

**ALASKA STATE LEGISLATURE**  
**HOUSE TRANSPORTATION STANDING COMMITTEE**

February 22, 2001

1:14 p.m.

**MEMBERS PRESENT**

Representative Beverly Masek, Vice Chair  
Representative Scott Ogan  
Representative Drew Scalzi  
Representative Peggy Wilson  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Vic Kohring, Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 127

"An Act relating to emergency equipment to be carried on aircraft."

- MOVED CSHB 127(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 4

"An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 39

"An Act relating to registration of motor vehicles, to operating a motor vehicle, aircraft, or watercraft while intoxicated, and to driving with a cancelled, suspended, or revoked driver's license; relating to duties of the division of alcoholism and drug abuse regarding driving-while-intoxicated offenses; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 127

SHORT TITLE: AIRCRAFT EMERGENCY EQUIPMENT

SPONSOR(S): REPRESENTATIVE(S) HARRIS

Jrn-Date	Jrn-Page		Action
02/14/01	0317	(H)	READ THE FIRST TIME - REFERRALS
02/14/01	0317	(H)	TRA
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17

BILL: HB 4

SHORT TITLE: OMNIBUS DRUNK DRIVING AMENDMENTS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0024	(H)	PREFILE RELEASED 12/29/00
01/08/01	0024	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0024	(H)	TRA, JUD, FIN
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE JOHN HARRIS  
Alaska State Legislature  
Capitol Building, Room 513  
Juneau, Alaska 99801-1182  
POSITION STATEMENT: Sponsor of HB 127.

REPRESENTATIVE NORMAN ROKEBERG  
Alaska State Legislature  
Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
POSITION STATEMENT: Sponsor of HB 4.

JANET SEITZ, Staff  
to Representative Rokeberg  
Alaska State Legislature  
Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
POSITION STATEMENT: Answered questions regarding HB 4.

MARY MARSHBURN, Director

Division of Motor Vehicles  
Department of Administration  
3300 B Fairbanks Street

POSITION STATEMENT: Spoke on behalf of the Division of Motor Vehicles and answered questions on HB 4.

DEAN GUANELI, Chief Assistant Attorney General  
Legal Services Section-Juneau  
Criminal Division

Department of Law  
PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Provided department's position and answered questions regarding HB 4.

DEL SMITH, Deputy Commissioner

Department of Public Safety

PO Box 111200

Juneau, Alaska 99811-1200

POSITION STATEMENT: Provided department's position on HB 4 and answered questions.

KAREN ROGINA

Alaska Hospitality Alliance;

Member, DUI Task Force

330 East Fourth Avenue

Anchorage, Alaska 99501

POSITION STATEMENT: Testified on behalf of the Alaska Hotel and Motel Association, and the Alaska Restaurant and Beverage Association, in support of HB 4.

JACK AMON, Volunteer President

Alaska Restaurant and Beverage Association;

Owner, Mark Brothers Cafe

Member, DUI Task Force

627 West Third Avenue

Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HB 4.

#### **ACTION NARRATIVE**

TAPE 01-13, SIDE A

Number 0001

REPRESENTATIVE BEVERLY MASEK, acting as the chair, called the House Transportation Standing Committee meeting to order at 1:14 p.m. [stated as 4:14 p.m.] Representatives Kapsner, Scalzi,

Ogan, Wilson, and Masek were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

HB 127-AIRCRAFT EMERGENCY EQUIPMENT

REPRESENTATIVE MASEK announced that the first order of business would be HOUSE BILL NO. 127, "An Act relating to emergency equipment to be carried on aircraft."

Number 0091

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, sponsor of HB 127, said he would explain the history of how this bill came about. "Our friends in Canada," who "we" deal with on a relatively regular basis, have passed a law that makes it illegal to own a handgun. The law also requires a permit to carry a rifle or shotgun through Canada. However, Alaska law that has been in place since the 1940s or possibly before statehood, requires one to carry a firearm on an aircraft if one is flying farther than 25 miles from the base. Alaska law also requires one to carry an assortment of other emergency equipment on the plane.

Number 0242

REPRESENTATIVE HARRIS stated that a number of private pilots in Alaska brought to his attention that this is a problem when flying from Alaska through Canada to the Lower 48. A pilot will be in violation of Alaska's law if he or she does not have a gun and in violation of Canada's law if he or she does not go through the training course and testing that is required in order to carry a shotgun. Therefore, a "very basic fix" to this dilemma would be to take away the section of the law that says one is required to carry a pistol, revolver, shotgun, or rifle, if one is going through Canada on a cross country flight that has been filed with federal authorities, the flight service station, or the tower.

REPRESENTATIVE HARRIS explained that the other part of the original legislation about which there had been some complaint was the requirement of "one small gill net." This is "somewhat difficult" to come up with, to put in an airplane, he said, and most people do not have one.

REPRESENTATIVE HARRIS mentioned that both of these changes [the handgun requirement into Canada and the removal of gill net] are not a problem with troopers and others that he has talked to.

These people realize that there are issues involving Alaskan and Canadian law conflicts. However, this does not take away the responsibility of a private pilot to carry a firearm in his or her airplane when flying in Alaska. It is only an exemption for a flight through Canada.

REPRESENTATIVE MASEK asked how many people the new law in Canada affects.

REPRESENTATIVE HARRIS replied that every private pilot in the state [Alaska] who flies through Canada is affected by the new law. He does not know how many people fly back and forth [to Canada]. But, there are a "significant" number of people who do. They go to Washington [State], and to "Oshkosh for the fly-in every year."

Number 0341

REPRESENTATIVE OGAN remarked that it is not illegal to bring a shotgun or rifle into Canada if one pays the fee and registers the item.

REPRESENTATIVE HARRIS said that with the new Canadian law, one has to go through a two-day training course in order to bring a shotgun or rifle into Canada. So, it is more complicated than it used to be.

Number 0377

REPRESENTATIVE OGAN wondered, for pilots who fly back and forth [Alaska to Canada], if HB 127 is "really creating quite a bit of exposure for pilots to fly without a weapon." He mentioned that he never flew without a weapon, but he said, "Of course, I wasn't flying to Canada." "We" did not remove the requirement for pistols when Canada banned them from coming in, although pilots were still able to bring in a revolver or shotgun. He said that if he was going to fly to Canada, he would take the training course or "jump through the hoops" because he would not fly without a weapon in a small airplane.

REPRESENTATIVE HARRIS replied that this would "certainly be your prerogative." House Bill 127 allows people to fly legally in Alaska by allowing them to take the "chance" [flying without a weapon] or enabling them not to take the training course. But one is still required by Alaska law to carry a firearm on board when flying in Alaska.

Number 0481

REPRESENTATIVE OGAN suggested looking at changing the requirements for having one wool blanket. When this legislation was written, he surmised, wool was probably the choice fabric for a blanket. But some survival blankets and synthetic [fabrics] now "wick" water as much as a wool blanket. He indicated concern that the law might be applied strictly, and said he might offer an amendment [that wool not be required.]

REPRESENTATIVE HARRIS commented that he would not have a problem with this [wool blanket change]. "We" were only dealing with the two issues that were brought forward, he said. However, there are a number of requirements in this legislation, some of which are very outdated. This law has not been modified in fifty years.

REPRESENTATIVE MASEK asked Representative Harris if he has looked into speaking with the Canadian government to see if they would give any exemption for people who fly from Alaska to the Lower 48.

REPRESENTATIVE HARRIS replied that Yukon Territory and British Columbia would "love" to do this, but they are under federal law, which is based out of Ottawa. At this point, they are not interested in giving exemptions.

Number 0629

REPRESENTATIVE WILSON mentioned that many people in her area go up the Stikine River to enter Canada. She asked if this [new Canadian law] will affect people who go from the United States to Canada in this way.

REPRESENTATIVE HARRIS replied that the law is pertinent to anyone going to Canada. He reiterated Representative Ogan's comments that a person can carry [a rifle or shotgun], if one meets the requirements for doing so, no matter what the form of transportation into Canada is. Even if someone is flying from Southeast Alaska, a short way to Canada, a person is technically required to check in with customs.

REPRESENTATIVE OGAN noted that Representative Scalzi had suggested adding the words "or equivalent" after "wool blanket", which would become Amendment 1. He remarked that he was not sure if "we need two small boxes of matches." He suggested that the bill just say "matches."

REPRESENTATIVE HARRIS commented that he fully supports the amendment. He added that "we" did not add items to this bill that "we could have", which is fine since firearms is the major issue of HB 127.

Number 0781

REPRESENTATIVE MASEK made a motion to adopt Amendment 1, as follows:

Page 2, line 14, after "one wool blanket" insert "or equivalent".

There being no objection, it was so ordered.

Number 0808

REPRESENTATIVE OGAN made a motion to adopt Amendment 2, as follows:

Page 2, line 5, delete "two small boxes of matches" and insert "fire starter".

REPRESENTATIVE OGAN explained that there are some "high-tech" fire starters available nowadays, and the committee should modernize the statute since members are already dealing with it.

REPRESENTATIVE HARRIS said he had no problem with Amendment 2. He remarked that in many federal aviation statutes, there are a number of things that are fairly outdated.

Number 0839

REPRESENTATIVE MASEK asked if there was any objection to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 0871

REPRESENTATIVE KOOKESH commented:

[I have] flown all my life, and I've never seen a plane carry enough food for two weeks for each occupant. A pair of snowshoes in Southeast Alaska makes as much sense as having enough food [for two weeks]. If you require that [food] and snowshoes, ...

I hope you are not planning to move this out today

....

REPRESENTATIVE MASEK said it has been in statute since 1949.

REPRESENTATIVE KOOKESH stated that many people have been in violation of it [food requirement], because he has never been on an airplane where somebody has carried that much food. He said the pair of snowshoes is the only other part that he objects to in HB 127.

REPRESENTATIVE HARRIS remarked that if Representative Kookesh wanted to make an amendment to eliminate that [snowshoes], it wouldn't bother him. However, especially in the winter, if someone goes down in an airplane, especially in the winter, having snowshoes would be "pretty valuable" in some areas of the state.

REPRESENTATIVE WILSON indicated agreement with keeping the snowshoe requirement because in some higher, mountainous areas, there is always snow at the peaks.

Number 1018

REPRESENTATIVE WILSON made a motion to move HB 127, as amended, out of committee with individual recommendations and the attached zero fiscal note. There being no objection, CSHB 127 (TRA) moved from the House Transportation Standing Committee.

#### HB 4-OMNIBUS DRUNK DRIVING AMENDMENTS

[Contains discussion of HB 172 and HB 39]

REPRESENTATIVE MASEK stated that the next order of business was HOUSE BILL NO. 4, "An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date."

Number 1074

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor of HB 4, declared that HB 4 would be the most important legislation introduced this session. He summarized HB 4 as the "omnibus habitual offender alcohol bill." The purpose of this

legislation is to "separate the habitual offenders and those people who are abusing alcohol and get on the roads and lead to the high level of tragic accidents and deaths in this state."

Number 1137

REPRESENTATIVE MASEK made a motion to adopt the proposed committee substitute (CS) for HB 4, version 22-LS0046\P, Ford, 2/16/01, as a work draft. There being no objection, Version P was before the committee.

REPRESENTATIVE ROKEBERG explained that there was a rash of unfortunate accidents, starting last year, which elevated public attention. The general public recognized that the legislature had not done enough to separate vehicles from habitual offenders and those abusing alcohol [while] driving. The Alaska State Legislature did increase penalties for Driving While Intoxicated (DWI) in 1995, by making the third conviction of a DWI a felony and increasing penalties. However, offenders have not gotten the message. For this reason, the Municipality of Anchorage created a task force to look into DWI issues in order to make recommendations to the local assembly and legislature.

REPRESENTATIVE ROKEBERG informed the committee that the packet they received contains a copy of the Final Report of the DUI (Driving Under the Influence of an alcoholic beverage or controlled substance) Prevention Task Force, including its recommendations. He stated that [Version P] incorporates a large number of these recommendations. He introduced Janet Seitz, staff to Representative Rokeberg, who served on the DUI Task Force along with Denise Henderson, staff to Representative Pete Kott. This gave a unique opportunity for the legislature to be involved in the public process of developing recommendations. He mentioned that he would rely on Ms. Seitz for technical interpretations, if needed.

Number 1249

REPRESENTATIVE ROKEBERG stated that the committee's packets contain information that "we" have been looking at for the past nine months. The packet contains news articles that address some of the senseless tragedies from DWI.

REPRESENTATIVE ROKEBERG pointed out that a large part of Version P deals with changing the term from "DWI" to "DUI". There has been some debate on this issue. However, the DUI Prevention Task Force recommended this change. This is appropriate since

Version P includes adopting the .08 [blood alcohol concentration (BAC)] standard. He said:

Changing the name of the offense because we're changing the standard of the offense, sends, I think, a clear message to the public. I think it's worth cutting down a few trees to get the message across that we are confronting this issue. We are taking it very seriously. We want the public to be aware of ... the fact that we do not want people that are under the influence of alcohol [or] controlled substances to be driving vehicles on our streets and highways.

Number 1316

REPRESENTATIVE ROKEBERG explained that Version P increases the presumptive sentence for a first felony conviction for manslaughter [as a result of DUI] from five years to seven years. This is a recommendation from the Department of Corrections. The maximum sentence would not be more than 20 years.

REPRESENTATIVE ROKEBERG stated that Version P mandates that the Division of Motor Vehicles (DMV) refuse to register a vehicle if the applicant does not have a valid driver's license. The bill provides procedures to follow up on this. This bill also requires that one's name on a driver's license and registration be consistent with the full name of the applicant. This is a small detail, but currently it is impossible to cross-match one's driver's license with one's registration because of the way the names are in the DMV databases. The only solution is to obtain new databases. This [provision in Version P] would be a "quick fix" until the new databases are in place, hopefully in the next few years.

REPRESENTATIVE ROKEBERG described another aspect of Version P as changing the grounds which a law enforcement officer can stop and arrest someone. House Bill 4 repeals the phrase "reasonable grounds" and replaces it with "probable cause grounds".

REPRESENTATIVE ROKEBERG said that Version P further mandates anyone who is convicted of a DUI offense in court to notify the DMV at the end of the following business day. Right now, this can take up to 60 days due to a lack of electronic infrastructure in the state and court. Version P would have the court report to the DMV that there is supposed to be a license identification and/or suspension.

Number 1479

REPRESENTATIVE ROKEBERG named the major provision and perhaps somewhat more controversial part of the bill as the adoption of the .08 BAC (Blood Alcohol Concentration) standard. The bill establishes that the minimum license revocation period would be not less than 45 days if the person has not been previously convicted, and if the court has suspended the execution of the sentence under the .08 diversion program.

REPRESENTATIVE ROKEBERG stated that Version P mandates that anyone receiving a limited driver's license [following a DUI conviction or refusal to take a breath test] shall only operate vehicles equipped with an ignition interlock device. This was a recommendation of the Task Force.

REPRESENTATIVE ROKEBERG specified that Version P requires a person who loses his or her driver's license [for DUI or refusal to take a breath test] to meet the alcohol screening, evaluation, program, [and referral] requirements as established by the Department of Health and Social Services. A limited driver's license may be granted in the final 30 days in which the license is revoked, if certain provisions are met.

REPRESENTATIVE ROKEBERG explained that this bill changes some of the provisions [for reinstatement of licenses] and tightens them up. A person [whose driver's license has been revoked] may apply for a driver's license at the end of a period of revocation or limitation. However, that person must submit to re-examination, pay all required fees including a reinstatement fee, and show proof that he or she has met the alcohol screening, evaluation, referral and program requirements. In short, provisions were tightened and fees were raised.

REPRESENTATIVE ROKEBERG stated that the bill raises the reinstatement fees for driver's licenses [if revocation is due to DUI]. The first time someone is convicted of DUI, the reinstatement fee for a revoked driver's license will be \$200. If a person's license has been revoked two or more times, the reinstatement fee will be \$500.

REPRESENTATIVE ROKEBERG pointed out that the bill "tightens up" the "enabler" statute, meaning somebody who "enables a driver to drive a car." Currently this is considered a misdemeanor. However, this bill is increasing the fine if someone is charged with being an enabler more than once.

REPRESENTATIVE ROKEBERG explained that DUI includes driving (indisc.) [an] aircraft or watercraft while under the influence of an alcoholic beverage or [controlled substance].

Number 1588

REPRESENTATIVE ROKEBERG reiterated that a major component of this bill is that it lowers the BAC to .08, which is supported by the Task Force and administration. He said that the House Judiciary Standing Committee has had a hearing on the "road appropriation situation" that revolves around the .08 adoption, which might interest the House Transportation Standing Committee. The State of Alaska, because of the federal mandate, stands to lose substantial monies in the future if the .08 BAC is not adopted. He believes that this would take effect, in the loss of \$3.5 million in the first year, which would affect "us" in FY 03. He said he believes that [the state] is in a position to lose money from the transportation allocations from Congress in two years, if .08[BAC] is not adopted.

Number 1655

REPRESENTATIVE ROKEBERG stated that if provisions in the law that meet federal standards for additional alcohol education and transportation programs are adopted, there are additional monies, up to \$800,000, that can be obtained for some of [Alaska's] alcohol programs. He mentioned that this might be an area of interest to the House Transportation Standing Committee.

REPRESENTATIVE ROKEBERG informed the committee that there are provisions if the state chooses to delay the adoption of the .08 [BAC] standard. He said it was his understanding that up to the year 2007, "we could recapture the capital dollars that were gone earlier," creating a phase-in period. He said:

Inasmuch as we were adopting a whole new scheme of dealing with the use of alcohol and driving, it would seem to be most appropriate to pick up the .08 [BAC] issue and integrate it into a new scheme because of graduated penalties and trying to make sense out of it at this time, rather than delaying it. But that's certainly a policy call that the legislature has to make. But I would just point out that where in the past I have been known to oppose .08 [BAC], I [would] just like to take legislative notice that I put it in this bill.

Number 1748

REPRESENTATIVE ROKEBERG stated that the first offense under the .08 BAC standard would still remain a class A misdemeanor. The fine would be increased to \$500 from \$200. [Version P] also establishes a diversionary program for those whose BAC is .08 but not more than .01. Therefore, for the 20 percent of people whose BAC that "we're rolling the threshold for," this has an "offsetting opportunity" for someone who is arrested. But there have to be no aggravating factors in the person's situation. The diversion program is for those who "happen to be caught for driving with that modest amount of decreased impairment." He explained:

The court shall suspend execution of the current 72-hour consecutive sentence upon condition that the person successfully completes a one-year probation of no traffic- or alcohol-related offenses, completes treatment requirements, pays for the cost of treatment, performs three days of community service, and pays the increased fines for the court. If not satisfactorily ...completed, the imprisoned sentence is served.

Number 1800

REPRESENTATIVE ROKEBERG stated that if the BAC level on someone's first offense was .10 or higher, the fine would increase to \$1,500 from \$250. The fine for a second misdemeanor offense is raised to \$3,000 from \$500, with a minimum sentence of not less than 30 days, or not less than 20 days if the person performs 10 days of community service. But, if someone has a second misdemeanor and his or her BAC is .16 or over, the person will receive an additional six-month imprisonment plus a 30-day residential treatment program. So, if someone is substantially drunk and has a BAC of .16 [or over], he or she will serve a substantially longer term.

REPRESENTATIVE ROKEBERG remarked that the largest fiscal note for this bill is the part dealing with aggravators "because the aggravators that are in the bill go through almost every incidence of arrest in this area." The total cost of this fiscal note is \$24 million. He said that the chances of this aggravator portion of the bill "surviving" is greatly decreased due to this fiscal note designed by the Department of Corrections. He said that he wanted to bring this fiscal note

to the committee's attention in case they saw something that would relate to aggravators or the aggravated provision (indisc.).

REPRESENTATIVE ROKEBERG explained that this bill requires that the past history treatment of the defendant be provided to the court, prosecutor, defendant, and agency involved in the current treatment. A problem in treatment elements is that at times a court may impose certain treatments. However, if the person has any history of alcohol treatment that has not worked in the past, for example, the law should require the information. This should be done before adjudication is made about what "treatment regime" or direction is given to the accused.

Number 1911

REPRESENTATIVE ROKEBERG reiterated that the Department of Health and Social Services would establish standards for clinically appropriate treatment. These standards must include alcohol and drug treatment, anger management counseling, parent training, and domestic violence prevention. This treatment would occur, as much as possible, while the person was incarcerated. The offender would be required to pay up to \$2,000 to the state for reimbursement of treatment. The court would include reimbursement of treatment costs as part of the offender's sentence. If the person is indigent, only the permanent fund dividend can be used to reimburse for treatment. In all other cases, the permanent fund dividend may be sought for reimbursement and cost of treatment. But this does not include cost incurred as a result of treatment, not required under the treatment standards.

REPRESENTATIVE ROKEBERG stated that preliminary information he has concerning the wellness program in Anchorage shows that there are a number of different treatment options put forward, most of which are at outpatient treatment levels. These programs cost between the \$2,000 to \$3,000 range. Therefore, "we" are looking at trying to recruit (indisc.) as much as possible from the person that requires a service, even though there are other treatment programs that would cost the (indisc.).

REPRESENTATIVE ROKEBERG explained that the cost of imprisonment, up to \$2,000, is required to be paid by the prisoner. The court shall include the costs of imprisonment as part of the judgment. The permanent fund dividend requirement is the same as [for reimbursement of treatment]. An appropriate place for a person

receiving certain imprisonment does not mean a residential treatment facility or hospital.

Number 1993

REPRESENTATIVE ROKEBERG stated that there is case law in Alaska, called the Nygren Credit Law, that says if the offender avails himself or herself of treatment, he or she will receive good time credit for the sentence while in [treatment]. These [treatment and imprisonment provisions] prohibit this, in certain instances, because many people are "gaming the system." For example, he said, if someone gets "busted" for DWI, and his or her attorney says "Go down and pay for a treatment program," by the time the offender gets to the arraignment, he or she might have enough Nygren credit to "walk." So, it is "gaming the system" if someone has money, proper counsel, and is able to do it. He said, "We want to be able to cut that off and not allow people to use the system for their own benefit."

REPRESENTATIVE ROKEBERG said that the bill phases in a ten-year "look-back" period. Currently, there is a five-year look-back period. He said that at first "we" tried to repeal both of the look-back periods, but the fiscal notes went "right through the roof." This means that if someone was to incur two DWI convictions within a five-year period, and at the sixth year the person had a third conviction, the person would be starting over [the first two DWI convictions would not count] again. Therefore, the courts would not look at this person as having a class C felony. But, if one had three convictions within five years, that person would be guilty of a class C felony. So a [five-year look-back period] is incongruous. He said:

If you get your third "bust" at five years and one day, you got a lesser sentence than the person that got picked up the day before [the five-year look-back], who is a felon because of that.

Number 2072

REPRESENTATIVE ROKEBERG reiterated that this bill repeals the five-year look-back period, and institutes a ten-year look-back period that has similar rules. "We" are trying to phase this in to attempt to minimize the impacts due to the law that was passed in 1995 [the third DWI conviction becomes a felony, and increase of penalties]. This was a major recommendation of the Task Force. It also allowed people to be in the system, whereas otherwise they might delay court hearings or say, "You stood me

up on that." "We" need to get away from that. The ten-year look-back period makes the third offense increase to a class C felony. The fine for this is doubled to \$10,000 from \$5,000.

REPRESENTATIVE ROKEBERG pointed out that the minimum sentence of imprisonment increases from 120 days to 240 days if the person has been previously convicted twice. If the offender was previously convicted three times, the imprisonment goes from 240 days to 480 days. If the person has been previously convicted four or more times, the imprisonment goes from 360 days to two years. This is one of the larger costs because the incarceration time served by multiple offenders is basically doubled.

Number 2170

REPRESENTATIVE ROKEBERG explained that in the case of a felony, the court is to permanently revoke the driver's license, subject to certain instances that are laid out in the bill. Watercraft is also added to the list of what must be forfeited if it is used in the offense. He pointed out that this bill names forfeiture as a mandate, not a discretionary element for the judge. This has given the Department of Public Safety "a little bit of heartburn" because of some of the problems. He noted that the municipalities of Anchorage and Fairbanks have full forfeiture at the second offense level. The fiscal note from the Department of Public Safety has provisions of cost for Anchorage and Fairbanks. He said, "One of the philosophies of this legislation is to remove that habitual offender from their vehicle."

REPRESENTATIVE ROKEBERG further explained that the bill requires the court to order the surrender of registration plates by the owner or co-owner by the close of the next business day. If not surrendered, any co-owner may not re-register the vehicle until such time that is proved to the department, that the person did not know the plates needed to be surrendered and twice the registration fee has been paid.

REPRESENTATIVE ROKEBERG pointed out that another provision in this bill, the Implied Consent Statute, was not intended to prevent police search warrants. A search warrant can be obtained when it is necessary to draw blood [from a person]. In other words, the impairment standard will decrease from the current .05 to .04 [BAC]. Currently, there is a law that one can be charged with Driving While Impaired at .05 [BAC]. A recommendation of the Task Force is that there is clear

notification of a person's right to an independent test. So, for the BAC test, a person can ask for an independent test and get it. The bill also adds a new section that authorizes police to obtain a blood sample when exigent circumstances prevent the police from administering a breath test.

REPRESENTATIVE ROKEBERG said in coordination with supreme court and appellate court rulings in the state of Alaska, the bill also establishes a repeat offender status system, effective July 1, 2002. This would consist of a database that would be accessible to the public for the purpose of determining if a person is prohibited by law from registering a vehicle. This would put the onus on new dealers, not the secondary market. It would also put the responsibility on the people at the DMV, where there will be a "denial of registration." In short, if someone has a revocation and is a habitual offender, that person will be on the register. It is similar to the sex offender registry, but this one should be a lot simpler and cheaper to operate. He went on to say that the effective date of this legislation [HB 4] is July 1, 2001.

Number 2293

REPRESENTATIVE ROKEBERG remarked that there are other elements that he would consider part of the whole package that will be before the legislature this year. He believes the "crown jewel" of that legislation is the wellness court or a pilot program [HB 172] that would replace Judge Wabanaker or be in coordination with Judge Wanamaker's district court activities, in which he prescribes naltrexone, a drug that inhibits people's cravings for alcohol. This has been working effectively in Anchorage, where a new wellness court concept will be introduced with appropriate support and staffing, and a large allocation of monies for treatment programs as well as wellness courts.

REPRESENTATIVE ROKEBERG declared that his intention with this particular bill, which he is working on it with the Speaker [of the House], is to provide a diversionary program at the third-offense level, without aggravators. This program would be for someone who was arrested for the third time, facing a felony offense. This offender can go into a wellness court program in which he or she spends a year to a year and a half under the court's treatment and regime. He said that he has been very impressed by what he has witnessed and researched regarding wellness courts. He mentioned that he spent last Friday afternoon observing Judge Wanamaker's courtroom. He also had a work session with members of the court and various branches of

state government. The court uses various methods including house arrest, electronic monitoring, and group programs, including the NOW (ph) Program. This program, which is being operated for free by a man who will be getting a grant for \$200 a month, consists of naltrexone users. It's a kind of "nickel and dime way" that the courts can put together. He said:

I think it's time for the state to throw its full resources behind that door as well as establish additional pilot programs in ... the Bethel area, or another rural area, to help with the significant problems of alcohol abuse and so forth in the rural areas of the state. I think that bill is going to have a hefty price tag, but I think we can bring it in at a reasonable figure.

Number 2400

REPRESENTATIVE ROKEBERG remarked that House Bill 39, which came before the House Transportation Standing Committee, was unfairly criticized in the press, because there had already been agreements about which bills would carry what legislation. He said that Representative Kott's bill had some important elements, including the ones relating to mandatory insurance and other provisions. In short, many of the provisions that were taken out of the original HB 39 are now in HB 4. He said, "I think Representative Kott was unfairly characterized about limiting the will of this legislature and people in the state, in terms of punishing these defendants."

REPRESENTATIVE ROKEBERG summarized by saying there will be a minimum of three or four bills [pertaining to alcohol and driving]. He mentioned that Representative Green has a bill concerning IDs and driver's licenses, which deserves some review.

TAPE 01-13 SIDE B

Number 2462

REPRESENTATIVE OGAN stated that are a couple of issues that stand out for him in HB 4: DUI versus DWI, and probable cause versus reasonable grounds. He said it seems that anyone who consumes an alcoholic beverage and drives, whether legally past the limit or not, is driving under the influence. This is because any amount of alcohol, [even] one beer or one glass of wine, depending on the person and tolerance level, somewhat

influences a person's ability to drive. He asked if this [HB 4] gives any kind of legal change. He explained:

We are giving probable cause to the police to stop anybody that might have come out of a bar, for example, because if they come out of a bar, it's probably probable cause, and if they get in the car, they're probably going to be driving under the influence, whether or not that's a legal influence or not. I'm a little worried about that.

He asked Representative Rokeberg to explain what the change in the standard of proof in the bill is regarding probable cause versus reasonable grounds.

Number 2405

REPRESENTATIVE ROKEBERG replied that "probable cause versus reasonable grounds" is an interesting legal question. It is case law in Alaska that reasonable grounds equals probable cause. The reason for changing the statute is that law enforcement- in particular, the Anchorage Police Department who are on the front line enforcing this law- says the statute needs to be changed. Constitutionally, probable cause is a higher standard than reasonable grounds, but not in Alaska, because the courts have declared them equal. Therefore, it is better to have the probable cause standard in the statute. He suggested that Mr. Guaneli from the Department of Law or someone else could explain this in greater depth.

REPRESENTATIVE ROKEBERG stated that in response to the name change [DWI to DUI], Mr. Guaneli had mentioned that he could remember at least three names under Alaska Statute that dealt with drinking and driving. These included OMVI (Operating a Motor Vehicle While Intoxicated.) So, changing the name has had a bit of tradition in this state. In short, it [DWI to DUI] is a nomenclature change. He reiterated that this makes sense since the rationale behind it is that "we" are lowering the BAC standard from .10 to .08. "We" want to educate people and let them know that "there is a new standard and we're calling it a new crime ... because it is a new crime in terms of our measuring."

Number 2290

REPRESENTATIVE KAPSNER applauded Representative Rokeberg, members of the Task Force, and citizens for their effort in

bringing this up. She said this is a very worthy cause, but, expressed curiosity about some of the mechanics of the bill. She asked what exigent circumstances would be needed to allow police to obtain a blood test for evidence.

REPRESENTATIVE ROKEBERG said "a broken breathalyzer machine," which was cited in Sosa v. State, Alaska Supreme Court, as a prime example.

REPRESENTATIVE KAPSNER asked for an explanation of an interlock device and where this will apply.

REPRESENTATIVE ROKEBERG replied that this is a device that is added to the ignition switch of one's car, which requires the person to blow into it to pass a BAC test before being able to turn the key to turn the car on.

REPRESENTATIVE KAPSNER asked if there are automobiles in the state that use this device.

Number 2234

REPRESENTATIVE ROKEBERG replied that the Department of Corrections indicates the state does not have this device because of a lack of a vendor. The state had a vendor, who then backed out. He said that for some reason the Department of Corrections is not comfortable with electronic monitoring and similar devices. Therefore, the legislature has been pushing these elements for a number of years. "We" have to get the message across to DOC [Department of Corrections] that "we" want these things to happen. He said, "If we mandate this stuff in statute, we will build it and they will come. There will be a vendor that will be able to do this." Representative Rokeberg said he thought the possibility of someone, who was not intoxicated, blowing into the ignition key and the key freezing up. However, the interlock device program is in effect in places like Michigan and other northern and Midwest states that are colder than a lot of parts of Alaska. He said he thinks "we" can do that [interlock device program] in Alaska and accomplish a good thing to make "these people that are using pay for it."

Number 2191

REPRESENTATIVE WILSON commented that [the bill] is wonderful, but it's overwhelming to "figure out every little aspect." She referred to the section regarding offenders listing their name

on a registry. She asked if this was something new, "how much involved is that going to be," and how long it would take to put into place.

REPRESENTATIVE ROKEBERG said he would have to defer to Mary Marshburn, DMV, for some of the technical implementation questions that might be asked.

Number 2136

REPRESENTATIVE KAPSNER referred to Section 46 in Version P. She stated that this section requires the state to seek forfeiture of a motor vehicle [used] in committing a DUI. She asked if this included snow machines.

REPRESENTATIVE ROKEBERG replied, "I think so," but said he would have to defer to his "expert" [Janet Seitz]. He then said the bill is applied to propelled vehicles including watercraft, three-wheelers, ATVs [all-terrain vehicles], and snow machines.

REPRESENTATIVE KAPSNER asked if there was a chance that the offender could get his or her vehicle back after it was forfeited.

Number 2102

REPRESENTATIVE ROKEBERG said the vehicle is gone after the second offense, but one could buy it back.

REPRESENTATIVE KAPSNER asked what would happen if the vehicle [that the offender was driving] did not belong to him or her.

REPRESENTATIVE ROKEBERG answered that then the vehicle would not be forfeited. However, there are some issues around co-ownership for which he would defer to Ms. Seitz.

Number 2078

JANET SEITZ, Staff to Representative Rokeberg, Alaska State Legislature, commented that provisions of the bill state that if there is a co-owner, he or she can re-register the vehicle.

REPRESENTATIVE ROKEBERG said, "We need to have true punishment. People are not getting the message."

Number 2073

REPRESENTATIVE MASEK commented that if [the legislature] adopted the .08 [BAC standard] now, "we" would receive \$850,000. Each year after this, the funding would decrease until it came to zero, which would probably be in FY 07. Funding will begin to be lost in FY 02- FY 03, at \$2 million.

REPRESENTATIVE ROKEBERG specified that \$3.5 million would be lost starting in FY 03, \$4 million in FY 04, and so forth.

REPRESENTATIVE MASEK said yes, and if it [.08 BAC standard] is never adopted, \$8-\$14 million will be lost annually.

Number 2022

REPRESENTATIVE ROKEBERG confirmed this statement. He said:

That doesn't factor in what I call the "Congressman Don Young effect," either. We have a "Ted Stevens effect on the economy," but ... [with] Congressman Young assuming the chairmanship of the [Committee on] Transportation and Infrastructure in Congress, I suspect that our percentage of funds could go up. So, we would be at greater loss [if .08 standard was not implemented].

Number 2005

REPRESENTATIVE KAPSNER referred to page 19, [lines 6 and 7] in Version P, which says, "[The cost of] treatment required to be paid to the state under this subsection may not exceed \$2,000." She said she was concerned that the wording might cause insurance companies to not pay anything over \$2,000 for treatment.

REPRESENTATIVE ROKEBERG deferred to Ms. Seitz.

Number 2000

MS. SEITZ replied:

This is the amount that the offender has to pay to the state. It's not the amount the insurance company would have to pay for the treatment. But it's what the offender has to pay to the state for providing the treatment.

REPRESENTATIVE ROKEBERG commented that presumably, the offender would be using the insurance monies before he or she would have to reimburse the insurance company. But it doesn't always happen this way. Sometimes the Department of Corrections is able to get reimbursement from private carriers if there was a spousal or dependent medical insurance policy in place.

Number 1961

REPRESENTATIVE KAPSNER stated that some treatment can be \$8,000-\$9,000. So, she wanted to make sure that people who have insurance have their insurance premiums paid for.

REPRESENTATIVE ROKEBERG remarked that if a wellness court were established in an area such as Bethel, more resources would be put into that community. This might cause the average cost [of treatment] to decrease and make it "more accessible to other folks."

Number 1943

REPRESENTATIVE KOOKESH expressed his concern regarding vehicle forfeiture occurring on the second offense, especially with the ten-year look-back period. He asked for information on what other states and jurisdictions do in regard to [vehicle] forfeiture.

REPRESENTATIVE ROKEBERG said that a number of states have vehicle forfeiture, but he would defer to Ms. Seitz.

Number 1926

MS. SEITZ replied that she could only talk about what was happening in the municipalities of Anchorage and Fairbanks. These areas have vehicle forfeiture on the second offense, in which cars are taken away and impounded. Currently, if one is charged under state law (not under municipal law), the offender does not have to forfeit his or her vehicle on the second offense. One does have to forfeit the vehicle under state law on the third offense. So, if someone is living in the Municipality of Anchorage and receives a second DWI, his or her car is forfeited. She mentioned that Juneau is looking into the forfeiture program, but that she was not sure if it was implemented or not.

Number 1890

REPRESENTATIVE KOOKESH remarked that he was uncomfortable with that [forfeiture program on the second offense], because there is a huge expense associated with it. He said:

I want to get people off the streets too; I don't want them to drive. But I think that if you put somebody in jail ... on the second offense and [for] more time on the third [offense], ... that the third ought to include the forfeiture. But I'm willing to be convinced otherwise.

Number 1866

REPRESENTATIVE KOOKESH, in response to a request by Representative Rokeberg, reiterated that he wondered what other jurisdictions did on the forfeiture provision, including if it was done on the second offense.

REPRESENTATIVE ROKEBERG said, "We'll look into that and get back to you," by the time it goes to the House Judiciary Standing Committee.

REPRESENTATIVE MASEK asked who pays the cost of a vehicle being forfeited and impounded.

REPRESENTATIVE ROKEBERG deferred to Mr. Smith, who would testify on that point. He then said:

Presumably, the state would pay them and then they would get reimbursed by the sale of the vehicle. Anchorage breaks even. I don't think the troopers think it will in outlying areas of the state, so that's a point of contention right now.

Number 1830

REPRESENTATIVE OGAN asked if the ten-year look-back period is a "retroactive thing" in which the time period is being raised from five years to ten years.

REPRESENTATIVE ROKEBERG specified that the five-year and ten-year look-back periods are in law now. The number of convictions and how they are counted makes up the five-year look-back period.

Number 1798

REPRESENTATIVE OGAN wondered if there had been any discussion concerning the issue of double jeopardy and looking at previous convictions. For example, if someone has "a previous conviction and all of a sudden we pass a new law, and then all of a sudden that last conviction counts against this conviction, is there a double jeopardy?"

REPRESENTATIVE ROKEBERG replied that he did not think so, but he would have to defer to Mr. Guaneli [Department of Law]. He said that this is a new offense, "if you've done it before, you've got a pattern, then it becomes an aggravator...."

REPRESENTATIVE KAPSNER asked if prior records from other states would be looked at.

REPRESENTATIVE ROKEBERG confirmed this statement. He said there are some provisions that need to be cleared up.

REPRESENTATIVE KAPSNER asked if "our" system is compatible with all other states.

REPRESENTATIVE ROKEBERG referred to testimony before the House Judiciary Standing Committee where there were questions related to this issue. The Department of Public Safety's "inter-tie and their system" should be able to do that. However, he was not sure if this was included in state records elsewhere. So, if someone were convicted in another state, the treatment elements wouldn't necessarily be included in the records.

Number 1745

REPRESENTATIVE KAPSNER referred to Section 26 of Version P. She asked what adding "an alcoholic beverage" to line 24 does.

MS. SEITZ replied that this was to address a concern of the Department of Law that [the department] would lose the ability to include other intoxicating substances [besides alcohol]. So, "alcoholic beverage" was put in the language, and they "removed the deletion of intoxicated substances so it was clear that all alcoholic beverages, intoxicating substances, or controlled substances" were included.

REPRESENTATIVE KAPSNER asked if this could also refer to people who are inhaling.

REPRESENTATIVE ROKEBERG confirmed this. He said that "we expanded it rather than contracted it," which was his interpretation.

Number 1682

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, stated that the DMV has been working with Representative Rokeberg and his office on alcohol-related questions and issues, and technicalities regarding how the laws work (that affect DMV), for a number of months. The DMV has also had conversations with members of the Task Force, due to the high profile of DWI issues last summer. She said that the DMV provided a significant amount of information to Representative Rokeberg. The DMV has helped him craft some pieces of HB 4. The DMV has not had enough time for a detailed or critical analysis of Version P, because they received it after the close of business on Friday night. She reiterated some members' concern that this was a large and important bill.

MS. MARSHBURN said a number of sections in the bill impact the DMV from an everyday work standpoint and the fiscal impact. The DMV still has questions on a number of sections. She reiterated that they have not had a chance to look at or discuss with Representative Rokeberg's office the new sections in Version P.

Number 1580

MS. MARSHBURN stated that some of the sections that concern the DMV include Section 6, Version P, where the DMV must refuse to register a vehicle if the applicant does not have a valid driver's license or if that license has been suspended or revoked. Also of concern are Sections 12 and 15 of Version P, which are interrelated by creating a "two-level first offense," by having court sentencing alternatives and changes to the limited licensing provisions. She said the DMV needs to look at these sections "one step at a time, because there appear to be areas that need a little more working out." Section 26 in Version P, which changes the BAC from .10 to .08, will have a fiscal impact for the DMV. Ms. Marshburn said she thinks these costs have been forwarded.

MS. MARSHBURN stated that the DMV needs to take a closer look at Section 31 in Version P, which revokes vehicle registrations in certain situations. Section 33 in Version P requires the surrender of plates for a second offender. It is her understanding that it mandates the restoration of a license in

certain circumstances. She said that one of the conditions of the restoration of that license is for the DMV to do a criminal background check. The DMV is not defined as a criminal justice agency, however; they don't have access to criminal backgrounds except through the Department of Public Safety or the FBI [Federal Bureau of Investigation].

MS. MARSHBURN referred to Representative Wilson's question concerning the DWI registry. She said the DMV has to discuss this, but it would be similar to the sex offender registry. It would list felony DWI offenders. There are concerns in developing this registry, which would be open to public access in some manner, according to the provisions of the bill. This may be implemented by using a simple query. For example, someone could input, "Does Representative Scalzi have an ability to register a vehicle"? In turn, one would receive a simple "yes" or "no" record. She said the DMV has not covered this ground yet.

MS. MARSHBURN said other issues of concern for the DMV include obtaining correct and complete records from the court. They don't want to put someone on the list who is not a felony DWI offender. They are also concerned with the period of time during which offenders are kept on this list, the process of removing them from the list, and issues of security or access. She summarized by stating that what this looks like will, in turn, affect what it is going to cost.

Number 1385

MS. MARSHBURN referred to Representative Ogan's questions concerning the existing look-back periods. She explained that right now the five-year look-back period is for the purpose of computing a felony. Currently, if someone has three DWI offenses within a five-year period, he or she is a felony DWI offender. The purpose of the ten-year look-back period is to compute multiple offenses. For example, if someone has two [DWI] offenses within the last five years and a third offense within eight or nine years, that person is a third-time offender. There is a different classification of crime, a different penalty [for the ten-year look-back].

MS. MARSHBURN reiterated that the DMV does not have a definite analysis or testimony. But, they wanted to lay out questions and concerns about the bill. At some point, the DMV will have the fiscal impacts of the bill. She said that "we" appreciate that Representative Rokeberg and his staff have involved the DMV

from the beginning in conversations dealing with HB 4. It makes "our" job easier when we can work with people on the "front end." She mentioned that she planned to meet with Ms. Seitz to further discuss these issues. She also pointed out that the DMV does not want to hold up the movement of this bill from the House Transportation Standing Committee.

Number 1278

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, stated that when he testified to the House Transportation Standing Committee a few weeks ago on the general topic of alcohol and driving, he identified a number of goals that the administration has for addressing these issues. One of these goals was to make some improvement in the state's bootlegging laws. He said he is happy to see that some of the suggestions that "we" made and consulted with the legislature about have found their way into a bill that's working its way through the legislature. He said that one change that was identified dealt with underage drinking relating to an Alaska Supreme Court decision and opinion, which did not adopt rules to fix that problem [underage drinking]. He mentioned that legislation on this issue might be introduced.

MR. GUANELI referred to Representative Rokeberg's notion of therapeutic courts. He said that these courts would deal with drunk driving offenders in a particular way by using new drugs to help people with their craving for alcohol. He mentioned that this legislation is "in the works" as well. He said that "we" also identified a need for an increase in the alcohol tax to pay for all of this.

MR. GUANELI went on to say that in addition, there are a number of goals that the administration had that dealt directly with drinking and driving. One of the goals was to reduce the threshold level from .10 to .08 [BAC]. He said that "we" are happy to see that this bill incorporates this issue. He stated that "we" support the gradual expansion of identifying people who have committed their third drunk-driving offense, prosecuting them, convicting them, and labeling them as felons. There are more options available, once this is done. These felons are under closer scrutiny, by having a probation officer. This is a good process, and "we" are happy to see how it has been adopted in this bill. He said that technical fixes were proposed for drunk driving laws relating to search warrants, drawing blood, and collection of evidence. These have also been adopted in this bill. "We" also identified the need for

clinically appropriate treatment for DWI offenders. He thinks that people in the criminal justice system believe that there is "only a limited amount of what can be done by locking people up. Treatment has to be part of the solution."

MR. GUANELI commented that there are aspects of the bill that "we" have some concerns with, but the [administration] is continuing to work with the sponsor on this. He mentioned that some of these concerns would be addressed in the House Judiciary Standing Committee and elsewhere. He referred to a concern that Representative Rokeberg mentioned, which was the issue of adding six months to someone's sentence if the offender is above a certain BAC level. He said the fiscal note for that is beyond what anyone is willing to pay, but that these issues can be worked out. He believes that by working on the bill in the House Judiciary Standing Committee, and as the bill moves forward, "we" will get a bill that everyone can support.

MR. GUANELI remarked, "All of this is going to have a cost." Reducing the BAC from .10 to .08 has a cost that will affect the Department of Corrections, in particular. Expanding the number of people who are labeled and treated as felons has a cost. Providing clinically appropriate treatment to offenders has a cost, particularly to the Department of Health and Social Services.

Number 1021

MR. GUANELI reiterated the message that he gave three weeks go [at the House Transportation Standing Committee meeting] that the fiscal notes of the departments have to be carefully considered. He said these initiatives, that are great and which the administration supports, "need to be funded or else the expectation that I think the public has, that something will be done, is really going to be dashed. I think that would be unfortunate."

Number 0986

REPRESENTATIVE OGAN asked for the difference between DUI and DWI.

Number 0977

MR. GUANELI replied that the legislature can call offenses whatever it wants. He said he would be concerned if there were definitional changes that went along with this. This change

simply deals with changing the title of the crime. It has no legal significance. He stated that if this helps the public understand what is involved, then it is fine.

REPRESENTATIVE OGAN stated that his concerns deal with the probable cause section of the bill. This section says that if a person is driving under the influence, the police have a probable cause to stop and check them. He said that he did not know if this means "you are past the legal limit of what you're allowed to drink." He asked if there was a change in the probable cause that would cause a police officer to stop somebody. He said that technically, anyone seen coming out of a bar, would [provide] probable cause "that they're under the influence of alcohol to some extent, whether it's legal or not." He expressed concern that that "every single person coming out of a bar is now subject to probable cause for a stop and a search and seizure and screening for alcohol." In short, he asked, "Does it change the probable cause standard of proof at all, with that change of description?"

Number 0856

MR. GUANELI answered that when dealing with statute terms, one has to consider the "common meaning that you might look up in a dictionary or that people on the street think of as under the influence or intoxicated," versus the legal significance. These words become "terms of art" after a while. He agreed with Representative Ogan's comments that most people would say, "You take one drink, and you're to some extent under the influence." However, the law and instructions that judges give juries in assessing these, and what police officers need to consider, is whether, due to ingestion of alcohol, a person is driving with a degree of caution that a reasonable and sober person would be driving [with].

MR. GUANELI commented that if a person has had one drink [alcoholic beverage], his or her BAC would be between .02 -.04 depending on weight. Most people can essentially drive the same at that level as they can when they are sober. This (indisc.) used for commercial vehicles because they are more difficult to drive. He said:

What the police officer has to determine is, is there some basis in the law for pulling this person over. That means that I have grounds to believe that that person is not driving in the same way as a reasonable, sober person who is driving. In other words, there

has been some weaving down the road, maybe they're going the wrong way on a one-way street. Those are the kinds of things that would justify pulling somebody over for drunk driving.

Often, however, what gives the officer grounds to pull somebody over is not necessarily that somebody is driving so badly but they have a taillight out, a headlight out, or some other equipment violation. We pull somebody over, roll down the window, [and] all of a sudden you're hit with this odor of alcohol, and then you've got probable cause to do something further. But, it's not simply a matter of being able to stop everyone who walks out of a bar. That would not be right.

MR. GUANELI stated that one of the most litigated issues in the courts is if the officer had cause to pull the person over. In other words, from the officer's observations of the person's driving, was there cause to pull the person over. The courts have set clear guidelines on what this means, and "it's not simply walking out of a bar."

Number 0659

REPRESENTATIVE OGAN asked what percentage of DUI's come from public drinking establishments.

MR. GUANELI replied that he did not know.

REPRESENTATIVE OGAN suggested that the Department of Public Safety could answer this question. He also asked what is the "highest percentage of arrests during particular hours."

MR. GUANELI said he wanted to defer to the Department of Public Safety for these answers.

Number 0577

DEL SMITH, Deputy Commissioner, Department of Public Safety, mentioned that Lieutenant Steve Dunnagan, Department of Public Safety, is on teleconference if needed. He said that he wanted to address a few items. He stated that having been an Anchorage police officer for 20 years prior to state employment, he has had the occasion to make a number of DWI arrests and impound offenders' vehicles. He left the department prior to the start of the forfeiture process. However, the sponsor [Representative

Rokeberg] referred to "our" concerns about statewide forfeiture impoundment. He said that he does have concerns. He said that Anchorage, Fairbanks, Juneau, and Ketchikan have the "substantial infrastructure and ability to hook user record, pull the vehicle in places to store, those kind of things." There are areas in the state that are not able to do this. Mr. Smith said:

It was substantially easier in Anchorage for me to call the (indisc.) and have it there in three minutes than take it to secure storage. I've taken people's vehicles that may or may not be returned to them or may be required to be sold. I am concerned about where we store them, and how we store them, and how secure they are. [I] don't want them going down in value if we're going to try to sell them or have to give them back to an individual after some litigation. Having said that, certainly if the law says we have to do it, we'll implement a process to do that.

Number 0479

MR. SMITH stated that "we" support doing everything that can be done about DWI and the "carnage it reeks on our highways." There are no Alaska State Troopers who like to "go and pick up pieces of bodies." He referred to the past summer, which showed a significant amount of things needed to be done [concerning DWI]. He said:

I recognize that relative to first-time offenders, at least from the statistics I'm aware of, the state's doing a pretty good job in deterring them. They drop off dramatically. But there clearly are people that continue to drive after that first offense that need to have a serious wake-up call.

REPRESENTATIVE MASEK called an at-ease at 2:40 p.m. The meeting was called back to order at 2:43 p.m.

TAPE 01-14 SIDE A  
Number 0052

REPRESENTATIVE OGAN reiterated to Mr. Smith his questions concerning the percentage of DUI's that come from public drinking establishments and the hours during which there are the highest number arrests.

Number 0062

MR. SMITH replied that his suspicion would be that people are often picked up leaving parties at private residences. However, he suspects that more people go out to establishments in the evenings, and then navigate their way back home instead of taking a cab. He did not know the exact number of people who do this. He mentioned that establishments in Anchorage used to be able to serve alcohol until 5 a.m. A municipal ordinance changed this to 2 a.m. As a midnight shift traffic officer, he saw a "substantial spike" in drinking and driving after midnight. At times, there were [drinking and driving activities] as late as 6 to 7 in the morning. But, this probably occurred because of the 5 a.m. time frame.

MR. SMITH remarked, "There is probably some traffic out of Anchorage, out to other areas that have a 5 a.m. closing time now that Anchorage closes at 2." He said he is aware of possible legislation that would restrict the closing time to 2 a.m. around the state, which he thought would be a good idea. In short, he believes in the "general sense, not scientifically," that more DUI arrests occur after midnight. He said that he did not know if, under most circumstances, "we" can capture where somebody was drinking, unless, for example, "you ... are sitting at Four Corners in the valley, and the person pulls out, runs a stop sign, and [you] say, 'I saw this individual leaving the Four Corners Bar,' and that's in fact, in the police report." Most police officers say anecdotally that when they stop someone and ask if the person had anything to drink that night, a person will say that he or she had two beers, for example, at a friend's house.

Number 0223

REPRESENTATIVE MASEK asked when the municipal ordinance in Anchorage was changed from 5 a.m. to 2 a.m.

Number 0245

MR. SMITH replied that he believed it occurred sometime in the years 1983-1984. The ordinance happened a few years after he left, which was in 1988.

REPRESENTATIVE MASEK commented, "It's been quite a few years and the population has increased in Anchorage quite substantially. If it's been [enacted] that long, I suppose, today I don't know what impact it really has on the issue."

REPRESENTATIVE OGAN asked Mr. Smith if he saw a significant drop in DWI arrests and actions, and if he was with APD [Anchorage Police Department] at the time of the change.

MR. SMITH replied, "Yes, I was." He went on to say that the average street cop had thought that the 2 a.m. time change would "bunch people up more" [when they left the bars], as opposed to people filtering out from between 2-5 a.m. under the 5 a.m. closing time. This concern "did not show itself," he added. He thinks that people started leaving [the bars] earlier [before 2 a.m.] because they knew the closing time was changed. He reiterated that it has been 13 years since he was in Anchorage and longer than that since he has driven a patrol car.

Number 0357

REPRESENTATIVE MASEK said:

I believe the boroughs do have the ability, at their governing power, to impose an ordinance that would be [a] borough wide vote, if they wanted a change, and restrict their bars from 5 to 2. They do have that ability to do that. We don't need to give a state law to do that if I'm under ....

MR. SMITH answered that he did not think the correct term is "local option," but he would have to defer to lawyers. He said that he thought Representative Masek's comments were true.

MR. SMITH referred to an earlier question regarding who pays for impoundment. Currently, if a person is stopped and his or her vehicle is impounded because of DWI, the impoundment and towing fees are borne by the individual. State troopers or local police are not responsible for the fees. This is assuming that it is not a forfeiture situation for Anchorage or whatever area is doing it. In order to retrieve one's vehicle, the offender has to pay the towing fee. One has to pay a storage fee as well if the vehicle is in storage for more than one day.

Number 0445

REPRESENTATIVE KAPSNER commented that other states are looking at "profiling." She asked what percentages of people from different ethnic backgrounds are getting pulled over. She wondered if the department had any indication of how many Alaska Natives are getting DWI's.

MR. SMITH said he did not know.

Number 0484

REPRESENTATIVE KAPSNER asked if the Department of Public Safety was looking at profiling. For example, by regulation, police officers could do profiles by plugging in the ethnic background of the driver. She asked if this [addressing profiling] would need to be done legislatively.

MR. SMITH remarked that the Department of Public Safety could enact this, but right now it is not happening. He said that from his view of national policing, profiling occurs in response to a perceived problem. To his knowledge, there are rules and regulations that the Alaska State Troopers operate by. These are not based on [profiling procedures]. He stated that he thought Representative Kapsner was referring to profiling that is used on an incidental basis, for example, "who happens to fall into these things, as opposed to saying 'There goes a Native or some other kind of person?'" The Seattle Police Department is experiencing this [being accused of profiling] now due to allegations that they targeted particular individuals. Usually a police report indicates race only if it is based on observation [of the incident], as opposed to describing whom the person is.

Number 0565

REPRESENTATIVE MASEK asked if it would be possible for the courts to have this information once offenders are prosecuted, and, if so whether it would be available for the public to view.

MR. SMITH said he would assume it was possible, but he did not know how this would work. He suggested asking the courts for that information.

MR. SMITH mentioned that Anchorage also established different closing times on the weekends. He believes that on Saturday nights, closing time is 1 a.m. instead of 2 a.m. or vice versa. The issue of whether this was a useful thing to do probably came up in the Anchorage Police Department, or the Municipality of Anchorage, or in discussions by the DUI Task Force.

MR. SMITH referred to Representative Ogan's questions concerning whether [DWI arrests] happen more in public drinking places or private locations. He said his perception of the public was that if someone has had too much to drink at somebody's private

residence, it's far more likely that someone will say "Stay the night here, I'm not going to let you drive." It would be difficult for a stranger to step up to somebody in a bar and say, "You're not going anywhere."

Number 0718

KAREN ROGINA, Alaska Hospitality Alliance, testified via teleconference:

I am representing the Alaska Hotel and Motel Association, and the Alaska Restaurant and Beverage Association. I am here to testify in support of this bill. I participated on the DUI Task Force here in Anchorage, along with other members of our industry, and we believe HB 4 accomplishes many of the goals set forth by the Task Force, and simply want to voice our support for the passage of this bill. Thank you.

Number 0751

REPRESENTATIVE OGAN asked if the associations Ms. Rogina represents would support additional alcohol taxes to pay for this bill.

MS. ROGINA replied that the purpose of her testimony was to speak on behalf of the merits of this bill. Regarding any issue related to payment of it, "we would like to not marry that issue with this bill."

REPRESENTATIVE OGAN said, "So you don't support it."

MS. ROGINA remarked:

Since the State of Alaska does not allow for dedicated taxes -- I think that the merits of this bill are what we are supporting today. I know that I'm kind dancing around things, but we don't support a liquor excise tax.

Number 0825

JACK AMON, Volunteer President, Alaska Restaurant and Beverage Association; Owner, Mark Brothers Cafe; Member, DUI Task Force testified via teleconference:

I believe that HB 4 moves Alaska in the correct direction in combating of drunk driving in our state. The two strongest things that I took from my service on the DUI Task Force was the (indisc.) of treatment for repeat offenders and stiffer sentences.

I am always horrified when I read in the newspaper a story of a horrible accident caused by a drunk driver with eight misdemeanor convictions and a revoked license. This repeat offender is the problem drinker who needs to be targeted. During the Task Force, we were told that statistically the first offender with a blood alcohol level of .14 or greater was over 80 percent likely to re-offend.

The industry does remain opposed to the .08 standard. Alaska has no record of traffic fatalities at that blood alcohol level. I would urge the committee to seriously consider that. ...However, if that .08 standard is going to be adopted, I do approve of the graduated penalties that are in this bill. Overall, the industry does support this legislation and would recommend passage. Thank you.

Number 0918

REPRESENTATIVE OGAN asked if the association Mr. Amon represents supports increasing taxes to pay the fiscal notes for this legislation.

MR. AMON replied, "There is no linkage allowed in Alaska law to link dedicated taxes, and at this point, the industry is not supportive of increases in the alcohol excise tax."

REPRESENTATIVE OGAN said he is well aware of the constitutionality of dedicated funds. However, the legislature will have to "write the check to pay the bill," and he was wondering if these associations were interested in helping to fund this legislation. He said, "If you support the bill but you want us to pay for it, you don't want anyone else to, I guess."

Number 0967

REPRESENTATIVE MASEK stated that Version P [HB 4] would be held over until Thursday in order to hear more public testimony.

**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:56 p.m.