ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 16, 2001
1:10 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

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. 158
"An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS ACTION

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
02/22/01		(H)	Heard & Held
02/22/01		(H)	MINUTE(TRA)
02/27/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/27/01		(H)	Moved CSHB 4(TRA) Out of Committee
02/27/01		(H)	MINUTE(TRA)
02/28/01	0470	(H)	TRA RPT CS(TRA) NT 1DNP 2NR 2AM
02/28/01	0471	(H)	DNP: SCALZI, NR: KAPSNER, KOOKESH;
02/28/01	0471	(H)	AM: MASEK, KOHRING
02/28/01	0471	(H)	FN1: (ADM); FN2: (ADM)
02/28/01	0471	(H)	FN3: (COR); FN4: (CRT)
02/28/01	0471	(H)	FN5: (HSS); FN6: (HSS)
02/28/01	0472	(H)	FN7: (HSS); FN8: (HSS)
02/28/01	0472	(H)	FN9: (LAW); FN10: (DPS)
02/28/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/28/01		(H)	Heard & Held
02/28/01		(H)	MINUTE(JUD)
03/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/09/01		(H)	Heard & Held
03/09/01		(H)	MINUTE(JUD)
03/12/01		(H)	JUD AT 2:30 PM CAPITOL 120
03/12/01		(H)	Heard & Held MINUTE(JUD)
03/14/01		(H)	JUD AT 2:15 PM CAPITOL 120
03/14/01		(H)	Scheduled But Not Heard
03/16/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JANET SEITZ, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 4, noted an omission in CSHB 4(TRA) regarding changes to the refusal statutes so that they conform with changes to the DUI/DWI statutes.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director

Alaska Court System
820 West 4th Avenue
Anchorage, Alaska 99501-2005
POSITION STATEMENT: Provided an overview from the Alaska Court System on HB 4.

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner
Department of Corrections
431 N. Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: Provided an overview from the Department of Corrections on HB 4.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: During discussion on HB 4, spoke on the topics of aggravators, and increased fines and penalties.

ACTION NARRATIVE

TAPE 01-33, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:10 p.m. [stated as 2:10 p.m.]. Representatives Rokeberg, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 4 - OMNIBUS DRUNK DRIVING AMENDMENTS

[Contains some discussion of HB 172 regarding the fiscal note component that adds a superior court judge position, and some discussion of SB 105 regarding reimbursement from the offender's permanent fund dividend (PFD).]

Number 0065

CHAIR ROKEBERG announced that the committee would hear 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." [Before the committee was CSHB 4(TRA).]

Number 0207

JANET SEITZ, Staff to Representative Norman Rokeberg (sponsor of HB 4), Alaska State Legislature, explained that CSHB 4(TRA) contains an omission in that the refusal statute [provisions] were not amended to be in compliance with changes being made to the DUI/DWI (driving under the influence/driving while intoxicated) statutes. She added that there is an amendment being drafted to rectify that omission. She mentioned that the agencies did not foresee any additional fiscal impact as a result of the forthcoming amendment because they, like she, thought those changes had already been incorporated in CSHB 4(TRA). She noted that some recently revised fiscal notes had been provided by the departments but had not yet been distributed to the committee.

CHAIR ROKEBERG mentioned that the current fiscal notes totaled under $8 million, and he thanked the representatives of the administration for their work on reducing the fiscal notes. He also remarked that Representative Ogan was viewing the meeting via Gavel to Gavel Alaska from his hospital room.

Number 0436

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS or the "court"), said that per the court's policy, ACS did not have a position on HB 4. He added that there were two principal reasons why the court did not typically wade into the public policy debates regarding legislation. The first is that generally the establishment of public policy through the legislative process falls under the purview of the legislature, and the court would prefer to leave it that way. The second is related in that many of the bills passed by the legislature find their way to the court system as challenges, and it would be inappropriate for the court to be addressing an issue if it had already taken a public stand either for or against it. Therefore, he said, his remarks would be limited to the anticipated impact of HB 4 on [the ACS].

MR. WOOLIVER explained that there are two principal ways in which legislation impacts the ACS: it either changes the way [the ACS] does business, or it changes the number of cases that come before [the ACS]. From those two perspectives, [the ACS] has analyzed three principal areas in which HB 4 will have an impact on the court. First, the .08 [blood alcohol concentration (BAC)] provision will impact [the ACS] to the extent that it brings cases before the court that otherwise would not have been there. Based on analysis from the executive branch, a 10 percent increase in case filings is anticipated as a result of changing [the BAC limit] to .08. He added that this increase is consistent with what other states have seen upon changing [BAC limits] from .10 to .08. Assuming a 10 percent increase from 5,000 misdemeanor [cases] and 283 felony cases, the result is 500 new misdemeanor cases and roughly 28 new felony cases per year. He specified that [the ACS's] fiscal note is based on those estimates, which equate to roughly 40 percent, or five months out of the year, of a district court judge's time with his/her staff.

MR. WOOLIVER said that the second area of impact of HB 4 on [the ACS] relates to the felony provisions. Currently, it is a class C felony to be convicted of DWI if previously convicted twice within the previous five years. Through a five-year "phase in" program, HB 4 builds that up to what is referred to as a ten-year "look-back," so that by 2006, if a person has been arrested for a third DWI within a ten-year period, he/she would be guilty of a class C felony. He noted that the Department of Law (DOL) has estimates based on its own statistics and other executive branch [agencies'] statistics regarding how many new cases [the ACS] would likely see.

Number 0652

REPRESENTATIVE BERKOWITZ interjected to ask if "new cases" meant new cases filed as DWIs that in past might have been filed as reckless or negligent driving.

MR. WOOLIVER explained that he was referring to cases that would have been misdemeanor DWIs but [under HB 4] would be filed as felony DWIs.

REPRESENTATIVE BERKOWITZ, on the previous point of lowering [the BAC limit] to .08, asked if those new cases would be new to the system, or just charged differently.

MR. WOOLIVER specified that .08-misdemeanor [cases] would be new to the system - charges that would not have been brought otherwise - but in some instances, the .08 [limit] would create felonies because the offender would not have been charged for his/her third offence without the change to .08. Therefore, there would be an overlap of the latter, but the estimated 500 misdemeanor [cases] would be new [to the system].

MR. WOOLIVER returned to the felony [look-back] provision of HB 4 and said that the DOL estimated that [the ACS] would see 45 new felony cases a year, each year, for the next five years. As a result, there would be 45 new felony cases the first year of the program; 90 new felony cases the second year; 135 new felony cases the third year; 180 new felony cases the fourth year; and up to 225 new felony cases during the fifth year. Because the Anchorage superior court is already at, or beyond, maximum capacity for felony caseloads, he explained, [the ACS] is requesting a new superior court judge to help absorb the extra work brought on by the aforementioned estimated new felony cases. He added that currently in Anchorage, a district court judge temporarily sits in as a superior court judge to handle all of the felony DWIs - approximately 100 cases a year. He explained that the last time a superior court judge was added in Anchorage was in 1985, and since that time there has been a 100 percent increase in felony filings.

Number 0812

MR. WOOLIVER said that the third area of impact of HB 4 on [the ACS] would be the forfeiture provisions. Mandatory vehicle forfeiture for all second and subsequent DWI convictions is called for in HB 4. He explained that the DOL is estimating 800 of these forfeiture cases per year, and each case is entitled to a hearing. Because these types of hearings are fairly quick, [the ACS] estimates approximately 15 minutes per hearing, but still, 800 hearings at 15 minutes per hearing is 200 hours of hearings.

REPRESENTATIVE BERKOWITZ expressed amazement that a court hearing could occur in 15 minutes.

MR. WOOLIVER warned that it is always a gamble when estimating court time for hearings, but several judges whom he had spoken with said that forfeiture cases result in fairly quick hearings. Returning to the point of fiscal impact, Mr. Wooliver said that a lot of the cost of [the vehicle forfeiture provision] will be absorbed in the new superior court [judge] position since all of

the felony [DWI cases] will result in vehicle forfeiture because of second, or subsequent, DWI offenses. Therefore, the only additional expense will be due to the 500 new misdemeanor [DWI cases].

REPRESENTATIVE MEYER asked if monies received from selling [forfeited] vehicles could offset the additional expenses of the forfeiture cases.

MR. WOOLIVER explained that any monies received either from selling forfeited vehicles or from fines would go to the general fund, not directly to [the ACS].

CHAIR ROKEBERG said he had concern about the number of forfeitures, particularly given the fact that the Anchorage and Fairbanks jurisdictions currently handle second-[DWI]-offense forfeitures. He pointed out that the bulk of the estimated 800 new forfeiture cases are already undertaken at the municipal level.

Number 0985

MR. WOOLIVER explained that the [estimated] numbers did not include municipal forfeiture cases; they are estimates of forfeiture cases instituted for state offenses, not municipal offenses.

CHAIR ROKEBERG noted that prior testimony on HB 4 suggested that the method for forfeiture did not have to result in a criminal action, and although he acknowledged that the DOL had testified in favor of criminal proceedings for forfeiture cases, he suggested that forfeiture as a civil proceeding could perhaps diminish the impact.

MR. WOOLIVER responded that [the ACS's] fiscal note is based on the current version of HB 4 [CSHB 4(TRA)], which is not crafted in the same fashion as the [Anchorage and Fairbanks] municipalities' administrative [forfeiture ordinances].

CHAIR ROKEBERG mentioned that he would be offering an amendment "to go that route, to help lower the fiscal costs and the impacts on the courts." He inquired if such an amendment would have an impact on [the ACS's] fiscal note.

MR. WOOLIVER responded that he thought such an amendment would "just about do away with that portion of the fiscal note." He added that there are other aspects of [HB 4] that will have an

impact on [the ACS] but which are not significant enough to warrant a fiscal note. He explained that typically when a penalty for a crime is increased - such as occurs with HB 4 - so, too, is the amount of court work, primarily because it is more onerous for the defendant to be convicted; thus he/she tends to fight harder against a conviction. He went on to say that not only trials but also pretrial litigation would increase. He mentioned the manslaughter provisions and the aggravator provisions as examples of the type of thing that people would be willing to fight harder against.

REPRESENTATIVE MEYER asked for an explanation of the distinction between tickets written for violation of a local ordinance versus a state law. He inquired whether Anchorage [and Fairbanks] police officers might be tempted to write DWI tickets against the state law instead of the local law because of budgetary constraints at the municipal level.

MR. WOOLIVER replied that the Municipality of Anchorage generates revenue from fines, fees, and forfeitures charged against municipal offenses. He said he supposed that each municipality has to decide at what point, on any given law, it would be cheaper to charge a state offense. He added that currently, the Municipality of Anchorage has chosen to adopt and pursue a whole variety of ordinances that closely model state law. He commented that he did not presently have concerns that municipalities would try to pass the costs [of DWI offenses] on to the state. He mentioned that occasionally [the ACS] talks about charging municipalities for the use of the state court system, and in fact, he noted, years ago there used to be fees for such use.

Number 1330

CHAIR ROKEBERG asked for comments regarding mandatory forfeiture provisions at the municipal level for second DWI offenses versus the state's [current] "permissive" forfeiture provision. He voiced concern that that distinction resulted in unequal treatment with regard to the application of penalties being dependent on what part of the state the offense occurred in.

MR. WOOLIVER responded that there is a provision in Alaska statute that allows municipalities to have a forfeiture provision, which in turn could provide for stiffer penalties than the state's discretionary penalties. He acknowledged that under those circumstances (and as prior testimony indicated), some offenders find it better to be charged with a state offense

rather than a municipal offense if the municipal offense results in vehicle forfeiture. He noted that while the distinction did not provide for equal treatment, it was the law.

CHAIR ROKEBERG offered that HB 4 is endeavoring to "level that playing field" by making forfeiture mandatory at the state level. He added that he found it incredible that a second [DWI] offense [at the municipal level] has a harsher penalty than a third offense (even though it is a felony charge) because it then becomes a state offense.

REPRESENTATIVE JAMES said she agreed. She added that municipalities should mirror state law even if it means that the municipal penalties are lowered, although she also said that she believes that [the state] needs to be [at least as severe as] "anyone else." She asked, if a person were charged under the municipal ordinance for a DWI offense, whether a subsequent DWI offense that occurred outside of a municipality would be considered a second offense and therefore subject the offender to mandatory vehicle forfeiture.

Number 1520

MR. WOOLIVER responded that to his understanding that person would be charged "under the state offense, or a comparable one," such as a municipal offense.

REPRESENTATIVE JAMES noted that if that person were close to the edge of the city limits, he/she might endeavor to cross over the boundary line to ensure one type of penalty versus another for a second offense.

CHAIR ROKEBERG observed that that circumstance might result in a high-speed chase. And on that point, he asked if currently, DWI offenses that occur in other jurisdictions in other states would count [towards the number of convictions a person has received].

MR. WOOLIVER said that to his understanding, those convictions would count, but only if the other state was also a ".10 state" [as Alaska is now]; otherwise, it would not be considered a comparable law.

CHAIR ROKEBERG asked for a more in-depth explanation of the duplication in HB 4 and [HB 172] regarding the cost of personnel.

MR. WOOLIVER noted that all of the [proposed] DWI bills are "somewhat of a package," and that there is "overlap" between them. He explained that HB 172 calls for a superior court judge [position] in both Anchorage and Bethel; the superior court judge in Anchorage would handle the workload generated by the therapeutic court (created by [HB 172]), which is aimed at felony-DWI offenders. He further explained that although both bills include in their fiscal notes funding for a superior court judge, one such judge can do the workload created by both HB 4 and HB 172.

CHAIR ROKEBERG asked Mr. Wooliver to explain his memorandum regarding the issues of collections and "fine revenue" generated by HB 4.

Number 1688

MR. WOOLIVER explained that per Ms. Seitz's request, the ACS had attempted to estimate how much revenue the increased fines provided for in HB 4 would generate. He added, however, the ACS does not have a computer system designed to make that kind of estimate, and, therefore, the information gleaned from both paper records and computer records produced a very rough, conservative estimate of $300,000 in additional revenues. He noted that the personnel who compiled that information had suggested that he not rely too heavily on that number.

CHAIR ROKEBERG commented that he was disappointed to see that those projections were based on a 35 percent collection rate, particularly given that HB 4 attempts to place liens on permanent fund dividends (PFDs).

MR. WOOLIVER explained that to his understanding, that 35 percent is the money that [the ACS] would bring in from people who pay their fines directly to [the ACS]. Delinquent fines, however, are forwarded to the [Collections and Support Section] of the DOL, but beyond that, [the ACS] does not maintain any record of those monies owed; he suggested that [the DOL] would be able to give a more accurate accounting of the collection rate.

CHAIR ROKEBERG said he was surprised that the estimate of income generated by HB 4 was not substantially greater since the fines for a first offense had been raised.

MR. WOOLIVER cautioned against "going to the bank with this estimate." He added that typically [the ACS] does not make

projections because "we're not ... in the loop on the revenue generation side."

Number 1867

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections (DOC), said that it is no secret that increasing penalties and/or creating new crimes has a direct impact on the DOC, particularly in fiscal areas. She explained that the first area [of HB 4] that has a fiscal impact on the DOC is the manslaughter provision. However, she noted that it would not be until fiscal year 2005 that the DOC would experience that impact.

MS. BROWER went on to say that based on DOL figures, [the DOC] estimated approximately nine cases a year in which somebody can be charged with negligent homicide or manslaughter relating to vehicle [use]. She added that there is usually also one [murder in the second degree] charge, per year. By assuming that five of those [nine cases] would be affected by the change in the manslaughter statute, then in fiscal year 2005 the DOC would begin to see the effects of increased sentencing. Referring to increases in fiscal years 2006 and 2007, she noted that that was due to the phenomenon of "stacking" that occurs in [correctional] facilities. People who are convicted in 2002 will create a fiscal impact in 2005, and those convicted in 2003 will create a fiscal impact in 2006; however, the fiscal impact from 2005 will carry over to 2006. She said that the [fiscal increase] levels off in fiscal year 2006 at an estimated amount of $211,640.

MS. BROWER also said that throughout the [DOC's] fiscal notes, where it is not in statute that someone must serve his/her time in a community residential center (CRC), she had utilized a combined figure of half time in a hard bed (at a current cost of $112/day) and half time in a CRC bed (at a current cost of $64/day). This calculation is based on the assumption that by the time someone gets into his/her fifth year of a sentence, it is conceivable that he/she would be transitioning into the community. The resulting calculation came to $88/day. She explained that the term "hard bed" is used for state correctional facilities, and the term "soft bed" is used for community residential centers (CRCs) - halfway houses.

MS. BROWER, turning to the .08 [BAC] provision as the next area to fiscally impact the DOC, said the DOC, the DOL, the Division of Motor Vehicles (DMV), and other agencies are estimating a 10

percent increase in convictions. This is based on the number of people who fall into the category of .08-.10 [BAC], as well as those who would not have been convicted but for the change in the law. She noted that the DOC had 4,118 misdemeanor convictions in fiscal year 2000. She estimated there would be 413 new misdemeanor convictions for a .08 [BAC] provision. Further, she had used DMV's statistics from 2000 to calculate percentages of first-, second-, and third-time offenders, and those records, for example, showed that 69 percent of license revocations were for first-time offenders. She went on to explain that her calculations resulted in estimates of 285 new first-time offenders for 3-day sentences at $64/day, for a total of $54,720; 83 second-time offenders for an average of 20-day sentences at $64, for a total of $106,240; 33 third-time offenders for two-thirds time in a CRC bed and one-third time in a hard bed, for a total of $287,742; 8 fourth-time offenders for a total of $90,000; and [4] fifth-time offenders for a total of $52,800. The grand total for misdemeanants came to $591,614.

Number 2302

MS. BROWER said she had used similar [statistical] assumptions for felons, and estimated 200 convicted felons for fiscal year 2000. She had used the formula of $88/day for an average of 352-day sentences, and the result was $619,520. The combined estimates for felons and misdemeanants totaled $1,211,134. She went on to say that anytime there are more felons, the need for probation supervision also goes up, and that figure is reflected in the fiscal note. She also said that assuming a .08 [BAC limit] will provide some relief in the rate of vehicular homicides, she estimated a savings of $61,320 starting in fiscal year 2003.

CHAIR ROKEBERG surmised that the calculations in the fiscal note regarding the diversion program for offenders between .08 and [.099 BAC] were achieved "by not allowing the three days in." He mentioned that he was rethinking the [diversion program].

REPRESENTATIVE BERKOWITZ, on the point [of the diversion program for offenders who fall between .08 and .099 BAC], said his suspicion was that it would require a lot of intensive courtroom action, because people will work hard to get into that diversionary range. There will be more motions, and more challenges to the intoximeters, the experts, and the calibrations, he added.

CHAIR ROKEBERG suggested that the committee "re-institute the time on the bill ... but not the diversion itself." He said that he still thought the diversion [program] had merit in terms of allowing people to keep a first-time offense off the record. He noted that he was surprised at the modest difference the diversion program made to the fiscal estimates.

MS. BROWER acknowledged that one would hope [the diversion program] would have a greater impact, but after further thought, would realize it really doesn't. On the point of the fiscal impact of not implementing the diversion program, she said it would not cost a great deal more, although she was not one to encourage incarceration.

TAPE 01-33, SIDE B
Number 2468

CHAIR ROKEBERG said his concern there, after talking with several people, was that maybe the mandatory jail time for a first-time offender was what made the most impression on that offender, and thus reduced the recidivism rate. He surmised that maintaining the mandatory jail time for a first-time offense would not do damage to the concept of diversion.

MS. BROWER noted that by mandating the jail time, the incentive of suspended imposition of sentence (SIS) is taken away; the person always has it on his/her record. "We forgive, but we don't forget," she added. On the point of inmates paying for incarceration, Ms. Brower explained that to her understanding, the required payment of $1,000 for the cost of incarceration (which HB 4 increases to $2,000) applies only to misdemeanants. Taking all of the above calculations into account with regard to the .08 provision, she estimated an increased cost for incarceration of $1,184,254 for fiscal year 2002.

MS BROWER, referring to page 1 of the DOC's fiscal note, confirmed that the gross note is $5,108,200 and the fund source from other areas besides the general fund (GF) shows $414,000. Thus the funds needed from the GF total $4,693,600 for fiscal year 2002. She explained that the $1,065,600 under "Contractual" in the Operating Expenditures column reflects substance abuse treatment services, which the DOC contracts out, and that the $4,042,600 under "Miscellaneous" reflects the estimated cost of incarceration, which includes just about everything else such as employees and the CRC contracts.

Number 2202

MS. BROWER, referring to the increase in sentencing for second-time offenders from 20 days to 30 days as another area with fiscal implications for the DOC, pointed out that a provision in HB 4 says that an offender can still get a 20-day sentence if he/she serves 10 days doing community work service (CWS). She said [the DOC] was not sure how that [provision] would be administered, or who would be responsible [for the offenders], and thus did not provide a fiscal note for the administration of that provision. She added that [the DOC] also was not sure who would take advantage of that provision, "so we said 50/50" in terms of serving [jail] time versus CWS.

CHAIR ROKEBERG explained that to his understanding and belief, the courts would handle that provision, and would also verify that [the CWS] was done. He added that he did not envision establishing a "bureaucratic point" to which [offenders] have to report. He asked Mr. Wooliver to confirm whether [verification] was normally done by the judge.

MR. WOOLIVER responded that he was not entirely sure if that was the case but he would check.

MS. BROWER went on to say that [the DOC] estimated that potentially half of the second-time offenders who would be eligible to serve 10 days of CWS would do so, while the other half would choose simply to complete the 30-days' jail time because they could conceivably get "good time" on the sentence. Thus, [the DOC] estimated an increased cost of $184,576 for an additional seven days, which is what this provision amounts to, she said.

CHAIR ROKEBERG commented that he would be surprised if the majority of those second-time offenders did not opt for the 10-day CWS.

MS. BROWER addressed the next area of HB 4 that had a fiscal impact on the DOC, the ten-year phase-in of the look-back provision. She explained that based on the DOL's figures, the DOC estimated an increased conviction rate of 38 felons each year. The increase in days of incarceration would total $535,040 the first year, and would increase each year as the full ten-year look-back was reached. She added that during the fifth year of the phase-in, the DOC estimates 190 felons at a cost of $2,675,200.

MS. BROWER, in response to several questions from Chair Rokeberg regarding the details of the DOC's fiscal note, said that she had used the figure of $88/day in most of her calculations. She also said she had used the current number of felony offenders per year, and then added the estimated additional offenders that the DOC would see as a result of instituting the .08 [BAC] and the look-back provision. The result was 240 new felony offenders for the first year, and she further calculated that 80 percent of those felons would be third-time offenders, 15 percent would be fourth-time offenders, and 5 percent would be fifth-time offenders; she multiplied these results by the additional days mandated by HB 4 for the different levels of felony offenses. She noted, however, that in her calculations she gave felons the benefit of "good time" based on current data. She offered to provide further details of her calculations, as well as alternate numbers reflecting possible amendments, to Ms. Seitz.

Number 1861

MS. BROWER commented that as the penalties increase and the number of offenders increases, so, too, will the fiscal impact on DOC increase. She added, however, that none of her current calculations include inflationary costs. And while she acknowledged that HB 4 already has a very steep fiscal note, she said she has not been able to formulate a calculation that takes into account the extra work involved such as increased bookings and other things that take a toll over time, nor has she taken into consideration the cost of increasing the number of facilities that may be needed for the increase in offenders.

MS. BROWER, on the next area of HB 4 that has a fiscal impact on the DOC, explained that according to a "snapshot" done by the DOC in October 2000, the provision removing the ten-year look-back for second-time offenders would only affect about 3 percent of those offenders. Under current statute, a person who commits a second offense within ten years is considered a second-time offender, but if that person's first offense had occurred further back than ten years, he/she is treated as a first-time offender. Section 32 would remove that ten-year look-back; thus all second offenses would be treated as such, regardless of how long ago they occurred. Because of the small percentage of second-time offenders this provision would affect, the DOC calculated an estimated increase of only $22,464. She confirmed for Chair Rokeberg that were that look-back provision for second-time offenders to remain in statute, only $22,464 is estimated as savings to HB 4's fiscal note. She added that this

calculation is based on the assumption that most first-time offenders do not re-offend; thus, for a person to have a second DWI in 11 years, versus 10 years, did not seem to be a frequent occurrence.

MS. BROWER then discussed the provision that removed eligibility for good-time deductions, for a person who has failed to satisfy court-ordered treatment, as another area of HB 4 with a fiscal impact on DOC. She explained that while this provision (Section 33) would have a fiscal impact on the DOC, that impact was not quantifiable. She pointed out that first-time offenders are not eligible for good time - those offenders are mandated to serve 72 hours. She noted that current statute says that if a person has been court-ordered to treatment, and he/she fails to complete that treatment, then he/she is subject to revocation of probation/parole - he/she loses "good time." She said that she had concern that the good-time provision would be removed in a "blanket" manner. She said she thought that [current] statute covers [the issue of good time deductions] fairly well for those offenders who are required to do intensive treatment. However, the people who are required to do three days (or twenty days) on first-time (or second-time) offenses - with the exception of treatment required by the Alcohol Safety Action Program (ASAP) - are not really exposed to treatment. But once a person has become a felon - through a third or subsequent offense - then the judge can impose court-ordered treatment, and the loss of good time can then be used as an incentive to comply with treatment. She added that while she suspected that the issue of good-time deductions was already covered in current statute, she wanted to voice her concern about the wording in HB 4 regarding this issue.

CHAIR ROKEBERG agreed to look at that issue more closely.

MS. BROWER next mentioned the topic of estimates of revenue from inmates paying up to $2,000 of their treatment costs.

Number 1551

CHAIR ROKEBERG asked if the cap could be raised or removed on the amount offenders are required to pay for their own treatment. He noted that there was a restitution issue regarding state provided treatment. He also inquired what could be expected if the offender had medical insurance.

MS. BROWER explained that currently, [the DOC] is unable to collect on Medicaid, and as far as she knew, [the DOC] did not receive reimbursement from insurance companies.

CHAIR ROKEBERG interjected and said that [the DOC] should [be able to receive reimbursement from insurance companies] as long as the policies covered treatment, and he suggested that that issue should be researched further.

MS. BROWER noted, for example, that all of [the DOC's] inmates who are covered by the "Indian Health Program" do not receive [treatment benefits] while they are incarcerated. Therefore, while she said she did not know a lot about this particular topic, she did not think [the DOC] was able to collect on the treatment portion.

CHAIR ROKEBERG said his intention was to raise the cap [of what the offender would pay] from $1,000 to $2,000.

MS. BROWER clarified that that raise was for the cost of incarceration, not for the costs of treatment; currently, there is no cap on the amount an offender pays for treatment.

CHAIR ROKEBERG surmised, then, that if there were to be a private health insurance plan in place, [the DOC] could collect [for treatment].

MS. BROWER expressed uncertainty about that assumption, and said she would have to research it.

Number 1452

CHAIR ROKEBERG mentioned that the House Finance Subcommittee on Corrections tries to look at [the DOC's] ability to recoup costs via the offender's (or spouse's) insurance coverage. He noted that Ms. Brower was making a distinction between the cost of incarceration and the cost of treatment, and he asked if offenders were subject to restitution to the state if they had income.

MS. BROWER said not to her knowledge. If offenders are on supervision in the community as probationers or parolees, then they have to pay for their treatment just as anybody else would. On the topic of the PFDs, she explained that for every eligibility year in which a felon or third-time offender is incarcerated, he/she is not eligible for his/her PFD - all of it is confiscated and goes into the "pool." She further explained

that the criteria for receiving money from the pool are very specific. The DOC is already in the pool to receive payment for sex-offender treatment and for "gate money"; the Department of Public Safety (DPS), the Council on Domestic Violence and Sexual Assault (CDVSA), and "Crime Victims Compensation" are also in the pool. She added that she was not familiar with the pool's priority list or distribution process.

CHAIR ROKEBERG suggested that that information is important because of the relationship between how the [pool's distribution] works and what [the DOC] can try to collect. He said it seemed to him that if there is a $1,000 cap on [repaying] the cost of incarceration, and if there were no other claims against the offender's PFD, then only $1,000 could be taken from that PFD. He asked if that was correct.

Number 1262

MS. BROWER said that was her assumption. She noted that Senator Halford has legislation - SB 105 - that would change the pool to include PFDs from first-time misdemeanants with a prior felony conviction, and from misdemeanants with two prior misdemeanor convictions; that money would go to a "victim's ombudsman's office."

CHAIR ROKEBERG observed that the DUI Prevention Task Force made the recommendation that PFDs be confiscated. He said he had been assuming, perhaps incorrectly, that by raising the cap of incarceration reimbursement to $2,000, HB 4 was essentially doing the same thing. He wondered if HB 4 needed other language in order to ensure that [the DOC] had the greater claim [on the PFD pool].

REPRESENTATIVE MEYER asked who pays for medical costs incurred by an inmate.

MS. BROWER answered that the state pays those costs, with the exception of a co-payment of approximately $2 that the inmate pays for every visit to the nurse.

REPRESENTATIVE MEYER then asked how inmates make those payments if their PFDs are confiscated.

MS. BROWER explained that inmates earn money (35 cents/hour) by working within the correctional facility, and that they can also request money from family members.

REPRESENTATIVE KOOKESH asked how the state forces an inmate to fill out and sign a PFD application.

MS. BROWER responded that the data processing section at the DOC goes through a complicated process to determine an inmate's PFD eligibility. The DOC then produces a list which, when matched up with information on file at the Department of Revenue, allows for those PFDs to be placed in the pool. Thus individual applications do not need to be filled out by inmates.

CHAIR ROKEBERG asked Ms. Brower to work with Ms. Seitz on an amendment which would ensure that [the DOC] got "first call" on an offender's PFD, perhaps even at the second offense. He added that HB 4 would raise the fine imposed on all offenders. He asked Mr. Wooliver if the ACS could attach an offender's PFD in order to pay the fine if that person was otherwise unable to pay.

MR. WOOLIVER said yes. He went on to explain that when a person is incarcerated and that incarceration prohibits receipt of a PFD, his/her PFD goes into the pool; once a person begins to get his/her PFD again after release from jail, there are, to his belief, eight different [levels of priority] for attaching a person's PFD. He listed child support, student loan, court-ordered restitution, and fines owed to the state as examples of the different levels.

Number 0911

MS. BROWER noted that once a person is no longer incarcerated, he/she may choose not to apply for a PFD during subsequent eligibility years; thus there would not be anything available for the state to attach.

MR. WOOLIVER added that in such cases, the court can mandate a person to apply for his/her PFD.

CHAIR ROKEBERG requested that Ms. Brower assist his staff in formulating ideas for increased revenue sources in order to help pay for the provisions of HB 4.

MS. BROWER said she would be happy to work on those issues. She added the following philosophical comment: The DOC feels that treatment is really the key to solving the problem. Other states - California, for example - have shown that increasing penalties and incarceration isn't always the best response; they can't build themselves enough prisons to handle the problems

created by such increases, and Ms. Brower said she did not want Alaska to go the same route. She added that [the DOC] has a strong commitment to treatment; and when someone is incarcerated, she viewed it as a fine time to provide that treatment. She said she thought a balance was important.

CHAIR ROKEBERG inquired if Ms. Brower's testimony was that, if some of the DOC's costs had to be eliminated because of the fiscal note, she would prefer to see the treatment money stay and the time served go down.

MS. BROWER answered that she wanted the treatment money to stay, but, again, achieving a balance was really important. She noted that in order for an offender to receive an adequate level of treatment, he/she had to be incarcerated long enough to receive it. She added that she thought treatment was essential.

CHAIR ROKEBERG said that the committee would look further at the topic of treatment as it relates to incarceration time for the different classes of offenders.

Number 0710

REPRESENTATIVE MEYER said he has concerns about domestic violence and sexual assault, and he noted that HB 4 is focusing on DWI. He postulated that soon people will simply resort to staying at home and drinking, and that will increase the problems of domestic violence and sexual assault without taking care of the underlying problem of alcoholism. He added, therefore, that he is in favor of keeping the treatment funding in HB 4.

CHAIR ROKEBERG commented that a major factor preventing people from getting the treatment they needed was an unavailability of affordable "beds."

MS. BROWER offered the following snapshot of current DWI statistics: 504 people within Alaska's jurisdiction are serving time for DWI - 200 for felony DWIs and 304 for misdemeanor DWIs. She added that many of those [offenders] are serving time for other offenses concurrently. And with regard to felony DWI offenders under supervision, she said that as of August 2000, there were 364, although she acknowledged that that figure might have increased since then. She pointed out that in the DOC's fiscal note she had placed probation supervision in the portion relating to the .08 [BAC], because the felony offenders are already under supervision for increased sanctions. In response

to questions from Chair Rokeberg, Ms. Brower explained that the DOC had just assumed a 10 percent increase across the board.

CHAIR ROKEBERG noted that the [.16 BAC] aggravator provision had been removed from CSHB 4(TRA) because of the enormous cost in terms of incarceration. He asked Mr. Guaneli to explain current law with regard to what would be an aggravator in a typical DWI case.

Number 0271

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), said that for felonies, there is currently a long statutory list of aggravating factors that the courts must consider in cases under presumptive sentencing. Typical aggravators include things like a weapon being used to commit a crime, cases involving a particularly vulnerable victim, or cases wherein a large amount of money or drugs is involved, to name a few. He added, however, that there was nothing specific that relates to drunk driving, such as a high BAC; notwithstanding this, judges tend, as a matter of practice, to add extra incarceration time to sentences involving high BAC levels.

CHAIR ROKEBERG said he had concern that if there were any aggravators placed in HB 4, it would translate into more prison time and, consequently, greater cost. He asked whether judges would find the ability to factor in increased BAC levels at sentencing to be a valuable tool.

MR. GUANELI said he thought that a high BAC aggravator is a valuable tool to consider. He went on to explain that statistics show the higher a BAC a person has, the more likely that person is to get into an accident, often a fatal one. He said it was interesting to note that in Alaska, the average BAC reading for DWI/DUI offenses is approximately .18; thus, in the original version of HB 4 that had an aggravator for BACs above .15, that aggravator would have applied in approximately 60 percent of DWI/DUI cases. He also said that those in the field [of law enforcement] will say that for cases of felony drunk driving, persons who have had three offenses in a relatively short period of time tend to be hardcore drinkers who have a higher BAC level in their systems all the time. In many of those felony drunk-driving cases, he added, a BAC of .20 is very common. He went on to say again that he thought judges were

already taking high BAC levels into consideration, just that they were not mandated to do so.

TAPE 01-34, SIDE A
Number 0001

MR. GUANELI noted that he was not certain what he could recommend in terms of putting a specific BAC aggravator level in statute, or in terms of giving judges specific instructions regarding sentencing.

CHAIR ROKEBERG asked, by putting a specific BAC aggravator in statute, whether the judge would still have discretion.

MR. GUANELI responded that having an aggravator in statute would allow the judge to take it into consideration, but the judge is not required to do so.

CHAIR ROKEBERG then asked if by having an aggravator of .20 BAC, the fiscal note could remain lower. He agreed that as a true aggravator, [.16 BAC] was probably too low.

MR. GUANELI said he did not have a response regarding the fiscal impact of a BAC aggravator because it is probably already being taken into consideration by judges to some extent now.

CHAIR ROKEBERG opined that having a BAC aggravator in statute would simply translate into more jail time; hence the debate would become about how effective more jail time was on the problem [of DWI/DUI]. He asked if there were any other aggravating circumstances, aside from high BACs, that should be taken into account.

MR. GUANELI observed that although there are a number of other possible aggravators, such as whether injuries occurred as a result of an accident in a DWI/DUI case, judges already take those aggravators into account. On the topic of increased penalties and fines, he said that in general, Alaska has tough [DWI/DUI] laws now, and they would become considerably tougher under HB 4. He noted, for example, that the current mandatory minimum fine for felony drunk driving is $5,000 - which is much higher than in any other state, according to an Internet list he had come across - and would become $10,000 under HB 4. He said that while raising such fines and penalties is not necessarily a bad thing to do, the administration's position is that there must be a clear focus on treatment for offenders. He added that some of that treatment must occur in prison and some of it must

occur outside of prison; ordinarily, offenders are required to pay a good portion of the cost of treatment. Hence there is some concern that having high financial penalties, particularly with repeat offenders, will make it extraordinarily difficult for offenders to get the treatment they need.

REPRESENTATIVE COGHILL asked what the generally accepted [timeframe] for successful treatment was.

MR. GUANELI offered to respond to that question in more detail at a later meeting, but for now he said that the DOC tries to provide what treatment it can within the confines of how long an offender is in custody. He noted that chronic offenders tend to need a long period of follow-up care, and sometimes inpatient care, after being released from jail. He also noted that treatment providers speak of a 28-day structured program for certain levels of offender, and there are also other programs of varying length, dependent upon the extent of an offender's problem. He said his sense was that an offender needed a fairly long period of treatment in some sort of inpatient program, but he would prefer to defer to the experts the question of exactly how long that treatment period should be.

Number 0615

REPRESENTATIVE COGHILL commented that he believed that the $10,000 fine could be found onerous, and might actually "break the issue of treatment," thereby removing an offender's hope that he/she could get out of the problems created by the DWI/DUI offense. He offered that even $5,000 was a pretty heavy cloud to hang over a treatable offender.

CHAIR ROKEBERG asked if it would be possible for the judge to order that the fines go towards treatment, or if the judge could suspend certain fines upon reimbursement of treatment costs.

MR. GUANELI responded that he would have to investigate those issues further; however, he said he believed that the mandatory minimum fine could not be suspended and still begged the question of whether an offender had the wherewithal to pay for treatment.

CHAIR ROKEBERG asked if having the flexibility to either suspend the fine or order it paid towards treatment would ensure that an offender could pay for treatment, even if it was only a small amount of treatment. He acknowledged, however, that fines do serve a purpose of judicial punishment, which is separate and

distinct from the treatment element, and he noted that the Criminal Justice Assessment Commission (CJAC) recommended that all fines for state offenses be doubled. He also noted that there was a practical problem created by forcing an individual, through statute, to reimburse the state for treatment when that individual has a limited amount of funds.

MR. GUANELI offered that the CJAC recommendation might only apply to lower-level offenses; he was not certain that the CJAC had this specific offense in mind when making that recommendation. He also pointed out that once a fine is imposed, it becomes the state's money and is supposed to go in to the GF; it is not supposed to be spent without going through the appropriation process. Therefore, even if a judge did have the discretion to suspend fines on the condition that offenders meet other criteria, fines could not just simply be collected and turned over to a treatment provider without an additional legislative process. He stipulated he would have to see any proposed language before being able to say how the mechanism worked.

Number 0865

CHAIR ROKEBERG said that presumably, now, when fines are collected and put in the GF, the GF reimburses the treatment provider; but that doesn't resolve the dilemma of "how do we squeeze blood out of a turnip, if it is only a small turnip."

REPRESENTATIVE COGHILL said he agreed, and he asked whether it is true that second- and third-time DWI/DUI offenders usually have other aggravators or offenses.

MR. GUANELI confirmed that in many cases it is true. He noted that the most common other offense is driving with a suspended license; in cases in which there is an accident, there is usually an assault charge as well. In response to a question from Chair Rokeberg, Mr. Guaneli said he would be compiling information regarding the percentage of fines that are being collected.

CHAIR ROKEBERG said he would appreciate that information since it was part of the fiscal note on the positive side, which he now estimated to be about $700,000. He also asked Mr. Guaneli to further investigate what portion of an offender's funds might be available to go directly toward the treatment element of HB 4.

MR. GUANELI said he would look into that issue, although program receipts were not his area [of expertise]. He added that the countervailing policy question is how much control the legislature wants to continue to have over all of the funding.

REPRESENTATIVE COGHILL asked if, in having a mandatory fine, discretion at the bench was unallowable.

MR. GUANELI replied that that was correct.

REPRESENTATIVE COGHILL then asked if the mandate could be changed by inserting language allowing latitude to the judge.

Number 1161

CHAIR ROKEBERG agreed that that was the sort of solution he would like to see in order to divert the funds toward treatment. He said that if it were discretionary, then HB 4 could have a range of fines with the $10,000 fine at the top; he added that he was not "wedded" to a $10,000 cap.

MR. WOOLIVER simply added that a mandatory minimum fine goes to the GF, and absent some type of specific legislative authority, there was no discretion to divert that money to some other program. With regard to how the ASAP works, he said that currently judges can order an offender into treatment and order that the offender be responsible for the costs of that treatment.

CHAIR ROKEBERG said it seemed to him as though [HB 4] could be drafted to mirror that practice with the added stipulation that payment for treatment had priority.

MR. GUANELI clarified that the way it is done currently in, for example, a felony drunk driving case, the judge sentences the offender to one year in jail with six months suspended on the condition that after the offender gets out of jail, he/she gets evaluated by the ASAP and follows its recommendations, including paying for any treatment programs. If those requirements are not complied with - including payment of treatment - then the offender is hauled back to jail to serve the remaining six months that were suspended. He said that in addition to paying for treatment, the offender pays a fine of $5,000; the order in which these are paid is left up to the judge. He added that his guess was that judges probably allow treatment portions to be paid first, followed by payment of any fines owed over a period of time. Then, if the fine is not paid in a timely fashion, it

goes through collections, and attaching the PFD is usually one of the first things [the DOL] does.

MR. GUANELI then asked if the proposal is to have $10,000 be the fine, with $5,000 suspended on the condition that other criteria are met by the offender, or if the proposal is to keep the fine at $5,000 and suspend part of that in order to ensure that the offender has enough money to pay for treatment. He said he thought there were various ways to go about it, and they were all questions of policy, though he was willing to look into any proposals in terms of procedure.

Number 1405

CHAIR ROKEBERG said he would appreciate Mr. Guaneli's input. He reiterated that he was not wedded to the $10,000 [cap], although he was not afraid of it, either, in terms of that amount being an appropriate fine for somebody who has the wealth and can afford it. He added that he was sure that judges consider those issues before meting out fines. He added that he simply had concerns regarding treatment reimbursement for mandated treatment. He also mentioned that, with regard to the example given by Mr. Guaneli, there is a provision in HB 4 that has the DOC providing treatment during the first six months of incarceration. He noted that the survivability of DOC's mandated treatment program was another issue the legislature had to face.

MR. GUANELI agreed that that was another issue, given that the average sentence for the 200-plus felony-DWI offenders is several months; that is a lot of people for the DOC to have in a specifically designed alcohol [treatment] program. Therefore, from the standpoint of the DOC, it becomes an issue of how many beds are available.

CHAIR ROKEBERG commented that it was important that all the provisions of HB 4 fit together, and he announced that the discussions would continue. [HB 4 was held over.]

ADJOURNMENT

Number 1548

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:10 p.m.