Without question, she pointed out, nurses are compassionate, and they want people to receive the health care they require and become stable to be discharged. She expressed that Dr. Anne Zinc "nailed it on the head" because when people are held for a long period of time when simply waiting for placement, they act out. She said she has had patients threaten her nurses by stating, "I'll figure out where you live," so my nurses have only their first names on their name badges because they are afraid to have their full name listed, but they are concerned about their first name being listed also. The milieu is not good for anyone and there must be a way to send a message stating that, "the health care environment needs to be protected." In response to Representative LeDoux's comment, she said, "To me, these are people that are putting themselves out there (audio difficulties) health care workers and supporting the community." She related that the state needs to have a high bar in keeping health care workers safe because if a staff member is distracted, another patient is not receiving the attention they deserve. She said that she echoes everything Dr.

Zinc testified to and added that this legislation is for the health and welfare of everyone.

[1:50:49 PM](#)

BECKY HULTBERG, President/CEO, Alaska State Hospital and Nursing Home Association, advised that she represents the Alaska State Hospital and Nursing Home Association and offered its strong support for HB 312. This legislation gives law enforcement "and the judicials" new tools to address workplace violence in health care facilities. As Representative Kopp noted, hospitals are sacred places to help people at some of their most joyful and most difficult times in their lives, and they should be safe places where people can receive help in an emergency. She related that hospitals are also a reflection of the community at large, and unfortunately due to a variety of factors, Alaska has seen workplace violence escalate in hospital settings. Health care staff report that they feel unsafe in the workplace because far too often they are kicked, punched, spit on, or verbally threatened. Violence should not be an acceptable workplace hazard, she said, except, for many nurses and physicians, CNAs, and other caregivers, this has become the new norm. As employers, hospitals have a responsibility to address any workplace violence, and she said she wanted to assure the committee that "we are doing our part" and working to ensure there are plans in place to prevent, identify, and de-escalate violence before it gets to the point where law enforcement becomes involved. She advised that, "We're sharing best practices" on preventing and responding to violence, but when law enforcement is called, usually the situation is serious and sometimes the individual must be arrested and removed from the facility. She commented that there is an attitude that violence is just part of the job in health care, and she opined that that is one of the things "we are working to address" through this legislation. Hospitals simply cannot bear the burden of violence much longer, "we are doing our part, but we need help. Our caregivers need help." While there are many things that can be done as hospitals in addressing workplace violence, health care workers need the support and engagement of the legislature and the criminal justice system, as well. She said she wanted to reassure the committee that hospitals address violence daily, and they understand the needs of vulnerable patients with behavioral health or substance abuse issues. The intent of this legislation is not to penalize those who need those treatment services. In fact, she advised, it was carefully designed not to do that, but it is intended to give law enforcement and the judicial system new tools to help address the epidemic of

workplace violence in Alaska's hospitals. She urged quick consideration and passage of this bill as written.

[1:53:27 PM](#)

REPRESENTATIVE REINBOLD commented that "it says only fourth degree here," and asked whether there was a reason it was limited to fourth degree and whether to expand the definition.

CHAIR CLAMAN advised that a person can be arrested for a felony without a warrant, so there is no need to change it for a felony assault because law enforcement already has that authority.

[1:53:56 PM](#)

REPRESENTATIVE REINBOLD surmised that the committee needs to keep the definition limited to what it is in the bill.

CHAIR CLAMAN advised that the only issue for law enforcement was fourth degree assault, it does not have issue with first, second, and third-degree assaults.

[1:54:20 PM](#)

CHUCK BILL, CEO, Bartlett Regional Hospital, advised that Bartlett Regional Hospital provides health care services to the residents of Juneau, visitors to Juneau, and the surrounding communities. He acknowledged that Bartlett Regional Hospital has seen almost the exact same increase in violence in its facility as was heard from the Fairbanks and the Matanuska-Susitna hospitals. Weekly, he said, the staff is punched, kicked, spit on, and that is not okay. The most dramatic incident, he stressed, was when a patient removed their IV tubing and tried to strangle one of his nurses. This is an important bill and he encouraged the committee to move it forward, while emphasizing that the hospital believes this legislation is only a part of the solution to the ongoing problem. Bartlett Regional Hospital implemented a number of programs to really start doing what it can to reduce those issues. Most importantly, he related is the training for all staff members, which includes: escalation; how to avoid dangerous situations; and so forth. In addition, he advised, Bartlett Regional Hospital implemented a software system, that has been implemented in the emergency departments throughout the state, that flags patients and sends the hospital a heads up when there is a patient with a prior history, so the hospital can be prepared. This year, he remarked, the hospital

introduced "duress buttons" wherein the staff in its emergency room and mental health facility can push a button if they feel they are in a threatened position, and that button will send help from all over the organization. Finally, he said, this year the hospital doubled its security force, which is not something it did lightly because obviously, it takes away from its ability to hire nurses and other staff. Except, he said, it was an important commitment for the hospital to make for the safety of its workers.

[1:56:29 PM](#)

REPRESENTATIVE REINBOLD referred to the increase in incidents and asked whether he had an inkling as to why the increase.

MR. BILL opined that, partially it is the pervasiveness of the meth problem, and partially it is in response to the changes in the law that made it harder to "put people in" for misdemeanors. While the timing is suspicious, he commented, he could not say that for a fact, but he was pretty comfortable that issue had input into the problem.

[1:57:19 PM](#)

JOAN CLOOTIER, RN, Alaska Native Hospital Emergency Room, advised that she was assaulted last September by a patient, she was punched twice in the face, kicked up against a wall, repeatedly kicked until security and a behavioral health person came to her aide. It was actually a patient that dragged her free after suffering multiple injuries, bruises, loss of a tooth and, she pointed out, this is "just one of these things that just seems to be increasing rampantly, nationwide assault against health care workers and nurses in particular." The emergency room is a hotbed, she described, because people are seen at their worst in all phases of strife and stress, and "we are" certainly one of the first people to get nailed when it comes to assaults. She opined that one of the big cause for assaults is that people are not held accountable for their actions. Speaking as an emergency room nurse of 27-years, she advised the committee that this was probably the 12th or 15th time she had been assaulted as a health care worker. Assaults on health care workers are horribly on the rise and she noted that she has been assaulted twice in the last six months. Clearly, drugs and alcohol are increasing but, she stressed, the lack of accountability has also increased in this country and people are not receiving consequences for their actions. Be that as it may, she said, the person who assaulted her last fall

served 90-days, "she tried to get out going through the mental health part of it." Ms. Cloutier related that she was persistent because it required her being persistent, while unfortunately, not all of her co-workers are persistent. Something must be done to stop the assaults against the nurses, she expressed.

[1:59:37 PM](#)

REPRESENTATIVE REINBOLD asked whether 90 days was enough time to serve for what the offender did to her.

MS. CLOOTIER responded that she absolutely did not believe [that was justice] because she is still recovering from the attack and has to pay \$1,000 out of her own pocket to have a tooth replaced.

REPRESENTATIVE KREISS-TOMKINS advised Ms. Cloutier that the Victims' Crime Compensation Board might be something to look into in terms of the \$1,000 tooth replacement.

[2:00:43 PM](#)

REGENA DECK, RN, Emergency Room, Bartlett Regional Hospital, offered testimony as follows:

I've lived in Juneau for three years and have worked on the East Coast in a variety of emergency room situations, including inner city. And, I've not seen the amount of violence that we have here in Alaska against health care professionals. In Pennsylvania, one of the emergency rooms that I have worked in, it is already a felony assault, there is no question about it, and when you say, "What's the difference?" I look at my co-workers and we have conversations on a daily basis, whether it is the security guard, whether it's a fellow nurse, we come out of a room and we say, "Wow, that person really scared me, they threatened to kill me, they know my cousin, they know where I live." And, those are the kinds of things that if this was raised to a felony, it would take that piece of us having to enforce it ourselves out of it. As people who are kind and caring, it is our job to try to heal and figure out, 'why was he angry with me.' We're almost in an abusive life situation, where instead of saying, 'Wow, I just got punched in the face, we look at it as 'what did I do, what did he really need from

me?' And, it is unacceptable. I was a victim, I moved to Juneau and three months after, I was strangled in the emergency department ... I feel that I've ... that gentleman has since been prosecuted, but not after a lot of work on our behalf. That gentleman is now serving three years in prison, but much of the trial process was him trying to get the three felony counts in addition to his misdemeanor (audio difficulties) to a misdemeanor. His people, speaking on his behalf, including mental health professionals, said 'Well, ER nurses have to expect it, it's your job, it's what you do.' To which I say, 'I doubt it, I definitely won't say to my family, Hey, I need to go to work as a nurse today, I hope I don't die.' That's not what I do for work. In Juneau, we see more and more of a prevalence, not only of drug addiction, homelessness, things that drive people to desperation, but also a disregard for the repercussions. We have people that come in with knives and guns on them, and anecdotally, they just say, 'Oh yeah, I guess you want to hold this while I go to x-ray.' As a nurse, that's unnerving. I get you might be a hunter, you might be qualified to carry that, but I work in an environment where not only am I now being strangled by my own equipment and being left with the ramifications of that, as have my fellow staff and my husband. But, now I have to worry that every patient is out to get me and that is not the kind of care I give. I also happen to be a professor who is teaching the next group of nursing students here in Juneau, and it's a fine road to hoe to take away the fantasy of, I'm going to go forth and help people and make them better. But, I have to be worried that they don't kill me first. So, I'm hoping that this bill ... in this gentleman's case, he had been reported to the police and reported to security on numerous occasions before this happened. And that anecdotal information didn't come out until after my event. So, had it been a felony, he wouldn't have had the opportunity to have 37 crimes listed on his rap sheet before strangling me.

[2:04:17 PM](#)

[CHAIR CLAMAN and Representative Reinbold discussed criminal justice reform.]

REPRESENTATIVE REINBOLD asked whether Ms. Deck believes that three years was justice for the event, that includes all of the time and energy she has had to put in on it and the trauma on her life.

[2:05:25 PM](#)

MS. DECK responded as follows:

The reality was, or my misunderstanding watching too much t.v. was, he was given his sentence and then walked out. He walked out of the courtroom and was going to be free on appeal. He went back into prison only by his own choice because he didn't have any place else to live. So, he chose to go back into prison, but after having been convicted, after being in court with his family, who can now identify me and made a point of staring at me in the courtroom, he then was let walk. And, that's the part for me that was the most scary. Three years ... I don't have a number that will make it go away, it'll be a lifetime for myself and the follow workers who were there. As well as my husband who has to deal with the idea that he can't protect his wife while she's at work. And, of course, I think somebody mentioned that our inclination is then to say, 'Don't work there.' Okay, well, I'm sure that many of you having an emergency or a trauma would be appreciative of nurses with experience, but I think we're scaring them out the door. So, I don't know how much would have been enough, but three years doesn't seem enough.

[2:06:30 PM](#)

REPRESENTATIVE KOPP referred to the person who strangled her and asked what charge the person received.

MS. DECK remarked that originally, he had four charges. He was charged with a class A misdemeanor for negligent injury with a weapon; and he was also then charged with class C felony for the cause of fear, cause of death, and attempt to harm with a dangerous weapon.

[2:07:22 PM](#)

HAROLD SUNKEL, RN, Emergency Nurses Association, Alaska Native Medical Center, [audio difficulties throughout Mr. Sunkel's

testimony.] described an attack he suffered when a lady came into the hospital crying from abdominal pain. (Audio difficulties) already verbally abusing, was uncooperative, and would not let anyone take her vitals while yelling profanities at the staff. She was given a private room, so the staff could close the door and not disturb anyone else. The woman called out slurs toward the staff, so Mr. Sunken took over her care. After several attempts to calm her down, she called him "the N-word" with homosexual slurs. (Audio difficulties.) After refusing to accept medication she began yelling that the staff was not helping her. After several requests for the woman to take her medication, he closed the door and walked out. The woman came out of the room and spit in his face, he was shocked and put his hand over his head (audio difficulties) and she hit the back of his head twice. As he was taunted, he then put her hand behind her, pushed her up against the wall, and pushed her face so she could not continue spitting at him of which she was attempting, and finally he received help. He said that security put her in a room to watch her, the police were called, and his shift ended four hours later. The police officer told him that his hands were tied because there was no visible bruising, and no charges were pressed (audio difficulties). The woman's consequence was a ride home from the police officer, and her defense was that Mr. Sunkel hit her and slapped her, even though he never laid a hand on her except to keep himself safe. He stressed that these people have no consequences, and when the staff tells them they will be arrested, they laugh in the staffs' face.

[2:10:20 PM](#)

AUDREY BUMA, RN, Bartlett Regional Hospital Emergency Room, advised she has been a nurse for 12-years and that not even once in nursing school did they teach the nursing students how to defend themselves. She advised that during the last 4.5 years at Bartlett Regional Hospital "we have been assaulted verbally," physically assaulted, kicked at, spit at, things thrown at the staff, and oxygen tanks have become weapons. Whereas now, the staff has to take most things out of a lot of the rooms just to be safe. These offenders know there are no consequences and it happens daily for most people, especially the verbal abuse and, it is okay. She related that she believes this legislation will help protect staff a little bit because there has to be consequences for their actions. Nurses did not go into the profession of nursing to be abused, she pointed out, and it is difficult to go to work knowing something could happen. She referred to Regina Deck's testimony wherein it took two years of

a terrible trial to go through to then see some consequences, yet this person would still come back on a weekly basis, which is difficult. She asked the committee to please pass this bill to help the health care workers.

[2:11:46 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Ms. Buma to describe the verbally abusive people being treated at Bartlett Regional Hospital, and what injuries or conditions they have when coming through the emergency room door.

MS. BUMA answered that most of the people come in due to being intoxicated with drugs, sometimes they may be hurt, but a lot of the time they were taken to the hospital for medical clearance before going to "sleep off," or to jail. Some of the people are hurt, some of the people come to the emergency room for help, but many times drugs and alcohol are involved.

[2:12:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the majority of the people that go to the hospital due to drugs and alcohol and asked whether there would be an active medical danger at hand if the person was not at an emergency room, such that they may die or suffer some type of injury.

MS. BUMA remarked that she was sure if the person was too intoxicated that "they worry" about them, or with drugs. The hospital has to be able to clear these people and sometimes it is hard to even access them because they get mad if a nurse wakes them up from sleeping; or if they are not getting the pain medicine they requested; or is making them leave when they have been discharged.

[2:13:15 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that he understands that the people who are heavily intoxicated should go to the emergency room, especially if other issues may arise. In the event the emergency room was being used as a place for people to sleep off a high or sleep off being incredibly drunk, that appears to be a misuse of the facility. He asked Ms. Buma to speak to the people she encounters who are verbally abusive, and whether there would be any medical harm if they were to go someplace else that was more secure with appropriately trained people.

MS. BUMA remarked that that is a hard question to answer.

[2:14:07 PM](#)

REPRESENTATIVE REINBOLD asked whether Ms. Buma had seen an increase [in workplace abuse] or whether it has been steady over the last 4.5 years.

MS. BUMA replied that it has probably increased over the last 4.5 years, and that she came from Washington and Colorado where it was a felony for assaulting a health care worker. She opined that that made a difference because people knew that health care workers could warn them that if they assaulted a health care worker something would happen, and people would "sort of" back down. She estimated that over the last two years there has been an increase in health care worker assaults.

[2:15:25 PM](#)

AMBER MICHAEL, Alaska Nurses Association, [audio difficulties throughout Ms. Michael's testimony.] (audio difficulties) in support of HB 312. (Audio difficulties) on health care workers a very real and troubling (audio difficulties) all areas of the hospital, not just the emergency department. This includes: (audio difficulties) progressive care, medical/surgical units, and ICUs. On a daily basis workers experience violence in all forms, including: spitting; hitting; kicking; pushing; verbal abuse; and in some circumstances gun violence. All (audio difficulties). The lack of (audio difficulties) situations is unacceptable. A police officer should be equipped with the legal authority to arrest someone who is a threat to those around them and remove them from the premises. The danger (audio difficulties) when an altercation occurs in a health care facility anyone present is in harm's way. Health care facilities, for example, (Audio difficulties) increased anger and even great joy. (Audio difficulties) and that is not including those who are intoxicated. Nurses, doctors, medical assistants, and other personnel can easily become targets of violence in these situations. (Audio difficulties) having to protect ourselves under (audio difficulties) care. The added (audio difficulties) health care worker (audio difficulties) and the hope that it is (audio difficulties) in health care facilities. She strongly urged the committee to support this legislation.

[2:17:25 PM](#)

WENDY SHACKELFORD, [Audio difficulties throughout Ms. Shackelford's testimony.] offered her belief that health care workers who want a job should absolutely be protected from physical injury while on the job, and abuse is never respectable behavior from patients or their visitors. This is also to avoid (audio difficulties) clients with behavioral health or trauma driven behavior. This state has worked hard to decriminalize the institutionalized (audio difficulties) criminal justice costs. She suggested that the resources may be better spent in beefing up community based behavioral health services so people have quicker access. She then offered examples (audio difficulties) actual data regarding physical arrests, physically removing the person from the hospital property to the Department of Corrections for assault in the fourth degree on health care workers. She asked the actual data regarding summons arrests, for example, the person left on the property and issued a court date is actually an arrest for assault in the fourth degree on health care workers. She opined that police agencies also have policies and procedures that may dictate whether they issue a summons or make a physical arrest based on bail schedules set by courts and circumstances (audio difficulties) boundaries, not necessarily whether someone wants to press charges. She encouraged the legislature to involve law enforcement (audio difficulties) they may also all be actual data in this area. She offered concern that there is not enough information to implement new legislation and encouraged the cultivation of actual data (audio difficulties) that still keeps health care workers safe.

[2:20:20 PM](#)

KATIE BALDWIN-JOHNSON, Senior Program Officer, Alaska Mental Trust Health Authority, advised that the Alaska Mental Trust Health Authority is in place to advocate on behalf of trust beneficiaries, and prioritize policy practices and funding toward strategies that help improve the lives of beneficiaries. She explained that beneficiaries include individuals with mental illness, chronic alcoholism, substance abuse, intellectual and developmental disabilities, Alzheimer's disease and related dementias, and traumatic brain injury. She advised that her comments are specifically focused on the impact on mental health trust beneficiaries, and that the trust recognizes there are legitimate concerns about hospital workplace violence, and the safety of health care providers and patients seeking care, requiring the implementation of a number of targeted solutions. She advised that the trust has made long-term investments in the

areas of disability, justice, and criminal justice reform with the focus on finding solutions with the fact that mental health trust beneficiaries are over-represented in the criminal justice system. Approximately 40 percent of incarcerations annually are beneficiaries and their stays at both pre-trial and sentencing are longer than non-trust beneficiaries. She described that trust beneficiaries languish in correctional care for a variety reasons, one reason is that some beneficiaries are higher utilizers of emergency services and it is difficult to find adequate solutions in the current system of (audio difficulties) treat their needs. The trust is concerned that the unintended consequences of this legislation will result in additional trust beneficiaries being incarcerated, she said. Much of what the trust focuses on is targeted toward preventing the following: identification of community-based solutions that better serve and prevent the incarceration of trust beneficiaries; enhancing access to necessary substance abuse and mental health treatment services; supporting opportunities for training and practices for providers to work effectively with complex behaviors; investing in housing solutions; employment opportunities; and together with the trust's partners, it addresses the gaps in the community continuum of care that shifts reliance on hospital settings and unnecessary incarceration, she explained. The trust would support, and is interested in, seeing some of the data hospitals are collecting and its analysis of the data, thereby, assisting the trust in understanding how beneficiaries inter-relate with the incidents that are taking place because the trust and its partners can help to be part of that solution.

[2:23:00 PM](#)

REPRESENTATIVE REINBOLD asked whether Ms. Baldwin-Johnson was opposed to this bill.

MS. BALDWIN-JOHNSON responded that the Alaska Mental Trust Health Authority was neutral, but it would be difficult to say that the trust supports this legislation without knowing more about its impact on its mental health trust beneficiaries.

[2:23:27 PM](#)

REPRESENTATIVE REINBOLD asked whether Alaskans with mental illness, substance abuse, Alzheimer's disease, traumatic brain injury are all beneficiaries of the trust.

MS. BALDWIN-JOHNSON responded that it depends upon their level of functionality because the trust is in place to prevent

beneficiaries from being incarcerated or placed in higher levels of institutional care. In the event an individual had a history of drug or alcohol use and was able to function independently in the community, that individual would not necessarily be deemed a beneficiary, she said.

[2:24:04 PM](#)

REPRESENTATIVE REINBOLD requested the percentage level of functionality.

CHAIR CLAMAN asked whether Ms. Baldwin-Johnson could offer statistics as to who is eligible and what kind of population is being served.

REPRESENTATIVE REINBOLD interjected that "functionality is what she said it was stated on." She then asked whether it would be better, "rather than having these people running all over the place with temptations and alcohol, and everything," to have them in a confined setting, such as a prison or a treatment program where their treatments would be more successful. It would seem, she opined, that Ms. Baldwin-Johnson would support treatment inside certain facilities.

MS. BALDWIN-JOHNSON referred to the functionality question and responded that it would be a description of an individual's ability to live independently and successfully in a community, and she said she would provide the committee with more information. Ms. Baldwin-Johnson then referred to the confinement question and answered that the department would "absolutely be an advocate of expanded treatment" in services both within correction settings and certainly community-based settings. The need there, she explained, is that individuals need access to their correct treatments in settings that are appropriate for their needs.

[2:25:50 PM](#)

REPRESENTATIVE STUTES surmised that the Mental Health Trust Fund does not directly help these individuals, but rather it works through the other agencies that help these individuals.

MS. BALDWIN-JOHNSON replied that the Mental Health Trust Fund funds through a variety of avenues, and it supports some funding to state agencies to implement mental health focus services to enhance those opportunities to better serve its beneficiaries. The Mental Health Trust Fund also has authority to grant funding

to community organizations that are working directly with its trust beneficiaries. The trust does have individual grants it can directly impact its beneficiaries to help them move more independently in the community, she offered.

REPRESENTATIVE STUTES asked whether Ms. Baldwin-Johnson was saying that the trust directly supports individuals if the parameters are appropriate.

MS. BALDWIN-JOHNSON responded that the trust has a mini-grants program that is appropriate for individuals with behavioral health issues. In the event an organization applies on behalf of that individual for a "specific thing" to support that individual in living independently, or help to improve their quality of life, the trust can fund an individual's beneficiary grants, she explained. Although, she added, the funds go through an organization and not directly to an individual.

[2:27:37 PM](#)

REPRESENTATIVE STUTES surmised that all of the trust's grants and dollars it expends are through a third-party, one way or another.

MS. BALDWIN-JOHNSON answered in the affirmative.

[2:27:55 PM](#)

SARA MARTIN, Nursing Director, Fairbanks Memorial Hospital, advised that she is the nursing director in the emergency room and the intensive care unit at Fairbanks Memorial Hospital. As had been previously testified, she agreed that there has been "a very, very sharp increase" in patient violence and acts against health care workers in the last two years.

She pointed out that the Fairbanks Memorial Hospital is there to help provide better support for its staff and increase their feelings of security and recognizing that these things are happening to them in their workplace. She advised that the Fairbanks Memorial Hospital has put into place many different additional steps in trying to keep its staff safe because the administration recognizes that this legislation is not the only answer to everything the staff has gone through. Ms. Martin added that this legislation would be a great step in moving the hospital forward in helping to support its staff and keeping them safe.

[2:29:03 PM](#)

JENNIFER MOORE, Chief Quality Officer, Mat-su Regional Medical Center, advised that she is speaking on behalf of the Mat-Su Regional Medical Center, and that the medical center is in support of HB 312, as it helps to address the serious concern of workplace violence in health care facilities. Alaska's hospitals have experienced increased workplace violence over the past year, including assaults and physical injuries against caregivers. As a nurse for more than 20-years, she said that she has personally been punched, spit on, slapped, kicked, and grabbed so hard the (audio difficulties), as well as countless verbal threats, all while attempting to treat and care for those in need of medical attention. Of note, she acknowledged that she has never been an emergency room nurse, but this abuse not only impacts that unit because it impacts any and all units within a hospital. She pointed out that the hospital's nurses and providers have experienced or witnessed the same workplace violence or worse, and they are afraid to come to work due to their fear of assault. Ms. Moore said that she remembers the day Dr. Zinc was assaulted and the impact it had on the emergency department and throughout the entire hospital, and its health care workers need to know they are supported in their time of need especially when they are always there to support others in their time of need. Violence, she argued, should not be an acceptable workplace habit, and yet, for so many nurses, providers, and others, this has become the new normal. Clearly, she pointed out, legislation is not the only acceptable solution to this complex problem and in order to successfully address this problem, each facility must implement a comprehensive strategy (audio difficulties). The Mat-Su Medical Center is working on a comprehensive workplace violence preventative program that includes a program called, "Handle with Care." This program teaches the staff how to de-escalate a situation with specialized safety techniques, such as escape, blocking, and how to safely (audio difficulties) an aggressive patient. This program also teaches the staff how to recognize their own tension triggers and how to reduce personal tension. The Mat-Su Memorial Hospital continually emphasizes to the staff that their safety is one of the hospital's top priorities and it will support them in whatever manner they need. She said that the Mat-Su Memorial Hospital urges the committee to pass this legislation, thereby, sending a strong message to nurses, physicians, and other caregivers, that Alaska takes this issue seriously.

[2:31:15 PM](#)

MATT HALL, Chief Human Resources Officer, Bristol Bay Area Health Corporation, advised that the Bristol Bay Area Health Corporation is in support of HB 312, and noted that the Bristol Bay Area Health Corporation provides all health care services in the Bristol Bay Region, which includes: medical, dental, behavioral, and environmental health. He added that its care includes a number of communities around the region where it also has 21 clinics. The Bristol Bay Area Health Corporation is aware that violence is never an acceptable workplace hazard, and he related that the testimonies he heard today are striking examples of workplace violence. There are other tribal organizations in Nome, and the Bristol Bay Area Health Corporation has medical providers out in the villages in the clinics, as well. When crimes are committed in an isolated rural area, the response time sometimes does take a bit longer with more effort, he remarked. Basically, he offered, being able to have responders (audio difficulties) fourth degree assault types of charges and those types of results and having that opportunity to respond far more quickly and efficiently would be a "huge thing for us." He noted that legislation is only one potential solution, but it is a great start and the Bristol Bay Area Health Corporation welcomes all avenues in helping its providers become far safer. This region of Alaska is rural in a land-locked area and assuring that its providers are safe and can go home safely at night in a small area where many people know each other professionally and personally, that type of a safety measure would be a wonderful thing, he explained.

[2:33:28 PM](#)

REPRESENTATIVE LEDOUX asked whether the meaning given to health care facility encompasses all of the facilities in rural areas.

CHAIR CLAMAN explained that the statute covers all of the facilities in the rural areas, the only two exempted facilities under Title 18 are the Pioneer Homes and Alaska Veterans Home.

[2:34:45 PM](#)

DAVID SCORDINO, MD, Alaska Regional Hospital, advised that he supports HB 321 for a variety of reasons. (Audio difficulties.) He said that a couple of months ago an intoxicated woman came into the hospital, she did not have a psychiatric (audio difficulties) exquisite abdominal pain, and she threatened to kill him, the nurses, security, and our families. (Coughing)

CHAIR CLAMAN interrupted Dr. Scordino to ask whether he was on a speaker phone, and Dr. Scordino then advised that he was on a cell phone. (Audio difficulties.)

[2:35:48 PM](#)

DR. SCORDINO continued his testimony (audio difficulties) strike, kick, spit on all members of his staff, but he had a legal obligation to verify that she did not have an emergency medical condition. The police were activated but they could not do anything because he could not discharge her to them and nothing ended up happening. Ultimately, (audio difficulties) heard through all of this is a complication (audio difficulties), he has a legal obligation, (audio difficulties) obligation because if he missed (audio difficulties) which can be a cause of bleeding (audio difficulties) caused by acting out or bad behavior, then he has missed that. And, that legal obligation to him, in his ability (audio difficulties) discharging these individuals without a thorough evaluation can put them in danger and; therefore, the hospital has to keep them sometimes longer than necessary due to that obligation both from a legal perspective and a financial perspective for his future. (Audio difficulties) increased medical health factor (audio difficulties).

CHAIR CLAMAN asked Dr. Scordino to email his remarks to Chair Claman's office due to the audio difficulties.

DR. SCORDINO said he would email his remarks.

[2:38:53 PM](#)

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 321.

[2:39:26 PM](#)

REPRESENTATIVE LEDOUX asked why this bill exempts the Pioneer Homes and the Alaska Veterans Home.

CHAIR CLAMAN responded that the Pioneer Homes and the Alaska Veterans Home are currently exempted under that definition of health care facility. He advised that more research is taking place as to why an existing statute is treated differently than every other medical facility in the state and noted that the answer is unknown at this point.

2:40:04 PM

REPRESENTATIVE LEDOUX surmised that under current statute, if a person commits an offense at a Pioneer Home or the Alaska Veterans Home, that person can be arrested, and it takes that person out of presumptive sentencing.

CHAIR CLAMAN responded that HB 321 allows a police officer to arrest the person who allegedly committed a fourth-degree assault offense without obtaining a sworn affidavit from the complainant. In the event it was a felony assault anywhere, the police officer could arrest the person, he said.

He advised that his office is looking into this issue because "what is the incidence of fourth degree assaults in the Pioneer Homes as distinct." For example, the committee has only heard testimonies regarding issues in emergency rooms and, he noted that the Pioneer Homes and Alaska Veterans Home are not an emergency room setting even though the Pioneer Homes provide a degree of medical care.

2:41:26 PM

REPRESENTATIVE LEDOUX surmised that the bill not only does what Chair Claman described, but it takes a person out of presumptive sentencing. She then referred to [HB 321, Sec. 3, AS 12.55.155(c)(36)] page 7, lines 7-14, which read as follows:

(36) the defendant committed the offense at a health care facility and knowingly directed the conduct constituting the offense at a medical professional during or because of the medical professional's exercise of professional duties; in this paragraph

(A) "health care facility" has the meaning given in AS 18.07.111;

(B) "medical professional has the meaning given in AS 12.55.135(k).

REPRESENTATIVE LEDOUX advised that it takes a person out of the presumptive sentencing. The presumptive sentencing guidelines are at AS 12.55.(c), and it adds something else so that it is now the 36th reason to get out of presumptive sentencing.

CHAIR CLAMAN advised that those are actually aggravating factors in a felony that gives the court authority ...

REPRESENTATIVE LEDOUX commented that she realized that, but that she sees 36 ways in which the judge can go above the presumptive sentencing, but she did not see, for example, workplace violence for daycare centers. She then referred to AS 12.55.155(c)(35), which read as follows:

(35) the defendant knowingly directed the conduct constituting the offense at a victim because that person was 65 years of age or older;

REPRESENTATIVE LEDOUX noted that it does not matter if a person "just slugs a person who is 80," if the reason was not because the person was 80 years of age, and "someplace else" it says that a person should know about advanced age. She suggested that possibly the committee should re-think all of the exceptions and do something different with presumptive sentencing. This is a good bill, she described, but she asked whether it would make more sense to change the presumptive sentencing guidelines so that they are guidelines, but that a judge in their discretion may direct a sentence above the guidelines, period.

[2:44:11 PM](#)

CHAIR CLAMAN commented that that is an interesting idea, but the intent of this legislation was to address the concerns brought forward by medical providers. While, he related, the presumptive sentencing structure has been in place in Alaska since 1980, it could be critiqued in that it has received different amendments in different ways. Except, he remarked, the sponsors are not ready to take that on because the goal was to simply identify a specific need.

[2:44:39 PM](#)

REPRESENTATIVE EASTMAN asked that law enforcement help the committee understand the gap in arrest authority currently, and what is it about these fourth-degree assault type charges that causes difficulty in arresting.

[2:46:01 PM](#)

DAN LOWDEN, Captain, Alaska State Troopers, responded that essentially, law enforcement is allowed to arrest for felonies not committed in the presence of law enforcement if there is probable cause. However, he added, if law enforcement is

dealing with a misdemeanor offense, that person cannot be arrested without a warrant if it was not committed in the presence of law enforcement. As the committee is well aware, there are exceptions for domestic violence, assaults, DUIs, and so forth. Therefore, he pointed out, the gap this bill appears to address is with regard to a misdemeanor offense wherein many times law enforcement does not witness the offense in the emergency room and arrives after the fact. This bill would give law enforcement the authority, as in DUIs, domestic violence, and assault, to arrest someone for this misdemeanor assault that was not committed in the presence of law enforcement, he advised.

[2:47:32 PM](#)

REPRESENTATIVE EASTMAN asked whether the ability to arrest in these types of fourth-degree assaults would be beneficial to law enforcement outside of a health care setting.

CAPTAIN DAN LOWDEN answered that most law enforcement officers would appreciate being able to arrest for most misdemeanors at any time necessary.

[2:48:15 PM](#)

REPRESENTATIVE REINBOLD commented that if the intent of this legislation is to make an assault on a health care worker a felony, then this bill is unnecessary.

CAPTAIN DAN LOWDEN commented that if the committee made assault on a health care worker a felony, this bill would not be necessary to address the issue it is trying to address, but it is a policy call for the legislature.

[2:49:09 PM](#)

REPRESENTATIVE REINBOLD asked the bill sponsors whether they would accept an amendment allowing for a felony on an assault on a health care worker because it appeared more logical than having a bill.

REPRESENTATIVE KOPP responded that a felony assault on a health care worker can and does occur currently, even without this bill. He pointed out that the previously described strangling offense is at least a felony assault, and possibly that assault should have been charged as attempted murder. On a domestic violence offense, strangling often is charged as attempted

murder and this bill would not change any of those provisions. This bill, he explained, amends the law so that on a misdemeanor assault where there is no serious physical injury, there is still an injury because there is real fear, which was articulated to the committee. Those types of assaults now can be arrested without a warrant, this legislation relates to the lower level of assaults. He noted that the committee could make a policy call and make every assault a felony. Although, he said, when considering that the ultimate goal is to protect health care workers, accountability, (audio difficulties) want there to be an immediate consequence. The sponsors are trying to achieve the right balance wherein the bill simply addresses the lower level misdemeanor assault wherein an arrest can be made without a warrant, which leaves the health care environment safe to continue to work.

REPRESENTATIVE REINBOLD noted that currently, assaults in the first, second, and third degree are felony assaults, and assault in the fourth degree is a misdemeanor. This bill basically allows law enforcement to arrest for fourth degree assaults of health care workers, which is important, she said.

[2:51:27 PM](#)

REPRESENTATIVE KREISS-TOMKINS surmised from the testimonies that emergency rooms are more of a dumping ground for undesirable people who are not in a condition to be in society. He commented that perhaps there is a need for enhanced drunk tanks for those who are incredibly drunk or high to sleep it off or let it wear off. While recognizing there has been a recent increase in drug and alcohol abuse, he asked how the state has gotten to this point and requested an off-the-record conversation or further testimony regarding his question.

CHAIR CLAMAN recommended that the folks with thoughts on that subject to follow up with Representative Kreiss-Tomkins.

CHAIR CLAMAN referred to the indeterminate fiscal note from the Alaska Psychiatric Institute (API), and noted to Randall Burns, Division of Behavioral Health, that the fiscal note suggests this bill would increase the need for competency exams when allowing for an arrest without a warrant in a health care facility for fourth-degree assault. He asked how often in the last five-years has API had to perform a competency evaluation on someone charged with fourth degree assault in any location.

[2:54:19 PM](#)

RANDALL BURNS, Director, Division of Behavioral Health, Department of Health and Social Services (DHSS), responded that he was not aware of the number of competency evaluations off the top of his head. The major concern, he related, is that this bill may create a situation wherein a significant number of additional individuals would claim their mental illness was a contributor to their arrest, thereby, creating a situation where even more competency evaluations were required. More importantly, he added, if the individual was found to be incompetent, then being asked to perform more restoration. He commented that, obviously, API and its staff completely understand the injuries and the situations other hospital nursing staff are under, and he opined that "As long as we're able to put on the record now that we are concerned about the potential ramifications on the forensic capabilities of the department and the division, that we would submit a fiscal note for now because there obviously is very little data coming from the hospital to assist us in reaching what might actually be the results in the next year." He related that that is the reason for the indeterminate fiscal note, and he believes it would make sense to submit a zero fiscal with the disclaimer that, depending on the increase, they may have to then submit additional budget support in the coming fiscal year.

CHAIR CLAMAN offered concern that the questions are legitimate but that the actual number of misdemeanor cases in which competency exams are performed are quite small and, in speaking with others, most of the competency evaluations involve folks charged with more serious crimes. This bill does not make any more serious crimes, it simply gives law enforcement additional arresting authority, he pointed out.

[The committee treated public testimony on HB 312 as closed.]

[HB 312 was held over.]

HB 129-FISH & GAME: OFFENSES;LICENSES;PENALTIES

[2:57:54 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 129, "An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport

fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; and providing for an effective date."

[3:00:31 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, advised that HB 129 is a governor's bill, it does not affect the court system much at all, and that the Alaska Court System (ACS) is completely neutral on the bill. She related that she was asked to respond to certain questions raised in the last committee meeting regarding restitution and fines. While it does not matter to the court system what is in the bill, she said she could assist in understanding a little bit about where the money goes when the court "orders some of this stuff." She referred to Sec. 17, AS 16.05.925(b), page 5, lines 10-26, and advised that it adjusts the restitution amount that may be ordered for someone convicted of unlawfully taking one of the mammals listed in subsection (b) and increases those amounts. Routinely, the court orders restitution in cases that involve the unlawful taking of game and there are a series of regulations that come up when violated, under which people are convicted. When people are convicted for those misdemeanors they may receive a fine and this restitution. She advised that in speaking with judges in some of the areas where these cases would arise, she believes that restitutions are generally ordered in the amounts listed. In the event someone does unlawfully take a moose, for example, it is fairly routine in certain areas to order \$1,000 in restitution, and under AS 16.05.925(b)(8) that amount would change to \$2,500, she said.

[3:02:25 PM](#)

MS. MEADE, in response to the question as to the fiscal impact of these increases, responded that the court system does not track fine amounts or restitution amounts, according to statute, so she could not locate "a great answer." Although, she said, she could determine how many misdemeanor convictions had taken place for the unlawful taking of game by going through all of the regulations. She advised that in the last couple of years it has varied from a low of 29 cases per year to 45 cases per

year. (Audio difficulties) 30 or 35 per year and maybe up to \$1,000 more would be ordered in restitution, roughly there may be \$70,000 ordered in total for restitution. She said she could get the numbers for total fish and game restitutions ordered, except there is restitution for "lots of things" other than just the unlawfully taking of game, such as commercial fishing and "all sorts of stuff." In 2017, approximately \$100,000 in total fish and game restitution was ordered, and in 2016 \$20,000 was ordered in restitution, so it varies depending upon "what's going on out there" and what cases come to court. She related that she also learned, by looking at how much of those dollars are actually paid as opposed to ordered, that when it comes to fish and game restitution as opposed to other criminal restitution, a large percentage is paid. Of the \$100,000 owed in 2017, approximately \$65,000 was paid, which is a higher percentage of recovery than from the other crimes.

[3:04:26 PM](#)

MS. MEADE referred to "how the money works" and explained that the court signs an order, there may be a fine, restitution, or other things going on, and then the court is finished with the case. Except, people can pay the court anytime, but many people do not. Previously, after 30-days the court clerks would send all of its judgments to the Department of Law Collections Section and it would try to collect on behalf of victims' restitution and collect court fines, except that section "went away." The Department of Administration then "sort of" revised and revived that section as the Shared Services of Alaska (SSOA) Division within the Department of Administration. The SSOA currently collects fines and "lots of other things that the court orders," with the exception of restitution. Currently, she offered, the court collects restitution and SSOA collects every other debt a person might owe after a criminal case. She opined that it probably is not important to the committee "who is trying to collect what on behalf of whom" when all of the criminal debts someone may owe is deposited straight into the general fund and it does not go to anyplace else.

When the court collects restitution, it goes to a named victim injured in a criminal case because restitution may be owed for the value of the person's car, or medical bills after an assault. Except, she pointed out, in fish and game cases, the restitution in Section 17 goes to the state because it is the state's loss of fish and game. The state collects that restitution and puts it straight into the general fund where it stays and is not dedicated anywhere, she opined.

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REPRESENTATIVE KREISS-TOMKINS commented that given that explanation, he could not understand why there was not a positive fiscal note for this legislation.

MS. MEADE said that of course the court system would not have a fiscal note because it does not care what it is collecting or on the benefit of whom. She then deferred to the department to answer the question and said that she did not know that anyone ever submits fiscal notes for the general fund.

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REPRESENTATIVE LEDOUX noted that she found it perplexing that there would not be a fiscal note for the general fund.

CHAIR CLAMAN opined that all could agree that whoever it is that is supposed to submit a fiscal note for the general fund, it is not the court system.

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REPRESENTATIVE LEDOUX referred to [CSHB 129, Sec. 4, AS 16.05.430(a), page 2, lines 27-31 and page 3, lines 1-2] and advised that there were probably "a few other sections around" that refer to "things are punishable" instead of "by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both." It read: "punishable as provided in AS 12.55," and Representative LeDoux asked the amount of the fine under AS 12.55.

MS. MEADE responded that AS 12.55 is in the criminal penalty section of the statutes, and that Representative LeDoux probably previously saw AS 12.55 in crime bills mostly. Currently, she said, the fish and game laws have many unclassified misdemeanors as this wording read: "it is guilty of a misdemeanor with a specified punishment." She explained that Section 4 would "get rid of that specific punishment," change it to a class A misdemeanor, and treat it in the same manner as any other class A misdemeanor under Title 11, such as an assault and so forth. Those class A misdemeanor penalties under AS 12.55 have a maximum fine of \$25,000 with minimum and maximum imprisonments. She reiterated that the effect of that provision changes the minimum and maximum prison term and changes the fine from \$1,000 up to a maximum of \$25,000.

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REPRESENTATIVE LEDOUX commented "that's a huge change," and asked whether this was actually intended. Her concern is that for most criminals, whether the fine is \$500 or \$500,000, the problem is that so many of the people arrested for petty offenses do not have the money at all. Except, she pointed out, with a fish and game violation, some of these people actually have the money to pay the fine. For example, fishermen might just pay the fine in order to get back out on the fishing grounds. She said she was unsure the state necessarily wanted to increase those fine from what the legislature previously thought should not be punishable for a fine of over \$1,000 to go up to \$25,000, because "that's a heck of a leap."

REPRESENTATIVE LEDOUX commented that she would like to speak with "whoever, you know, came up with this language, whether this was actually the intent. And, if it was in fact the intent, some rationale for what the intent was to increase it by ... is that 25-fold or is it 25,000-fold?"

CHAIR CLAMAN answered that it was 25-fold and advised the committee that Representative LeDoux was discussing that the maximum penalty on a misdemeanor goes to \$25,000 under the current status of class A misdemeanors. He deferred to Aaron Peterson, Department of Law.

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AARON PETERSON, Assistant Attorney General, Office of Special Prosecutions, responded that Representative LeDoux exactly identified (audio difficulties) and potential fine amounts on some of the offenses, and that is a policy question.

CHAIR CLAMAN interrupted Mr. Peterson and pointed out that on the one hand it is a policy (audio difficulties) making and presenting this bill. Chair Claman expressed that he would not accept an answer saying that this is a policy call for the legislature because this is a governor's bill.

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MR. PETERSON explained that some of these offenses should be in line with other class A misdemeanors in that some of the affected offenses change, for example, under Sec. 11 [AS 16.05.783(c), page 4, lines 10-16], (audio difficulties) from

\$5,000 to \$25,000. In effect, he noted, throughout Title 16, it makes the fine amount and the jail time amount uniform with other class A misdemeanors found under Title 11 (audio difficulties) in statute. He pointed out that in several places there are additional (audio difficulties) to reduce those misdemeanors down to violations, which was discussed in the previous hearing. The rationale is making it uniform while giving the Department of Public Safety (DPS) and the Department of Law (DOL) the ability to, where appropriate, reduce to a violation and the smaller maximum fine under AS 12.55.035 of \$500, and they do not carry (audio difficulties) making it uniform with statutes in other sections.

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REPRESENTATIVE LEDOUX commented that the administration went through this bill last week and she did not think that the issue of the big fine increase was necessarily pointed out to this committee, and she believed that is something worth mentioning.

[HB 129 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:15 p.m.