ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 26, 2001
1:15 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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. 3
"An Act relating to deposits to the Alaska permanent fund from mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), federal mineral revenue sharing payments received by the state from mineral leases, and bonuses received by the state from mineral leases, and limiting deposits from those sources to the 25 percent required under art. IX, sec. 15, Constitution of the State of Alaska; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

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 MINUTE(TRA)
02/27/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/27/01		(H)	Moved CSHB 4(TRA) Out of Committee 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	0472	(H)	REFERRED TO JUDICIARY
02/28/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/28/01		(H)	Heard & Held 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
03/12/01		(H)	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
03/16/01		(H)	Heard & Held MINUTE(JUD)
03/19/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/19/01		(H)	Heard & Held
03/19/01		(H)	MINUTE(JUD)
03/23/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/23/01		(H)	Heard & Held MINUTE(JUD)
03/26/01		(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: Explained proposed amendments to CSHB 4(TRA) and answered questions.

MIKE FORD, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Answered questions about proposed amendments to CSHB 4(TRA).

MARY MARSHBURN, Director
Division of Motor Vehicles (DMV)
Department of Administration
3300 B Fairbanks Street
Anchorage, Alaska 99503
POSITION STATEMENT: Answered questions regarding an amendment to CSHB 4(TRA) [Amendment 5] proposed by the DMV.

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: Answered questions relating to proposed amendments to CSHB 4(TRA).

ERNIE TURNER, Director
Division of Alcoholism & Drug Abuse
Department of Health & Social Services
PO Box 110607
Juneau, Alaska 99811-0607
POSITION STATEMENT: Answered questions relating to Amendment 11 to CSHB 4(TRA).

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner
Department of Corrections

431 North Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: Answered questions relating to Amendment 11 to CSHB 4(TRA).

HEATHER NOBREGA, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: As committee aide for the House Judiciary Standing Committee, pointed out the need for a conforming amendment to be included in Amendment 11 to CSHB 4(TRA).

LOREN JONES
CMH/API Replacement Project Director
Division of Mental Health & Developmental Disabilities
Department of Health & Social Services
PO Box 110620
Juneau, Alaska 99811-0620
POSITION STATEMENT: Testified on Amendment 12 to CSHB 4(TRA); asked why the department's suggestions had been incorporated into AS 47.37.130(b) instead of AS 47.37.140 and answered questions relating to the amendment.

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: Answered questions relating to Amendment 12 to CSHB 4(TRA).

ACTION NARRATIVE

TAPE 01-41, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:15 p.m. Members present at the call to order were Representatives Rokeberg, Ogan, Coghill, Meyer, and Berkowitz. Representatives James and Kookesh arrived as the meeting was in progress.

HB 4 - OMNIBUS DRUNK DRIVING AMENDMENTS

[Contains discussion of HB 172 as it relates to Amendment 7; contains discussion of HB 179 as it relates to Amendment 12]

Number 0049

CHAIR ROKEBERG announced that the committee would take up amendments to 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).]

[Because of their length, some amendments discussed or adopted during the meeting are found at the end of the minutes for HB 4. Shorter amendments are included in the main text.]

Number 0115

CHAIR ROKEBERG made a motion to adopt Amendment 1 [22-LS0046\S.5, Ford, 3/9/01], which read:

> Page 21, line 14, following the first occurrence of "**vehicle**":
> Insert "**or is registered as a co-owner under a business name**"

Number 0127

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that Amendment 1 addresses some concerns of the Division of Motor Vehicles (DMV) regarding a [registration of a] vehicle that might have a co-owner registered under a business name.

Number 0147

REPRESENTATIVE OGAN asked whether [Amendment 1] allows the co-owner who wasn't charged to [have the license reissued]; whether this is to protect the co-owner's property right in the vehicle; and whether it applies only to a business, not another co-owner [such as a husband or wife].

MS. SEITZ indicated the intention is that the co-owner who was convicted of drunk driving would not have access to the vehicle.

CHAIR ROKEBERG added that if a business [is the co-owner], there will not be a forfeiture or revocation. He said although this amendment is for a business, he believes there is a spousal provision already in there.

Number 0244

REPRESENTATIVE BERKOWITZ asked for confirmation that there is a provision for an innocent private owner as well.

Number 0260

MIKE FORD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, responded:

> If your question is, "Is there a provision ... that allows an innocent person to come forward and address their interests," yes. I don't think it's in the bill; I think it's in law already. ... If you're on a registration, and a provision that we're discussing right now requires that a name be taken off, then [you] could re-register the vehicle without that name. That's what [we] are required to do under this bill.

Number 0299

REPRESENTATIVE BERKOWITZ asked whether there are any Fifth Amendment issues about "taking" related to this.

MR. FORD said he didn't think so. He explained, "We're not taking property. All we're doing is saying you can't register the vehicle."

REPRESENTATIVE BERKOWITZ asked what the status of the vehicle would be if a person couldn't register it, and how a person would transfer such a vehicle.

MR. FORD said the owner could own a vehicle that is unregistered, and could still "title" it or sell it, for example.

CHAIR ROKEBERG asked whether there was any objection to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0366

CHAIR ROKEBERG made a motion to adopt Amendment 2 [22-LS0046\S.6, Ford, 3/9/01], which read:

Page 10, line 28, following "**AS 28.35.030**":
Insert "**or 28.35.032**"

Page 10, line 31, following "**AS 28.35.030**":
Insert "**or 28.35.032**"

Number 0379

MS. SEITZ explained that Amendment 2 increases the fees for the reinstatement of a license when the license has been revoked for refusal to submit to a "chemical test." In [CSHB 4(TRA)], the reinstatement fees have been raised for DWI [driving while intoxicated], she noted, but "we ... neglected to insert the refusal language." Amendment 2 just inserts the statutory reference to the "refusal citations."

CHAIR ROKEBERG asked whether there was any objection to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 0402

CHAIR ROKEBERG made a motion to adopt Amendment 3 [22-LS0046\S.7, Ford, 3/21/01]. [Amendment 3 is provided at the end of the minutes on HB 4.]

MS. SEITZ characterized Amendment 3 as being "partially a technical correction." She explained, "When we phased in the ten-year 'look-back' in [the House Transportation Standing Committee], we neglected to reinsert the subsequent misdemeanors." She said [Amendment 3] does that and raises the fines for the subsequent misdemeanors.

Number 0450

REPRESENTATIVE BERKOWITZ requested confirmation that the fines are being raised to $4,000 when there are two prior [convictions], $5,000 when there are three, $6,000 when there are four, and $7,000 when there are five.

CHAIR ROKEBERG affirmed that. He added that he would be "monitoring" some of the fines and would be happy to take other comments as the bill moves through [the process]. For example, it might be desirable to give the judge more discretion, rather

than to have the minimum [sentences]. It wouldn't be addressed at the current meeting, however.

REPRESENTATIVE BERKOWITZ emphasized that these are mandatory minimum fines. He explained his concern: There needs to be some way to have discretion by the courts to impose alternative sentences.

CHAIR ROKEBERG concurred, saying he was open to making modifications along those lines; he offered to work with Representative Berkowitz on it. Chair Rokeberg indicated that particular area hadn't been addressed previously.

Number 0571

REPRESENTATIVE COGHILL requested confirmation that even with the mandatory minimum [fines], there are payment options that a judge has [discretion in imposing].

CHAIR ROKEBERG replied, "I'd think so." He reiterated his willingness to make modifications. He then pointed out that [Amendment 3] reinserts something that was omitted in error.

CHAIR ROKEBERG asked whether there was any objection to Amendment 3. There being no objection, Amendment 3 was adopted.

Number 0627

CHAIR ROKEBERG made a motion to adopt Amendment 4 [22-LS0046\S.10, Ford, 3/23/01], which read:

> Page 7, line 27:
> Delete "The"
> Insert "**Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the** [THE]"

MS. SEITZ explained that Amendment 4 is a technical amendment that fixes a conflict between the bill and the existing law regarding minimum license revocation periods.

Number 0677

MR. FORD provided a further explanation:

> There was a conflict between a permanent revocation provision for felony offenders and a provision under which the court is required to revoke your license for

certain specified periods. So, with this amendment, you make it clear that the felony provisions would supersede, and your permanent revocation would take effect. ... This was our [the drafters'] mistake.

CHAIR ROKEBERG, hearing no objections to Amendment 4, announced that it was adopted.

Number 0726

CHAIR ROKEBERG made a motion to adopt Amendment 5 [22-LS0046\S.12, Ford, 3/23/01], which read:

Page 7, line 28:
Delete "**not less than 45**"
Insert "**not more than 90**"

Page 22, line 16:
Delete "shall"
Insert "may"

Page 23, following line 3:
Insert a new subsection to read:
"(s) For purposes of this section, the director of the division within the department responsible for administration of this section or a person designated by the director may request and receive criminal justice information available under AS 12.62. In this subsection, "criminal justice information" has the meaning given in AS 12.62.900."

Number 0728

MS. SEITZ addressed Amendment 5 in three sections. The first [relating to page 7, line 28] increases the period of revocation of a license from not less than 45 days to not more than 90 days when the person has not been previously convicted and the court has suspended the [imposition] of the sentence. Ms. Seitz explained that this was done in response to a request by the DMV because of a concern that the timelines were too short; the "not more than 90" [days] works better with the DMV's internal processing.

MS. SEITZ addressed the second section [relating to page 22, line 16]. She explained that the change from "shall" to "may" gives the division the discretion to reinstate a person's driver's license that has been permanently revoked.

MS. SEITZ turned attention to the third section [relating to page 23, following line 3]. She explained that when the DMV was moved from the Department of Public Safety into the Department of Administration, it lost its classification as a criminal justice information agency; thus it has not been able to access the APSIN [Alaska Public Safety Information Network] system. This change gives limited personnel [the director or a person designated by the director] the ability to access the APSIN system for criminal information. If a person has a long-time revocation, for example, and the bill says a person must meet certain criteria - including that the person hasn't had another criminal offense - right now the division couldn't check to see whether that other criminal offense existed. This [portion of Amendment 5] gives the DMV the ability to go into the APSIN system and check.

Number 0850

REPRESENTATIVE KOOKESH returned attention to the DMV's discretion regarding whether to restore a permanently revoked license. He requested an explanation, noting that the DMV is not a court. He asked how that agency could have discretion, one way or the other, to give a license.

MR. FORD explained:

> What we're talking about here is the provision under which the department could restore your license. The court's going to revoke your license, but the department has some ability to ... review the revocation. If you meet the criteria that ... have been established, they could give you your license back.
>
> And the change that we're talking about here is changing it from a "shall restore" to "may restore". And although that sounds like some discretion, I believe the reason ... the department would like to do that is because the license may be revoked under another provision of law, ... or there may be some other criteria that they want to apply. And so, I assume that's why they want to go to "may". That's the way it's typically written, is that they may restore it, rather than to require them to restore it.

Number 0942

REPRESENTATIVE BERKOWITZ explained that his problem with the first section [of Amendment 5] is that AS 28.35.030(b)(1)(A)(i) says, basically, that there is a "window" from .08 to .10 [blood alcohol concentration] in which there is a different sentencing scheme. He said he objects to that notion and doesn't think [the legislature] should make an exception for it; he is concerned with it as it relates to this section. He explained:

> It seems to me that the courts ought to at least have discretion to treat those offenders who fall in that window similarly to those who ... are above .10 [blood alcohol concentration]. ... They should have that discretion, instead of us crimping what their authority is in that area. Oftentimes, ... someone who has a .08 might also have another substance involved, and there's just reasons why you want the courts to have the discretion to do each case individually.
>
> ... I think I have an amendment on this, later on, ... but I would just point out that that first section in Amendment 5 deviates from ... what exists already. It adds ... more statute than is ... simply required for going from a .10 to .08 [blood alcohol concentration].

CHAIR ROKEBERG suggested Representative Berkowitz was making an argument about the whole section. He said this is a recommendation or request from the DMV to make it more workable.

REPRESENTATIVE BERKOWITZ specified, "I would say that it should be not less than 90 days."

CHAIR ROKEBERG inquired whether that was instead of "not more than 90 days." He asked Mr. Ford to address the issue.

Number 1086

MR. FORD noted that the language [in CSHB 4(TRA), beginning at page 7, line 31] says "not been previously convicted"; it would be a person's first offense. He said it gives the courts some leeway to look at each case individually. If one person's offense were slightly less serious than another's, the court could impose a shorter period of revocation.

REPRESENTATIVE BERKOWITZ asked, however, whether the court doesn't already have discretion under the current statutory scheme.

MR. FORD replied that it depends on which type of issue is being talked about. In some cases, there are mandatory minimums.

REPRESENTATIVE BERKOWITZ asked: In instances in which the courts have discretion, don't they have the discretion to distinguish between greater and lesser offenses?

MR. FORD responded, "Only on certain issues. If you look at existing law under this section, it says the minimum [periods of revocation] are ... not less than 90 days, so ... there's no discretion there."

REPRESENTATIVE BERKOWITZ pointed out that it could be greater than 90 days.

MR. FORD concurred, but added that he was talking about the mandatory minimums. In further reply to Representative Berkowitz, he agreed that it is a mandatory maximum [of not more than 90 days] under this paragraph, but said on this particular example, he thinks the department is trying to allow discretion up to 90 days, as opposed to saying "at least 90 days".

CHAIR ROKEBERG called an at-ease at 1:33 p.m.; he called the meeting back to order at 1:37 p.m. He called another at-ease at 1:38 p.m. in order to obtain a quorum; he called the meeting back to order at 1:39 p.m.

Number 1266

REPRESENTATIVE BERKOWITZ pointed out that in [CSHB 4(TRA)], 45 [days] is the floor "for ones that don't qualify on first offense," so there is a lower floor already. This [first section of Amendment 5] would put a ceiling on it, so that the court couldn't exceed a 90-day suspension. To his understanding [of the current statutes], by contrast, a suspension for a first offense could go up to a year or five years; there is an existing upward limit.

REPRESENTATIVE BERKOWITZ said he could understand that maybe for fiscal reasons [the DMV] would want to limit the number of people, but most "first-timers" would land within that [45-to-90-day] range. He said it seems appropriate, in those instances

in which someone doesn't land in that range, that there would be the opportunity to exceed a 90-day cap.

CHAIR ROKEBERG noted that Ms. Marshburn of the DMV was online and could clarify why she had made that recommendation. He referred to the section of [Amendment 5] amending page 7, line 28, and asked her to speak to that.

Number 1340

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, speaking via teleconference, said she could try. She explained that Section 12 [of CSHB 4(TRA)], page 7, line 28, works in concert with Section 15, page 9, and with Section 27, page 16. She stated:

> What it did, as we saw it, was set up a ... two-tiered revocation period for a first offender. The department, in an administrative revocation, revokes for 90 days on a first offense, and the individual is eligible for a limited license for the last 60 days of that revocation.
>
> This set up two periods if the breath test was between .08 and .10 [blood alcohol concentration]. If the court suspended the execution of sentence, it called for a "not less than 45 days", and we interpret that as probably being the 45 days, with a limited license for the last 30 days of that, as specified in Section 15 of the bill. And that gave a 15-day revocation period.
>
> If DMV's administrative revocation for 90 days has already taken place - and in all likelihood it would - the individual would be on one ... administrative revocation track with DMV and, potentially, an entirely separate revocation track with the court.
>
> We can envision the individual approaching DMV for a limited license 15 days into their revocation period, or 15 days into their 45-day revocation period, and DMV would be unable to do that, because ... court action likely would not have taken place.
>
> If the court did not suspend imposition of sentence, then the revocation period was 90 days - again, if a breath test was between .08 and .10 [blood alcohol

concentration]. And it was that two-tiered or two-level system that we saw as confusing.

If you ... then look at Section 27 on page 16, the penalties, if you were, ... - for a first-time offender, and to qualify for the imposition of sentence - included [a] probationary period of a year; ignition interlock; a $500 fine, I think, and community service.

The 90-day revocation period did not include the ignition interlock or the one-year probation period. The other thing the division could see was [that] a first offender, looking at this two levels and choosing to take the 90-day revocation - because they would not have to serve the year's probation, would not have to have the interlock - they would have to spend three days in jail.

And I don't know, Mr. Chairman, whether that [explanation] helped or hindered.

Number 1543

REPRESENTATIVE BERKOWITZ asked how this setup would differ from the current one. He stated his understanding that the court's and the DMV's suspensions usually run concurrently.

MS. MARSHBURN agreed, then explained:

At this point, DMV would be revoking for 90 days, under an administrative revocation, and that revocation would start on the eighth day following delivery of the notice and order. At that point, the person may have been arraigned, but likely would not have gone to court ... under most schemes. At the time that the individual gets to court and is sentenced, they would likely be well into ... the 45-day revocation period. Even if the court suspended the imposition of sentence, the minimums would have been met, at least administratively.

REPRESENTATIVE BERKOWITZ responded:

But there's no reason why the court couldn't impose its sentence on the revocation portion to run concurrently, even if it's running retroactively. ...

> Say, you're 60 days out, ... and the individual's already served the 45[-day] revocation period. The court could say, "We're suspending you for 45 days, and congratulations, you've already finished those ... 45 days."

MS. MARSHBURN said that is correct, if the court is aware that the DMV "has suspended for that period of time already." She agreed that both suspensions would run concurrently.

Number 1630

REPRESENTATIVE BERKOWITZ said:

> But in the instance where the court said, "No, we want you to serve a 200-day sentence" - and we're 60 days out and you've already served the 45 [days] and you ... have your license back for 15 days - now you've got to serve another 155 days. Is that what the problem is, why you want a 90-day cap?

MS. MARSHBURN affirmed that.

REPRESENTATIVE BERKOWITZ asked what the logistics problem is. He restated that the person would have his/her license revoked by DMV and would get it back through DMV; subsequently, the court would revoke it again. He asked whether Ms. Marshburn anticipates this being a frequent problem.

MS. MARSHBURN replied that with the .08 and .10 [blood alcohol concentrations], she doesn't know. "We just anticipate the problem," she added.

Number 1675

REPRESENTATIVE BERKOWITZ asked: Under the current statute, for first-time DWI [driving while intoxicated] offenders, roughly what percentage receive the minimum 90-day revocation?

MS. MARSHBURN answered that it is an overwhelming majority.

Number 1701

REPRESENTATIVE BERKOWITZ, in response to Chair Rokeberg, affirmed that he maintained his objection. He explained:

> My objection to section 1 [of Amendment 5] ... is that what you set up is a mandatory maximum, that the court, even if it looks at the totality of the circumstances involved in an offense, couldn't impose a revocation of more than 90 days. And I think ... that's an unfair restriction on the court's discretion. I think there are instances that would require more than 90 days - now, not many, but in those instances where it's required, ... we set an artificial top; it doesn't always serve what I think is a just result.

Number 1740

REPRESENTATIVE JAMES asked what those circumstances would be.

REPRESENTATIVE BERKOWITZ answered:

> Under this scenario, you'd need someone who was a first-time offender who somehow fit in that window. There's a .08-to-.10 [blood alcohol concentration window], and that's all you need to be in the first-time-offender window, right? So, say you had someone who was a .08 who had, for example, driven down the road, banged into a bunch of cars, ... had a history of ... driving offenses - not DWIs - I mean, there just might be a reason to load up a little bit more on the revocation period. That would be one scenario. ... I'm sure there's folks around who could come up with others, but ... there's reasons why you might want to have that [discretion] in your hip pocket.

Number 1780

REPRESENTATIVE COGHILL said it is still imposing a minimum, but the minimum just happens to be not more than 90 days. It could be anything up to that point.

REPRESENTATIVE BERKOWITZ responded that it could be zero to 90 days. Currently, by contrast, the minimum is 90 days. There is an inequity between someone who has a .10 [blood alcohol concentration] and gets a 90-day revocation and someone who has a .08 [blood alcohol concentration] but has done "some horrendous things" and would get no more than 90 [days' revocation].

Number 1830

REPRESENTATIVE JAMES said it sounds as if, in Representative Berkowitz's example, the person would be "a bad guy" regardless of the blood alcohol concentration. She asked whether there aren't some penalties for that, too.

CHAIR ROKEBERG replied that there [may be] other criminal charges.

REPRESENTATIVE BERKOWITZ said it would factor in to different parts of the sentencing, such as the jail time. He continued:

> Realistically, first-time offenders don't normally get more than three days. But you might want to have ... more than a 90-day [revocation] period, for example, to make sure that someone ... went through their alcohol [rehabilitation]. Or a lot of times, people would want to get off so they could go fishing and things like that. You might want to have something so that ... there was some real punishment. ... People would offend, and then they'd be fishing for 45 days, and there wouldn't be any real penalty attached to it.

CHAIR ROKEBERG said he would have no objection to deleting the provisions on lines 1-3 [of Amendment 5],

Number 1899

REPRESENTATIVE BERKOWITZ made a motion to amend Amendment 5 by deleting lines 1-3 [of the amendment], which read:

> Page 7, line 28:
> Delete "**not less than 45**"
> Insert "**not more than 90**"

CHAIR ROKEBERG commented:

> We need to make sure we're doing the right thing. We'll work with DMV to make sure that this is clarified, because if we go back to the default language here of not less than 45 [days], then that will, presumably, allow the judge to give less than 90 days, but also it [is] taking into account your concerns by going up to a year.

Number 1941

REPRESENTATIVE COGHILL asked whether that impacts the bill elsewhere.

CHAIR ROKEBERG said he didn't think so. He said it would be continued as a point of examination, however, before the legislation goes to the House floor, in order to make sure it has been clarified completely.

CHAIR ROKEBERG asked whether there was any objection to the amendment to Amendment 5. There being no objection, the amendment to Amendment 5 was adopted.

CHAIR ROKEBERG asked whether there was any objection to Amendment 5, as amended. There being no objection, Amendment 5, as amended, was adopted.

Number 1970

CHAIR ROKEBERG made a motion to adopt Amendment 6 [22-LS0046\S.13, Ford, 3/23/01]. [Amendment 6 is provided at the end of the minutes on HB 4.]

MS. SEITZ explained that Amendment 6 is to "make sure that we're capturing only the individuals in your diversion program and at least .08 [blood alcohol concentration] but less than .10, so that .10 was not included."

CHAIR ROKEBERG asked Mr. Ford, "So more than .10 equals .0999."

Number 2000

MR. FORD responded:

> It's just a question of where you draw the line. And we understood, incorrectly, that you wanted to include the .10 class. But if you do not wish to do that, you need to adopt this amendment and thereby [exclude] the .10 class from your diversionary program.

CHAIR ROKEBERG said this considerably narrows the number of people who would be eligible for the diversion program.

Number 2022

REPRESENTATIVE BERKOWITZ expressed his understanding that court cases indicate there is an error rate that has to be factored in to "intoximeter readings" of up to .01.

MR. FORD replied that the legislature had adopted a statute that says whatever the machine results are, even though there is an inherent error factor, it doesn't matter.

CHAIR ROKEBERG stated his belief that newer machines are much more accurate.

REPRESENTATIVE OGAN said that is assuming they have the newer ones.

REPRESENTATIVE BERKOWITZ remarked that he thinks this amendment clarifies it, but given the error rate and trying to draw this "window," it is a "full-employment program for lawyers."

Number 2117

CHAIR ROKEBERG asked whether there was any objection to Amendment 6. There being no objection, Amendment 6 was adopted.

Number 2125

CHAIR ROKEBERG made a motion to adopt Amendment 7 [22-LS0046\S.15, Ford, 3/23/01], which read:

> Page 16, line 9, following "shall":
> Insert "**, except as provided under (s) of this section,**"
>
> Page 20, line 19, following "shall":
> Insert "**, except as provided under (s) of this section,**"
>
> Page 23, following line 3:
> Insert a new subsection to read:
> "(s) The court may suspend execution of a portion of the mandatory minimum sentence required under (b)(1) or (n)(1) of this section if the court determines that the person has successfully completed a therapeutic court program."

Number 2126

MS. SEITZ explained that Amendment 7 would allow for the suspension of a portion of the mandatory sentences for a person who had successfully completed a therapeutic [court] program.

CHAIR ROKEBERG noted that during a hearing on HB 172, there was discussion about the existing therapeutic district court operations of Judge Wanamaker in Anchorage, and about the endeavor of Judge Froehlich to start a similar project in Juneau. He said because HB 172 focuses on third-offense felony-conviction DWIs, the intention here is to give a statutory right of a district court judge to be flexible within that scheme, "if he's within a therapeutic [court] program."

MS. SEITZ affirmed that. She added, "It says the court may suspend a portion of the mandatory minimums."

CHAIR ROKEBERG clarified that [Amendment 7] would ensure that the existing district-court-level operations can continue and have some statutory authority to be flexible.

CHAIR ROKEBERG asked whether there was any objection to Amendment 7. There being no objection, Amendment 7 was adopted.

Number 2195

CHAIR ROKEBERG made a motion to adopt Amendment 8 [22-LS0046\S.17, Ford, 3/22/01], which read:

> Page 22, line 20, following "responsibility":
> Insert "and proof that the person has paid all court-ordered restitution"

[Amendment 8 was later withdrawn.]

MS. SEITZ explained:

> Amendment 8 adds proof that a person has paid all the court-ordered restitution before their driver's license can be reinstated. ... Again, we're going back to where the license has been permanently revoked. Right now, the bill requires that a person has not been convicted of a criminal offense and provides proof of financial responsibility, and this just adds that they've paid all their court-ordered restitution.

Number 2226

REPRESENTATIVE BERKOWITZ asked whether there is a maximum amount of restitution that can be ordered.

MR. FORD answered that there is a limit on class A misdemeanors within which he believes the court would have to fall, since that is the maximum to which someone can be sentenced. He concluded, "So, yes, I think there would be - $5,000."

CHAIR ROKEBERG asked, "What about a felony?"

MR. FORD replied $50,000, except for certain felonies. In response to another question, he said there is a statutory limit on a statutory penalty for the offense: one year and $5,000. In further response, he agreed that in some instances, [the court] requires restitution.

CHAIR ROKEBERG read from Amendment 8, "proof that the person has paid all court-ordered restitution". He said he assumes that would be based on an "actual-value-type restitution order of the court, not a fine or cap on ... the fine."

MR. FORD said he didn't know, but could find out.

Number 2301

REPRESENTATIVE BERKOWITZ pointed out that there is a distinction between a fine and restitution.

MR. FORD added that someone could have serious injuries, too.

CHAIR ROKEBERG said that is why there is civil court. On the other hand, the court seemingly could order the payment of medical costs and so forth. He asked whether that is true.

MR. FORD answered that he himself was interpreting this to be acting within the limits of the class A misdemeanor. "You're raising an interesting question," he added.

REPRESENTATIVE BERKOWITZ indicated he hadn't practiced law in this area for ten years. However, in his experience, much of the restitution that was ordered was for people doing things like running over street signs.

MR. FORD commented, "I think the court would have serious problems if they decided to undertake civil remedies in the criminal process - complete civil remedies."

CHAIR ROKEBERG remarked that it is opening up Pandora's box. He noted that there had been testimony before the committee about [this issue]. He asked Ms. Seitz to comment.

Number 2350

MS. SEITZ said it was a suggestion from someone in Fairbanks who felt that before a person could get his/her license reinstated, all court-ordered restitution should be paid.

Number 2367

CHAIR ROKEBERG withdrew Amendment 8. He asked Mr. Ford to get back to the committee about the issue. He remarked that conceptually he thinks it is a good idea, but that he wanted to ensure that the committee understood the legal ramifications before adopting it.

Number 2386

CHAIR ROKEBERG made a motion to adopt Amendment 9 [22-LS0046\S.18, Ford, 3/23/01], which read:

> Page 11, line 2:
> Delete "a new subsection"
> Insert "new subsections"
>
> Page 11, following line 11:
> Insert a new subsection to read:
> "(d) It is an affirmative defense to a violation of (c) of this section that the conduct was justified by necessity."

Number 2392

MS. SEITZ explained that Section 18 of the bill adds some language to the current "enabler statute" that indicates "certain things could happen" to a person who knowingly allows someone who is not validly licensed, due to a DWI conviction, to drive his/her car. Amendment 9 adds an affirmative defense that the conduct was justified by necessity; it was drafted following some suggestions by the [Alaska] Network on Domestic Violence [and Sexual Assault] "and some discussion with those groups who were afraid that someone might be under a threat if they didn't let someone use the vehicle."

REPRESENTATIVE BERKOWITZ said it seems the "necessity defense" is always available as an affirmative defense. He suggested:

> Maybe we ought to be looking at a different standard than affirmative defense, which requires the defendant to put on some proof, and something relating to domestic violence might be one of those instances where we ... did something besides an affirmative defense.

MR. FORD concurred that [the defense] is always available; this makes it clear to the court that it is available in this case. He added, "There [are], of course, statutory provisions to use this defense. It's up to the committee to decide if they wanted to ... change the nature of the defense."

Number 2445

CHAIR ROKEBERG stated his preference to leave it in, to give guidance. He asked Representative Berkowitz about his point of having to make an affirmative defense under those types of fact patterns.

REPRESENTATIVE BERKOWITZ clarified, "What I would have in mind would be something like 'it's a bar to prosecution that the conduct was justified by necessity,' which ... would make the state prove that it wasn't."

CHAIR ROKEBERG asked whether that wouldn't come up during discovery or when the prosecutor reviewed the prosecution under the statute.

REPRESENTATIVE BERKOWITZ replied, "Not in misdemeanors. Not until they get a lot more money and a lot more experience [prosecuting]." He added, "Essentially, what you're telling law enforcement is, 'If you're going to pursue a case under this, you need to look to see whether there was an instance of domestic violence that precipitated the offense.'"

CHAIR ROKEBERG said that is why [Amendment 9] is being inserted.

CHAIR ROKEBERG asked whether there was any objection to Amendment 9. There being no objection, Amendment 9 was adopted. [This motion is not found on the tape but was recorded in the log notes.]

TAPE 01-41, SIDE B
Number 2511

CHAIR ROKEBERG made a motion to adopt Amendment 10 [22-LS0046\S.19, Ford, 3/23/01], which read:

> Page 20, line 11, following "**hospital**":
> Insert "**, unless the person requires medical treatment**"

MS. SEITZ explained that currently the bill says an appropriate place for treatment does not mean a residential treatment facility or a hospital. There was some concern that this might be too limiting. Therefore, the language "unless the person requires medical treatment" is being proposed.

CHAIR ROKEBERG asked whether there was any objection to Amendment 10. There being no objection, Amendment 10 was adopted.

Number 2466

REPRESENTATIVE OGAN returned attention to Amendment 9 and Section 18 of the bill, page 11. He paraphrased from Section 18, which read in part:

> (c) A person who violates (b) of this section by knowingly allowing a person who is not validly licensed as a result of a conviction under AS 28.35.030(n) to drive a motor vehicle is, upon conviction, guilty of a class A misdemeanor, and the court shall
>
> (1) revoke the person's driver's license, privilege to drive, or privilege to obtain a license for 30 days;
>
> (2) impose a minimum fine of $1,000; and
>
> (3) if the person has been previously convicted under this section, require the person to complete an alcoholism program required under AS 28.35.030(h).

REPRESENTATIVE OGAN asked, "What if the person is not an alcoholic?"

CHAIR ROKEBERG said it is a requirement [relating to] the person's awareness, a further punitive action to educate the person about the reasons to refrain from giving the car to somebody.

REPRESENTATIVE OGAN said it seems to treat the person as if he or she were an alcoholic. He asked whether the alcoholism program under AS 28.35.030(h) also includes "enablers" and people who aren't alcoholics. Perhaps the person doesn't drink, he pointed out, and is just ignorant. He asked why that language exists.

Number 2400

MR. FORD responded that the program described here is one of screening and evaluation. Even if the person wasn't an alcoholic, the program may raise that person's awareness of how alcoholism affects people's lives.

REPRESENTATIVE OGAN pointed out that there is no [discretion] because it says "the court shall" require the person to attend an alcoholism program.

MR. FORD suggested that the screening and perhaps an evaluation would justify the provision.

REPRESENTATIVE OGAN asked why [the legislature] is wasting resources by sending people who might be stupid or ignorant [to alcoholism treatment]. He acknowledged that it is stupid to let someone who is drunk take one's car, but he again asked why there was a mandate to go to an alcoholism program if a person had made a bad error in judgment. He proposed that perhaps there would be another reason such as use of drugs.

CHAIR ROKEBERG suggested that Representative Ogan could come up with an amendment or that it could be addressed under discussion of the bill [later].

Number 2322

CHAIR ROKEBERG made a motion to adopt Amendment 11 [22-LS0046\S.16, Ford, 3/23/01]. [Amendment 11 is provided at the end of the minutes on HB 4.]

Number 2314

MS. SEITZ pointed out that the first four lines of Amendment 11 were contained in Amendment 4 and, therefore, had already been adopted. Those first four lines read:

Page 7, line 27:
Delete "The"

Insert "**Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the** [THE]"

Number 2300

CHAIR ROKEBERG offered a technical correction to delete lines 1 through 4 of Amendment 11.

MS. SEITZ explained that the next section [relating to page 18, lines 5-8 of the bill] applies to the misdemeanor portion of the statute that includes watercraft and what may be forfeited, and it makes forfeiture mandatory if the person has previously been convicted two or more times.

MS. SEITZ addressed the next section of Amendment 11. Starting on line 22 [relating to page 25, following line 20 of the bill], she noted that a new bill section applies to a refusal to submit to a chemical test.

Number 2250

MR. FORD explained that this just brings refusal [of a chemical breath test] in line with the penalties under the DWI provisions. He continued explaining Amendment 11, saying there are also changes that reflect the intent of the committee to mandatorily forfeit the vehicle upon a third conviction. Furthermore, on page 7 [relating to page 28, following line 6, of the bill], there is a change to the municipal impoundment and forfeiture law, which allows them to impose an administrative fee. He concluded that except for forfeiture, [Amendment 11] is primarily a conforming amendment.

MS. SEITZ pointed out that on page 7, line 11 [of the amendment, relating to page 27, lines 27-31, of the bill], Chair Rokeberg had wanted to have it say "shall" instead of "may".

[Thus lines 10-13 of the amendment would read in part, "the state shall move the court to order the forfeiture of the motor vehicle [,] or aircraft involved in the commission of the offense if the convicted person has been previously convicted **twice".**]

Number 2140

REPRESENTATIVE BERKOWITZ objected, on a policy basis, to changing "may" to "shall". He offered an example in which someone has totally smashed up a vehicle. Essentially, the

state would be taking the vehicle, and the responsibility for it, from the defendant's hands. The state would assume a cost that might not be appropriate.

Number 2109

MR. FORD said it is a complicated provision, then suggested the sponsor would not want to make that change. The provision being amended applies to all offenses, he explained, not just the felony offenses or a third or subsequent offense. He concluded:

> So, I think you want to leave that as "may", and your felony provisions, where you want mandatory forfeiture, are covered under other provisions of law. ... If you change this to "shall", you are sort of back where you started, which is, it's a mandatory forfeiture for all offenses under [AS 28.35.]030 and [AS 28.35.]032, which is, I think, where you're not trying to go.

Number 2035

MR. FORD explained that there are mandatory forfeiture provisions; this changes is a slightly different mandatory forfeiture provision that is only triggered on the third or subsequent offense.

CHAIR ROKEBERG noted that [Amendment 11] takes the "shall" out [of the bill] and puts the "may" back in.

MR. FORD emphasized, "For all offenses."

CHAIR ROKEBERG concurred with retaining "may" on line 11 [of the amendment].

REPRESENTATIVE BERKOWITZ asked whether there is a change from "shall" to "may" all the way through the amendment.

MR. FORD responded:

> The easiest way to think of this is that under current law, the court is allowed to forfeit your vehicle; it's not required to. With this amendment [Amendment 11], if you had two prior convictions, then ... the court's going to be required to forfeit your vehicle. So only for third or subsequent convictions will you trigger forfeiture.

CHAIR ROKEBERG asked whether there was another provision regarding the second offense in the amendments.

MS. SEITZ indicated it was in a later amendment.

CHAIR ROKEBERG explained that Anchorage and Fairbanks, at the second offense, have mandatory forfeiture. He said another provision allows the charging of a fee; he noted that testimony from the municipalities that are doing this had indicated it would help with their costs.

Number 1895

REPRESENTATIVE MEYER asked, "Why aren't we being similar to Fairbanks and Anchorage in making that after a second offense?"

CHAIR ROKEBERG answered that there have been criticisms and comments from the Department of Law and the Department of Public Safety about some practical applications and the costs of doing it, in certain areas of the state. He said an [unspecified] amendment speaks to that in terms of what can be done at the second[-offense] level. He added, "We're ... recommending a forfeiture, but we also can have it impounded in place, and ... you can [chain] it up, on the property of the individual, so we don't incur the liability of storage and so forth - immobilizing the vehicle."

Number 1844

REPRESENTATIVE BERKOWITZ asked whether there is a provision for a state administrative fee to be collected.

MR. FORD said he believes there is.

REPRESENTATIVE BERKOWITZ asked, "So, if we wind up confiscating someone's wreck, we can charge them for the haul and the disposal fees?"

MR. FORD answered that he believes the state imposes those fees as a matter of course.

Number 1810

CHAIR ROKEBERG addressed Mr. Ford, saying Representative Berkowitz brings up a good point that the troopers don't want to be confiscating wrecked cars except for evidence. He asked,

"Where are we on that?" He then asked Lieutenant Dunnagan what is currently done when there is a vehicle that has been damaged severely.

Number 1798

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety, responded:

> There would actually be several different scenarios you could look at. If the vehicle was wrecked and ... there [were] no injuries involved in it, and it was not a traffic hazard, the vehicle could actually be left there because of the way the state law reads, depending on where it would be sitting on state property.
>
> If it was involved in an accident and still in the roadway, ... then it would be impounded if the owner did not have the capability to remove it right away.
>
> If it was involved in an accident and there [were] injuries caused to other people or a fatality, the vehicle would be impounded, most likely, to a state trooper office, ... where it would be held as evidence until search warrants could be obtained and things like that, for the investigation. Those particular vehicles, right now, are paid for out of Department of Public Safety funds. Once we seize something as evidence, it becomes our property and our liability.

Number 1685

CHAIR ROKEBERG suggested that the committee needs to be aware of the disposition if the vehicle is not impounded for purposes of evidence.

LIEUTENANT DUNNAGAN specified, "If it wasn't impounded for purposes of evidence, the costs would be borne by the owner."

CHAIR ROKEBERG said there is a practical problem here of mandating the courts to forfeit an automobile that [has been] wrecked, which might inadvertently let the miscreant "off the hook" from claiming the car.

LIEUTENANT DUNNAGAN agreed that could be true.

CHAIR ROKEBERG suggested the committee should follow up on that and restated that Representative Berkowitz had made a good point. He asked Mr. Ford whether he had "run down anything" on the state's ability in that regard.

MR. FORD said he couldn't find the provision; he offered to check on it and get back to Chair Rokeberg.

Number 1667

REPRESENTATIVE BERKOWITZ turned attention to page 4, lines 2-3 [of Amendment 11], which read in part:

> **The cost of treatment required to be paid to the state under this subsection may not exceed $2,000.**

He said it would seem that [the legislature] should allow for the possibility that someone could afford more than $2,000. He noted that there is a provision in there for a waiver of costs if the individual is indigent. He inquired about the reason for putting a cap on it.

CHAIR ROKEBERG answered that it raises the cap. He referred to previous testimony and stated his understanding that currently there is a requirement that people in the programs pay for their own treatment; if they cannot pay and the treatment is paid for by the state, "then we're looking at some recovery costs, but we're trying to put a cap on that." He added, "I agree with you, what you're saying."

Number 1610

REPRESENTATIVE BERKOWITZ proposed eliminating the whole section that says a person will only pay up to $2,000, and then saying it will be done on a sliding scale, based on the ability to pay. That would ensure that people who cannot pay don't have to pay, but that those who can, would.

CHAIR ROKEBERG noted that there had been discussion of use of the permanent fund [dividend] (PFD), which is another policy call. He said:

> How about putting the treatment elements and other costs that related to drunken driving into the ... PFD pool and giving it a priority there? But the bill doesn't speak to that currently. It allows the court to impose the fine, the equivalency of it.

REPRESENTATIVE MEYER said as he reads it, a millionaire would still have to pay only $2,000.

CHAIR ROKEBERG said that isn't the case. He asked Mr. Turner to address the issue.

Number 1548

ERNIE TURNER, Director, Division of Alcoholism & Drug Abuse, Department of Health & Social Services, stated his understanding that it only applies if a person is incarcerated.

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections, in response to Chair Rokeberg, said that is her understanding as well: This provision applies while someone is incarcerated. If that is the case, she added, she doesn't believe there is a provision currently for offenders to pay for their treatment. There is a provision for offenders who are misdemeanants to pay for their costs of incarceration, she noted.

Number 1516

MS. SEITZ commented, "I think right now they don't reimburse anything for their cost of treatment while they're incarcerated."

MS. BROWER affirmed that.

CHAIR ROKEBERG said he'd had that wrong. It is for the "typical 72-hour-type, or other shorter-term periods, on the misdemeanant level." He asked: What about the felony level for imprisonment?

MS. BROWER said there is no provision for that, to her understanding.

CHAIR ROKEBERG asked Mr. Ford for confirmation that [AS 28.35.]032(o) only relates to the misdemeanor element.

MR. FORD affirmed that.

Number 1466

REPRESENTATIVE BERKOWITZ clarified that he had been looking at subsection (l) above that [in Amendment 11], page 4, lines 2-3.

CHAIR ROKEBERG said he'd been confused, then added, "I knew we'd introduced the element of treatment into the bill for the first time; even if you're in corrections, it seems if somebody has health insurance that pays for the treatment, they should be paying for it."

REPRESENTATIVE BERKOWITZ replied that in this case, he hadn't even looked at the insurance angle. He noted that the insurance [companies] wouldn't be billed more than $2,000. He said that doesn't seem right to him.

UNIDENTIFIED SPEAKER said the state would pick up the rest, which doesn't seem right.

REPRESENTATIVE BERKOWITZ added:

> Especially if ... a defendant had been paying into an insurance program all along. Then the insurance company winds up being the beneficiary of the state's largesse, and I didn't notice that the fiscal situation was so good, we could start taking care of everybody now.

CHAIR ROKEBERG said that is why they are looking for some reimbursement here.

UNIDENTIFIED SPEAKER said that if [the state] could get more than $2,000, that would be even better.

Number 1387

REPRESENTATIVE COGHILL asked why the sentence "between two and three" was put in there. He further asked whether it was meant to be for indigent people that there would be a requirement to repay up to $2,000.

CHAIR ROKEBERG replied that "looking at the misdemeanant treatment, I think, was the real thrust of that." He added, "We're mandating other treatment throughout the whole system now, in the bill."

Number 1352

REPRESENTATIVE BERKOWITZ referred to [page 4, lines 6-7, of Amendment 11], which read: "**Except for reimbursement from a permanent fund dividend as provided in this subsection,] payment**

of the cost of treatment is not required if the court determines the person is indigent. He said a person who [qualifies for] a public defender is indigent, so there wouldn't be much [verification] after that, unless the person got lucky and inherited a lot of money in the meantime.

CHAIR ROKEBERG noted that previous discussion had included talk about the limitation because the vast majority of people [affected] would be judgment-proof. He said it does seem to run into a problem regarding the "recoupment" of insurance.

MS. SEITZ emphasized that it is just for people who are incarcerated, who currently aren't required to pay anything. "So, we were looking for them to at least be required to pay something," she noted.

Number 1288

MS. BROWER, in response to Chair Rokeberg, said she supposes an offender may have a spouse with an insurance policy that would cover the offender, but said she isn't sure what happens under such insurance policies regarding treatment of an incarcerated spouse. It isn't something that the department has explored.

MR. TURNER remarked that most insurance companies won't pay for court-ordered treatment.

CHAIR ROKEBERG questioned the value of a cap, then, unless there is some simple schedule adopted.

Number 1220

REPRESENTATIVE BERKOWITZ asked, however, whether most insurance companies will pay if [the treatment] is medically necessary.

MR. TURNER said yes.

REPRESENTATIVE BERKOWITZ continued, "And it would seem that any assessment would make a determination if there was some kind of necessity?"

MR. TURNER reiterated that if the court orders the treatment, then the insurance company won't pay.

REPRESENTATIVE BERKOWITZ asked, "If the court orders an assessment, and the assessment yields a result that treatment is

necessary, then the insurance companies still aren't paying?" [There was no audible response.]

CHAIR ROKEBERG said it is another topic, but an interesting one. He noted that there had been debate over the definition of "medical necessity" the previous year.

Number 1061

REPRESENTATIVE MEYER asked why the committee couldn't change the ["may not exceed] $2,000" [on page 4, line 3, Amendment 11] to say "may not exceed $10,000". If a person could only pay $2,000, that would be fine, he said; but if the person could pay $10,000, that would be all the better.

CHAIR ROKEBERG indicated the desire to make it a realistic number, but said he didn't object to Representative Meyer's point.

MS. BROWER commented that in light of fines, restitution, and other costs involved, she isn't sure at what point [the state] would receive this money, if ever.

Number 1048

REPRESENTATIVE BERKOWITZ asked how much it would cost for 30 days [of treatment] at Charter North.

CHAIR ROKEBERG said it would be "big bucks," but the state wouldn't necessarily put a person there.

REPRESENTATIVE BERKOWITZ suggested that if the state is providing the equivalent service in a state-run facility, then the state would be bearing the cost that otherwise an individual could bear, and there might be circumstances under which the insurance companies could bear that cost, as well.

Number 1061

REPRESENTATIVE MEYER again asked why the committee is limiting it to $2,000, when perhaps [the state] could get more.

CHAIR ROKEBERG said it is a valid concern.

Number 1048

REPRESENTATIVE BERKOWITZ made a motion to amend Amendment 11 by deleting from page 4, lines 2-3 [of the amendment], the sentence, "**The cost of treatment required to be paid to the state under this subsection may not exceed $2,000.**"

Number 1014

REPRESENTATIVE OGAN expressed concern that removing the limitation could wipe out a person's assets because of the expense of these programs. He said he would be interested in hearing testimony about the average cost of treatment.

CHAIR ROKEBERG said he believes it is about $6,300 [within the prison system]. He requested confirmation from Ms. Brower.

MS. BROWER affirmed that.

CHAIR ROKEBERG objected to the amendment to Amendment 11. He explained that he would like to see a cap [on the reimbursement] and would be more open to the [$10,000] cap proposed by Representative Meyers.

REPRESENTATIVE BERKOWITZ withdrew his amendment to Amendment 11.

Number 0923

REPRESENTATIVE MEYER made a motion [to amend Amendment 11, page 4, line 3, to delete "$2,000" and insert "10,000"].

CHAIR ROKEBERG asked whether there was any objection "at this time." [No objection was stated]. He then announced that it would be reviewed further.

HEATHER NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, speaking as the committee aide for the House Judiciary Standing Committee, pointed out the need to include the same provision on page 19, line 9 [of CSHB 4(TRA)], for the purpose of consistency relating to the DWI [breathalyzer] refusal.

CHAIR ROKEBERG made a motion to amend the amendment [to Amendment 11] to include the same amount just adopted [$10,000] on page 19, line 9, of the bill [CSHB 4(TRA)]. [No objection was stated.]

CHAIR ROKEBERG asked whether there was further discussion on Amendment 11, as amended. He then announced that Amendment 11, as amended, was adopted.

Number 0780

CHAIR ROKEBERG made a motion to adopt Amendment 12 [22-LS0046\S.9, Ford, 3/21/01]. [Amendment 12 is provided at the end of the minutes on HB 4.]

MS. SEITZ explained that Amendment 12 contains changes requested by the Department of Health & Social Services. It adds language to the title; removes the language regarding treatment standards from the current section of the bill; changes some language regarding the cost of treatment that is not required under this subsection, to make the language cleaner; redefines "alcohol safety action program"; and inserts the standards for the alcohol safety action program "over on the next pages, in Title 47."

Number 0726

LOREN JONES, CMH/API Replacement Project Director, Division of Mental Health & Developmental Disabilities, Department of Health & Social Services, came forward. He told members:

> We had suggested and recommended that the changes be made in AS 47.37.140, where the Division of Alcoholism & Drug Abuse establishes the standards for treatment programs. And our recommendation was that we just amend that section to add ASAP [alcohol safety action program] as well as the treatment to that.
>
> We did not understand why this amendment was to [AS 47.37.]130, which basically sets forth what the treatment programs are, not what the standards are. And, in essence, it simply repeats most of the language in [AS 47.37.]140 over here in .130(b), just for ASAP.
>
> In ... my discussion with Mike Ford, I believe he felt that by putting it in [AS 47.37.]140, it violated the single-subject rule of a bill. I'm not a lawyer; I can't say. But it just didn't seem like this was the appropriate place to be placing this particular amendment, in [AS 47.37.]130(b), as opposed to amending [AS 47.37.]140.

MR. JONES clarified that the language in question is on page 2 of Amendment 12; in the bill itself, it is on page 18, starting at line 27. It would delete the section requiring, in the DMV statutes, the establishment of standards for clinically appropriate treatment. Mr. Jones explained:

> It was our understanding that the sponsor wanted to make sure that we had standards for ASAP programs, and that's what we were attempting to do by making an amendment to [AS 47.37.]140. This makes it to .130. That was our only question, is exactly why it was in that section.

CHAIR ROKEBERG asked Mr. Ford to respond.

Number 0577

MR. FORD said there is just some confusion about the proper way to add the provisions that the department would like. The original language submitted [by the department] amended [AS 47.37.]140, but those provisions deal with program facilities, and he himself believed the language would be broader than could be included in the bill. Therefore, he had redrafted it and moved [the department's] language to [AS 47.37.]130, which deals with the program itself, "because I thought that's what we were talking about, standards for the program, not for actual facilities." Mr. Ford suggested that with some additional work, "we could come up with an approach that makes the department happy and also avoids the other issues I'm concerned about."

MR. FORD, in answer to a member's question, pointed out that [AS 47.37.]140 is found neither in the bill nor the amendment. He clarified that because of the need he saw to avoid broadening the bill to the point where there would be constitutional problems, he had narrowed the language and moved it to what he thought to be the appropriate place. If the department feels that isn't the appropriate place, Mr. Ford said he would be glad to work towards finding another approach.

CHAIR ROKEBERG suggested that if the department wants the language in the bill, [Amendment 12] should be adopted and then members could work on a proposed committee substitute (CS). He asked Mr. Jones whether he had a problem with that.

MR. JONES stated his preference to work on some language first, but then indicated he had just been given a directive otherwise.

Number 0420

REPRESENTATIVE BERKOWITZ referred to page 2, Section 51, of Amendment 12 and noted that an ASAP program is being developed for persons 21 years of age or older. He asked whether there is an equivalent program for people 21 years old or younger.

CHAIR ROKEBERG said it was a good question, then answered no. He said there was other legislation, which he called a "minor in possession/consuming bill," which has a recommendation of the department to establish a "junior ASAP" program; he acknowledged that it would be expensive.

REPRESENTATIVE BERKOWITZ responded, "Less expensive than allowing this stuff to continue."

CHAIR ROKEBERG said he does have a concern about stipulating as to [a person's] age in the bill "at this juncture." He asked whether the recommendation [of age 21 or older] had come from the department.

Number 0304

MR. JONES affirmed that. He explained:

> We had a similar-language amendment ... to set up a program for persons under the age of 21, and it was suggested to us that that would be covered under the "minor consuming bill," House Bill 179. So, it was not included in this because we're talking pretty much about drunk driving.

Number 0285

REPRESENTATIVE BERKOWITZ said if it can all be put in one bill, that seems good. "This is the horse that's running," he added.

CHAIR ROKEBERG expressed concern about the total fiscal notes.

REPRESENTATIVE BERKOWITZ said it would be a small addition to this, "and a huge deletion from that other thing that's standing behind."

CHAIR ROKEBERG said his biggest concern now is the gap in ages between those ages 15 through 21 who may or may not be covered under a true [juvenile] ASAP, depending on how it is defined.

Number 0195

REPRESENTATIVE OGAN asked whether the department has an estimated fiscal note for this amendment, which seems to add all kinds of new programs and job descriptions on pages 2-3 [of the amendment].

MR. JONES said there is no fiscal note.

CHAIR ROKEBERG added that they are existing programs; it is a matter of whether they are funded.

MR. JONES explained that the sections being referenced by Representative Ogan are already in [AS 47.37.]140 for treatment programs. This simply adds it for the existing ASAP. At this time, there are only ten programs. "We do not feel that there's a fiscal note by including those in this bill," he concluded.

Number 0119

REPRESENTATIVE OGAN said he would remove his objection to that section [of Amendment 12]. He asked whether Section 51 would cause an additional expense.

MR. JONES answered, "No. Our intent here is to give a little stronger statutory language to a program that is existing, our alcohol safety action program that we operate in ten communities plus Anchorage."

Number 0069

CHAIR ROKEBERG restated his concern about the distinction regarding persons 21 years or older. He asked what would happen if the age limitation were deleted, thus making the program available to juveniles as well; he asked whether the fiscal note would go up in that case.

MR. JONES indicated he didn't think so with regard to this bill.

TAPE 01-42, SIDE A
Number 0001

CHAIR ROKEBERG made a motion to delete the phrase "21 years of age or older" on page 2, lines 11-12 [of Amendment 12]. [This is only partially on the tape, but was restated later.] He said he would be open to working with the department and committee

members on this. He indicated it would be discussed in terms of the "MIP" [minor in possession] bill too.

MR. JONES said the majority of this section deals with issues generally handled in district court for adults, the forfeiture of vehicles for DWI offenses. Therefore, "21 years of age or older" fits better.

CHAIR ROKEBERG asked what happens for persons 18, 19, or 21 years old. He said they are not under juvenile court jurisdiction.

MR. JONES affirmed that, saying that oftentimes they end up in the adult ASAP programs under the drunk-driving offenses. He suggested perhaps Chair Rokeberg would want to set the limit at 18 years, rather than having an unlimited age.

CHAIR ROKEBERG asked Mr. Guaneli whether, in the current court system, DWI youth offenders are handled as adults.

Number 0154

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, answered that the Department of Corrections has some sort of arrangement with juvenile facilities for holding persons under the age of 18 in a juvenile facility; however, they are treated as adults for purposes of district court or superior court proceedings.

CHAIR ROKEBERG mentioned the ASAP program for purposes of DWI and AS 47.37.040. He asked Mr. Ford how broadly this is "sweeping this brush."

MR. FORD said he thinks Chair Rokeberg is on the right track. If the division is going to develop an alcohol safety action program, Mr. Ford said he doesn't know why there should be a distinction drawn between a 21-year-old and an under-21-year-old. In response to Chair Rokeberg's mention of getting another fiscal note, Mr. Ford replied, "That may be true. But as we've heard from the department, they're ... saying there is no additional fiscal effect."

Number 0325

CHAIR ROKEBERG, in response to a question by Representative Coghill, clarified that he was saying the age issue should be

deleted, then sorted out later, if the committee wants to establish another [age limit]. He said potentially, if there is a DWI offense, even by a juvenile, that person should be eligible for "the ASAP net" in that program. "And it remains to be seen what we're going to be doing with the other issue," he added.

Number 0423

CHAIR ROKEBERG restated his motion to amend [Amendment 12] by deleting the phrase "21 years of age or older" [on page 2, line 11]; he asked whether there was any objection. In response to a question by Representative Ogan, he referred to his discussion with Mr. Guaneli and said:

> We're treating even "under-18s" as an adult. ... We're not talking about how they're dealt with by [the Department of] Corrections and so forth; we're just talking about ASAP here, which is ... how they get in and out of ... the evaluation and treatment elements. So, I think they should have the benefit of that, even if they're a [juvenile].

Number 0484

CHAIR ROKEBERG, hearing no objection, announced that the amendment to Amendment 12 was adopted.

CHAIR ROKEBERG asked whether there was any objection to Amendment 12, as amended. There being no objection, Amendment 12, as amended, was adopted.

Number 0521

CHAIR ROKEBERG turned attention to Amendment 13A [22-LS0046\S.11, Ford, 3/23/01] and Amendment 13B [22-LS0046\S.14, Ford, 3/23/01]. [Amendments 13A and 13B are found at the end of the minutes on HB 4.]

MS. SEITZ explained the difference between the two proposed amendments. Amendment 13A deals with the discussion of how to cover "inhalant" under the DWI/DUI [driving under the influence] statutes; goes back to using the term "intoxicated" and includes "hazardous volatile material or substance" as an element of driving while intoxicated; and changes the references to "alcoholic beverage" back to "intoxicating liquor". Amendment 13B also changes the title of the bill, but everywhere that the

phrase "under the influence of an alcoholic beverage" occurs, "inhalant" is also added and defined. It is a policy decision as to which way the committee wishes to handle this, Ms. Seitz explained, in order to ensure that inhalants are included.

CHAIR ROKEBERG noted that in the House Transportation Standing Committee, at the request of Representative Kapsner, the "inhalant concept" was introduced; he expressed appreciation for that. Chair Rokeberg said it is really a matter of nomenclature, and it had become a drafting problem. Either "inhalant" needs to be added throughout, because it is not a defined controlled substance, or the language could revert to the "DWI" rather than using the new "DUI" designation.

Number 0629

REPRESENTATIVE BERKOWITZ indicated his belief that going from "DWI" to "DUI" is a good step. He continued:

> As for not sweeping in inhalants, it's something I was concerned about. There [were] two approaches that occurred to me. The first was to read the statutes that we had and see what they did, ... before I made an argument. And if you track "controlled substance", on page 28 of the bill, controlled substance includes a hazardous volatile material or substance that has been knowingly smelled or inhaled; and then it goes on, and the next section is "hazardous volatile material or substance" has the meaning given in [AS] 47.37.270. ...
>
> The other alternative - besides doing what we already seem to be trying to do - would be, instead of talking about "under the influence of alcoholic beverage" or ... "controlled substance", just say "other substance".
>
> Now, ... you could think of these weird things that don't quite fit in with what fits under [AS] 47.37.270, because ... it includes things that are smelled; I don't think it includes things that are taken orally. So, there's that anomaly. But ... if you get away from it, and ... instead of talking about "controlled substance", just talk about "other substance", ... that just opens up the universe ...; instead of having to prove it ... in a generic way, you can prove it for each case.

CHAIR ROKEBERG said he wasn't sure he bought into that argument; "other substance" is pretty wide open. He asked Mr. Ford to comment.

Number 0740

MR. FORD responded that he thinks there is a problem with including inhalants under controlled substances, because they're not controlled substances. He also said he wouldn't recommend going to "any substance" or "other substance", because those are too broad. He said the question will be whether a person is impaired. He restated his belief that it would be a problem.

REPRESENTATIVE OGAN asked whether the term "any other substance" would include marijuana, crack [cocaine], opiates, barbiturates, and "the painter that sprays lacquer for his business and doesn't wear a respirator."

MR. FORD said that brings up an interesting point: There is no definition of "controlled substance" for this offense, although there is a definition in Title 11. He explained:

> I think that's pretty much where the courts would look when they look at that question. And that, of course, is very, very well defined: A controlled substance is something that's listed on our schedule of controlled substances. Inhalants, with the definition we have, would not be a controlled substance. And that's what we're trying to do, is to be very clear on what it is that triggers this offense.

Number 0861

REPRESENTATIVE OGAN asserted that [HB 4] is no longer a drunk driving bill, but is an "operating any kind of vehicle under any kind of thing that impairs your ability to operate" bill. He asked whether that is a fair assessment, if it were to be amended that way.

CHAIR ROKEBERG indicated that either way, it includes other substances such as drugs.

MR. FORD said it includes controlled substances as well as "hazardous and volatile material or substance".

CHAIR ROKEBERG maintained that it is more of a drafting problem, and a matter of language, rather than a matter of what the committee is trying to do.

Number 0932

REPRESENTATIVE BERKOWITZ indicated that it seems the substances on the schedule in Title 11 ought to be retained, because those are illegal drugs. He pointed out that those are things that people could chew, for example, rather than smell or inhale. He also noted that "hazardous volatile material or substance" is defined. He read from AS 47.37.270, which is referenced in Section 48 of the bill. That definition read:

> (10) "hazardous volatile material or substance"
>
> (A) means a material or substance that is readily vaporizable at room temperature and whose vapors or gases, when inhaled,
>
> (i) pose an immediate threat to the life or health of the person; or
>
> (ii) are likely to have adverse delayed effects on the health of the person;
>
> (B) includes, but is not limited to,
>
> (i) gasoline;
>
> (ii) materials and substances containing petroleum distillates; and
>
> (iii) common household materials and substances whose containers bear a notice warning that inhalation of vapors or gases may cause physical harm;

REPRESENTATIVE BERKOWITZ agreed with Representative Ogan that it doesn't include the controlled substances that one would normally think of.

REPRESENTATIVE BERKOWITZ pointed out that the committee had already done more than a third of the work [on the 35 proposed amendments]; he noted that at least two or three of his amendments no longer needed to be offered, because those issues had already been dealt with.

[There was committee discussion about the upcoming schedule, and a brief at-ease. Following the at-ease, the meeting was recessed to a call of the chair, and HB 4 was held over.]

AMENDMENTS

The following amendments to CSHB 4(TRA) were either discussed or adopted during the hearing. [Shorter amendments are provided in the main text only.]

Amendment 3 [22-LS0046\S.7, Ford, 3/21/01] (adopted):

Page 17, lines 14 - 29:

Delete

"[(C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS THAN $1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED TWICE AND IS NOT SUBJECT TO PUNISHMENT UNDER (n) OF THIS SECTION;

(D) NOT LESS THAN 120 DAYS AND A FINE OF NOT LESS THAN $2,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED THREE TIMES AND IS NOT SUBJECT TO PUNISHMENT UNDER (n) OF THIS SECTION;

(E) NOT LESS THAN 240 DAYS AND A FINE OF NOT LESS THAN $3,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT UNDER (n) OF THIS SECTION;

(F) NOT LESS THAN 360 DAYS AND A FINE OF NOT LESS THAN $4,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED MORE THAN FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT UNDER (n) OF THIS SECTION;]"

Insert

"(C) not less than 60 days and a fine of not less than **$4,000** [$1,000] if the person has been previously convicted twice and is not subject to punishment under (n) of this section;

(D) not less than 120 days and a fine of not less than **$5,000** [$2,000] if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days and a fine of not less than **$6,000** [$3,000] if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days and a fine of not less than **$7,000** [$4,000] if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;"

Amendment 6 [22-LS0046\S.13, Ford, 3/23/01] (adopted):

Page 16, lines 16 – 17:

Delete "**not more**"
Insert "**less**"

Page 16, line 18:
Delete "**not more**"
Insert "**less**"

Page 16, line 19:
Delete "**not more**"
Insert "**less**"

Page 17, line 7:
Delete "**more than 0.10 percent**"
Insert "**0.10 percent or more**"

Page 17, line 8:
Delete "**more than 100 milligrams**"
Insert "**100 milligrams or more**"

Page 17, line 9:
Delete "**more than 0.10 grams**"
Insert "**0.10 grams or more**"

Amendment 11 [22-LS0046\S.16, Ford, 3/23/01] (original version; adopted after being amended):

Page 7, line 27:
Delete "The"
Insert "**Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the** [THE]"

Page 18, lines 5 - 8:
Delete
"(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may **that** order the motor vehicle or aircraft that was used in commission of the offense [TO] be forfeited under AS 28.35.036."

Insert
"(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order **that** the motor vehicle**,** [OR] aircraft**, or watercraft** that was used in commission of the offense [TO] be

forfeited under AS 28.35.036**;**

(4) the court shall order that any motor vehicle, aircraft, or watercraft that was used in the commission of the offense be forfeited under AS 28.35.036 if the person has been previously convicted two or more times."

Page 25, following line 20:

Insert new bill sections to read:

"*** Sec. 40.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section**,**

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours and a fine of not less than **$500** [$250] if the person has not been previously convicted;

(B) not less than **30 days, or not less than** 20 days **if the person performs 10 days of community service,** and a fine of not less than **$3,000** [$500] if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than **$4,000** [$1,000] if the person has been previously convicted twice and is not subject to punishment under (p) of this section;

(D) not less than 120 days and a fine of not less than **$5,000** [$2,000] if the person has been previously convicted three times and is not subject to punishment under (p) of this section;

(E) not less than 240 days and a fine of not less than **$6,000** [$3,000] if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

(F) not less than 360 days and a fine of not less than **$7,000** [$4,000] if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order **that** the motor vehicle**,** [OR] aircraft**, or watercraft** that was used in commission of the offense be

forfeited under AS 28.35.036; [AND]

(4) **the court shall order that any motor vehicle, aircraft, or watercraft that was used in the commission of the offense be forfeited under AS 28.35.036 if the person has been previously convicted two or more times; and**

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

*** Sec. 41.** AS 28.35.032(h) is amended to read:

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under [(l) OF] this section shall supply the **judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress** [ALASKA COURT SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY REQUIRE BY RULE]. Information compiled under this subsection is confidential and may only be used **in connection with court proceedings involving the defendant or the defendant's treatment** [BY A COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN PREPARING A PRE-SENTENCE REPORT FOR THE USE OF THE COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION]."

Renumber the following bill sections accordingly.

Page 25, following line 26:

Insert new bill sections to read:

"*** Sec. 43.** AS 28.35.032(l) is amended to read:

(l) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the division of alcoholism and drug abuse, of the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person is convicted under (p) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes

sentence for the offense. **Treatment required under this subsection shall occur, as much as possible, when the person is incarcerated. The cost of treatment required under this subsection shall be paid to the state by the person being treated. The cost of treatment required to be paid to the state under this subsection may not exceed $2,000. Upon the person's conviction, the court shall include reimbursement of the cost of treatment as a part of the sentence. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of treatment is not required if the court determines the person is indigent. For costs of treatment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided in AS 43.23.065. In this subsection, "cost of treatment" does not include costs incurred as a result of treatment not required under the treatment standards established under this subsection.**

*** Sec. 44.** AS 28.35.032(o) is amended to read:

(o) Imprisonment required under (g)(1)(A) or (B) of this section shall be served at a community residential center, or if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. The cost of imprisonment resulting from the sentence imposed under (g)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed **$2,000** [$1,000]. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (g)(1)(A) of this section shall perform at least 24 hours of community service work and a person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of community service work,

as required by the director of the community residential center or other appropriate place. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, [RESIDENTIAL TREATMENT FACILITY, HOSPITAL,] halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction**; "appropriate place" does not mean a residential treatment facility or a hospital**.

*** Sec. 45.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this section and has been previously convicted two or more times **since January 1, 1996, and** within the **10** [FIVE] years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(o)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than **$10,000** [$5,000] and a minimum sentence of imprisonment of not less than

(A) **240** [120] days if the person has been previously convicted twice;

(B) **480** [240] days if the person has been previously convicted three times;

(C) **two years** [360] days if the person has been previously convicted four or more times;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person serve the minimum imprisonment under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) the court shall **permanently** revoke the person's driver's license, privilege to drive, or privilege to obtain a license **subject to restoration under (r) of this section** [UNDER AS 28.15.181(c)];

(4) the court may order as a condition of probation or parole that the person take a drug, or combination of drugs, intended to prevent consumption of an alcoholic beverage; a condition of probation imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) the sentence imposed by the court under this subsection shall run consecutively with any other

sentence of imprisonment imposed on the person; [AND]

(6) the court **shall** [MAY] also order forfeiture under AS 28.35.036, of the **motor** vehicle**,** [OR] aircraft**, or watercraft** used in the commission of the offense, subject to remission under AS 28.35.037**; and**

(7) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 46.** AS 28.35.032 is amended by adding new subsections to read:

(r) Upon request, the department shall review a driver's license revocation imposed under (p)(3) of this section and may restore the driver's license if

(1) the license has been revoked for a period of at least 10 years;

(2) the person has not been convicted of a criminal offense since the license was revoked; and

(3) the person provides proof of financial responsibility.

(s) A person who fails to satisfy alcoholism treatment requirements imposed by the court or an authorized agency under (l) of this section is not eligible for good time deductions credited under AS 33.20.

(t) If a person is convicted under this section and has been previously convicted, the court shall order the person to surrender the registration plates for any vehicle registered or co-registered in the person's name. The person shall surrender the registration plates to the department by the close of the next business day. A person other than the person convicted under this section who applies to register a motor vehicle that has registration plates that were required to be surrendered under this section but that were not surrendered as required by this subsection may not register the vehicle unless the person registering the vehicle provides proof satisfactory to the department that the person did not know that the registration plates were required to be surrendered under this subsection or the person pays twice the applicable registration fee required under

AS 28.10.421."

Renumber the following bill sections accordingly.

Page 27, lines 27 - 31:
Delete "(a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state **shall** [MAY] move the court to order the forfeiture of the motor vehicle [,] or aircraft involved in the commission of the offense if the convicted person has been previously convicted in this or another jurisdiction [OF MORE THAN ONE OF THE FOLLOWING OFFENSES] or has [MORE THAN ONCE] been previously convicted"
Insert "(a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state may move the court to order the forfeiture of the motor vehicle [,] or aircraft involved in the commission of the offense if the convicted person has been previously convicted **twice** in this or another jurisdiction [OF MORE THAN ONE OF THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED]"

Page 28, following line 6:
Insert a new bill section to read:
"*** Sec. 53.** AS 28.35.038 is amended to read:
Sec. 28.35.038. Municipal impoundment and forfeiture. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or 28.35.032. An ordinance adopted under this section **may include a fee for the administrative costs incurred by the municipality and** is not required to be consistent with this title or regulations adopted under this title."

Renumber the following bill sections accordingly.

Page 29, line 2:
Delete "Section 47"
Insert "Section 54"

Page 29, line 3:
Delete "Section 51"
Insert "Section 58"

Amendment 12 [22-LS0046\S.9, Ford, 3/21/01] (original version; adopted after being amended):

Page 1, line 8, following "**Code;**":
Insert "**relating to alcoholism treatment for offenders convicted of certain offenses involving operating a motor vehicle, aircraft, or watercraft;**"

Page 18, line 29, through page 19, line 3:
Delete "**The Department of Health and Social Services shall, by regulation, establish standards for clinically appropriate treatment required under this subsection. The treatment standards established under this subsection must include compliance with alcohol or drug treatment, anger management, counseling, parent training, and domestic violence prevention.**"

Page 19, lines 16 - 18:
Delete "**In this subsection, "cost of treatment" does not include costs incurred as a result of treatment not required under the treatment standards established under this subsection.**"
Insert "**This subsection does not apply to costs of treatment incurred by a person if the cost is incurred as a result of treatment not required under this subsection.**"

Page 28, following line 6:
Insert a new bill section to read:
"*** Sec. 47.** AS 28.35.039(2) is amended to read:
(2) "alcohol safety action program" means a program **for alcohol and substance abuse screening, referral, and monitoring developed and implemented or approved by the Department of Health and Social Services under AS 47.37** [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM]."

Renumber the following bill sections accordingly.

Page 28, following line 25:
Insert new bill sections to read:
"*** Sec. 51.** AS 47.37.040 is amended by adding a new paragraph to read:
(20) develop and implement, or designate,

in cooperation with other state or local agencies, an alcohol safety action program that provides alcohol and substance abuse screening, referral, and monitoring services to persons 21 years of age or older who have been referred by a court in connection with a charge or conviction of a misdemeanor involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled substance, or referred by an agency of the state with the responsibility for administering motor vehicle laws in connection with a driver's license action involving the use of alcohol or a controlled substance.

*** Sec. 52.** AS 47.37.130(b) is amended to read:

(b) The program of the division must include

(1) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(2) inpatient treatment;

(3) intermediate treatment; [AND]

(4) outpatient and follow-up treatment**; and**

(5) standards for alcohol safety action programs; the standards may vary in their requirements and stringency according to the population, price level, remoteness, access to transportation, and availability of ancillary services of the area to be served; a program must meet the applicable standards before it is approved by the division as an alcohol safety action program; the standards required under this paragraph shall be established in a manner that provides protection of the health, safety, and well-being of clients of the affected programs and protection for the affected programs from exposure to malpractice and liability actions.

*** Sec. 53.** AS 47.37.130 is amended by adding new subsections to read:

(h) The division shall

(1) inspect, on a regular basis, approved public and private alcohol safety action programs at reasonable times and in a reasonable manner; and

(2) maintain a list of approved public and private alcohol safety action programs.

(i) An approved public and private alcohol safety action program shall file with the division on request data, statistics, schedules, and information that the division reasonably requires. An approved program that fails without good cause to furnish any data, statistics, schedules, or information as

requested, or files fraudulent returns of them, shall be removed from the list of approved programs.

(j) The director, after holding a hearing under the provisions of AS 44.62 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant an approval for an alcohol safety action program for failure to meet standards established under (b) of this section."

Renumber the following bill sections accordingly.

Page 29, line 2:
Delete "Section 47"
Insert "Section 48"

Page 29, line 3:
Delete "sec. 51"
Insert "sec. 55"

Amendment 13A [22-LS0046\S.11, Ford, 3/23/01] (discussed but neither moved nor adopted at this hearing):

Page 1, line 2:
Delete "**under the influence of an alcoholic beverage or controlled substance**"
Insert "**intoxicated**"

Page 1, lines 7 – 8:
Delete "**relating to the definition of 'controlled substance' for purposes of the Alaska Uniform Vehicle Code;**"

Page 2, lines 15 - 28:
Delete all material.

Renumber the following bill sections accordingly.

Page 3, lines 17 - 18:
Delete "**under the influence of an alcoholic beverage or controlled substance**"
Insert "**intoxicated**"

Page 3, line 22, through page 4, line 13:
Delete all material.

Renumber the following bill sections accordingly.

Page 4, line 20, through page 6, line 8:
Delete all material.
Renumber the following bill sections accordingly.

Page 6, lines 15 - 16:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 6, line 27, through page 7, line 19:
Delete all material.

Renumber the following bill sections accordingly.

Page 12, line 14, through page 13, line 8:
Delete all material.

Renumber the following bill sections accordingly.

Page 13, lines 14 - 15:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 13, lines 17 - 18:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 14, line 12, through page 15, line 22:
Delete all material.

Renumber the following bill sections accordingly.

Page 15, lines 24 - 25:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 15, line 27:
Delete "**an alcoholic beverage**"
Insert "**a hazardous volatile material or substance**"

Page 16, lines 3 - 4:
Delete "**an alcoholic beverage**"

Insert "**a hazardous volatile material or substance**"

Page 16, lines 6 - 7:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 21, line 18:
Delete "REPEALED"
Insert ""**"hazardous volatile material or substance" has the meaning given in AS 47.37.270;** [REPEALED]"

Page 21, line 31, through page 22, line 1:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED,]"
Insert "intoxicated [,]"

Page 22, lines 8 - 10:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 23, lines 12 - 13:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 23, lines 17 - 18:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 24, line 22, through page 25, line 26:
Delete all material.

Renumber the following bill sections accordingly.

Page 25, lines 30 - 31:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 26, lines 6 – 7:
Delete "**an alcoholic beverage** [INTOXICATING LIQUOR]"

Insert "intoxicating liquor"

Page 26, lines 13 - 14:
Delete "**an alcoholic beverage** [INTOXICATING LIQUOR]"
Insert "intoxicating liquor"

Page 26, lines 15 - 16:
Delete "**an alcoholic beverage** [INTOXICATING LIQUOR]"
Insert "intoxicating liquor"

Page 26, lines 21 - 22:
Delete "**an alcoholic beverage** [INTOXICATING LIQUOR]"
Insert "intoxicating liquor"

Page 27, lines 6 - 14:
Delete all material.

Renumber the following bill sections accordingly.

Page 28, lines 2 - 3:
Delete "**under the influence of an alcoholic beverage or controlled substance** [INTOXICATED]"
Insert "intoxicated"

Page 28, lines 13 - 25:
Delete all material.

Renumber the following bill sections accordingly.

Page 28, line 28:
Delete "Section 6"
Insert "Section 3"

Page 29, line 2:
Delete "Section 47"
Insert "Section 32"

Page 29, line 3:
Delete "sec. 51"
Insert "sec. 34"

Amendment 13B [22-LS0046\S.14, Ford, 3/23/01] (discussed but neither moved nor adopted at this hearing):

Page 1, line 2, following "**beverage**":
Insert "**, inhalant,**"

Page 1, lines 7 - 8:
Delete "**relating to the definition of 'controlled substance' for purposes of the Alaska Uniform Vehicle Code;**"

Page 2, line 16, following "**beverage**":
Insert "**, inhalant,**"

Page 2, line 19, following "**beverage**":
Insert "**, inhalant,**"

Page 2, line 22, following "**beverage**":
Insert "**, inhalant,**"

Page 3, line 18, following "**beverage**":
Insert "**, inhalant,**"

Page 4, line 10, following "**beverage**":
Insert "**, inhalant,**"

Page 4, line 12, following "**beverage**":
Insert "**, inhalant,**"

Page 4, line 22, following "**beverage**":
Insert "**, inhalant,**"

Page 4, line 25, following "**beverage**":
Insert "**, inhalant,**"

Page 5, line 2, following "**beverage**":
Insert "**, inhalant,**"

Page 6, line 3, following "**beverage**":
Insert "**, inhalant,**"

Page 6, line 16, following "**beverage**":
Insert "**, inhalant,**"

Page 7, line 7, following "**beverage**":
Insert "**, inhalant,**"

Page 7, line 14, following "**beverage**":
Insert "**, inhalant,**"

Page 12, line 16, following "**beverage**":
Insert "**, inhalant,**"

Page 12, line 18, following "**beverage**":
Insert "**, inhalant,**"

Page 12, line 20, following "**beverage**":
Insert "**or inhalant**"

Page 12, line 27, following "**beverage**":
Insert "**, inhalant,**"

Page 12, line 30, following "**beverage**":
Insert "**, inhalant,**"

Page 13, line 5, following "**beverage**":
Insert "**, inhalant,**"

Page 13, line 14, following "**beverage**":
Insert "**, inhalant,**"

Page 13, line 18, following "**beverage**":
Insert "**, inhalant,**"

Page 15, line 9, following "**beverage**":
Insert "**, inhalant,**"

Page 15, line 13, following "**beverage**":
Insert "**, inhalant,**"

Page 15, line 25, following "**beverage**":
Insert "**, inhalant,**"

Page 15, line 28, following "liquor,":
Insert "**inhalant,**"

Page 16, line 4, following "liquor**,**":
Insert "**an inhalant,**"

Page 16, line 7, following "**beverage**":
Insert "**, inhalant,**"

Page 21, line 18:
Delete "REPEALED"
Insert "**"inhalant" has the meaning given to the "phrase hazardous volatile material or substance" in**

AS 47.37.270;"

Page 21, line 31, following "**beverage**":
Insert "**, inhalant,**"

Page 22, line 9, following "**beverage**":
Insert "**, inhalant,**"

Page 23, line 12, following "**beverage**":
Insert "**, inhalant,**"

Page 23, line 18, following "**beverage**":
Insert "**, inhalant,**"

Page 24, line 24, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 3, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 6, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 11, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 19, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 23, following "**beverage**":
Insert "**, inhalant,**"

Page 25, line 31, following "**beverage**":
Insert "**, inhalant,**"

Page 27, line 9, following "**beverage**":
Insert "**, inhalant,**"

Page 28, line 2, following "**beverage**":
Insert "**, inhalant,**"

Page 28, lines 13 - 17:
Delete all material.

Renumber the following bill sections accordingly.

Page 28, line 22, following "**beverage**":

Insert "**, inhalant,**"

[End of amendments - HB 4 was held over, with the meeting having been recessed to a call of the chair.]

ADJOURNMENT

Number 1203

CHAIR ROKEBERG [recessed] the House Judiciary Standing Committee meeting at 3:15 p.m., to a call of the chair.