ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 28, 2001
1:07 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. 52
"An Act relating to the Interstate Compact for Adult Offender Supervision and the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED HB 52 OUT OF COMMITTEE

HOUSE BILL NO. 40
"An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

- HEARD AND HELD

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. 179
"An Act relating to underage drinking and drug offenses; and providing for an effective date."

- BILL HEARING POSTPONED TO 3/30/01

PREVIOUS ACTION

BILL: HB 52
SHORT TITLE:COMPACT FOR ADULT OFFENDER SUPERVISION
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/10/01	0053	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0053	(H)	JUD, FIN
01/10/01	0054	(H)	FN1: (COR)
01/10/01	0054	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/05/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/05/01		(H)	Scheduled But Not Heard
02/14/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/14/01		(H)	Heard & Held
02/14/01		(H)	MINUTE(JUD)
03/28/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 40
SHORT TITLE:REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/10/01	0045	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0045	(H)	JUD, FIN
01/10/01	0045	(H)	FN1: (ADM)
01/10/01	0045	(H)	FN2: ZERO(ADM)
01/10/01	0045	(H)	FN3: ZERO(LAW)
01/10/01	0045	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/26/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/26/01		(H)	Heard & Held
02/26/01		(H)	MINUTE(JUD)
03/28/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 4
SHORT TITLE:OMNIBUS DRUNK DRIVING AMENDMENTS
SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0024	(H)	PREFILE RELEASED 12/29/00
01/08/01	0024	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0024	(H)	TRA, JUD, FIN
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/22/01		(H)	Heard & Held
02/22/01		(H)	MINUTE(TRA)
02/27/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/27/01		(H)	Moved CSHB 4(TRA) Out of Committee
02/27/01		(H)	MINUTE(TRA)
02/28/01	0470	(H)	TRA RPT CS(TRA) NT 1DNP 2NR 2AM
02/28/01	0471	(H)	DNP: SCALZI, NR: KAPSNER, KOOKESH;
02/28/01	0471	(H)	AM: MASEK, KOHRING
02/28/01	0471	(H)	FN1: (ADM); FN2: (ADM)
02/28/01	0471	(H)	FN3: (COR); FN4: (CRT)
02/28/01	0471	(H)	FN5: (HSS); FN6: (HSS)
02/28/01	0472	(H)	FN7: (HSS); FN8: (HSS)
02/28/01	0472	(H)	FN9: (LAW); FN10: (DPS)
02/28/01		(H)	JUD AT 1:00 PM CAPITOL 120
02/28/01		(H)	Heard & Held 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)
03/21/01		(H)	MINUTE(JUD)
03/23/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/23/01		(H)	Heard & Held
03/23/01		(H)	MINUTE(JUD)
03/26/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/26/01		(H)	Heard & Held MINUTE(JUD)

WITNESS REGISTER

CANDACE BROWER, Program Coordinator/Legislative Liaison
Office of the Commissioner
Department of Corrections
431 North Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: Testified on HB 52 and answered questions. During discussion of HB 4, answered questions relating to proposed amendments to CSHB 4(TRA).

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: During discussion of HB 40, testified in support and answered questions. During discussion of HB 4, answered questions relating to proposed amendments to CSHB 4(TRA).

MARY MARSHBURN, Director
Division of Motor Vehicles
Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503
POSITION STATEMENT: Answered question relating to HB 40.

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).

JANET SEITZ, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: Answered questions relating to proposed amendments to CSHB 4(TRA).

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).

MARGOT KNUTH, Assistant Attorney General
Office of the Commissioner - Juneau
Department of Corrections
431 North Franklin, Suite 203
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 4, presented proposed Amendment 17 on behalf of the Criminal Justice Council (CJC).

BLAIR McCUNE, Deputy Director
Central Office
Public Defender Agency (PDA)
Department of Administration
900 West 5th Avenue, Suite 200
Anchorage, Alaska 99501-2090
POSITION STATEMENT: During discussion of HB 4, answered questions regarding proposed Amendment 18.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
820 West 4th Avenue
Anchorage, Alaska 99501-2005
POSITION STATEMENT: During discussion of HB 4, commented that proposed Amendment 21 would not have any fiscal impact on the ACS.

ACTION NARRATIVE

TAPE 01-43, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Members present at the call to order were Representatives Rokeberg, Ogan, Coghill, Meyer, and Berkowitz. Representatives James and Kookesh joined the meeting as it was in progress.

HB 52 - COMPACT FOR ADULT OFFENDER SUPERVISION

Number 0059

CHAIR ROKEBERG announced the first item of business, HOUSE BILL NO. 52, "An Act relating to the Interstate Compact for Adult Offender Supervision and the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." [There had been a full hearing on HB 52 at a previous meeting.]

Number 0073

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections (DOC), came forward at the request of Chair Rokeberg and reminded members that HB 52 proposes a new compact to replace the 1937 interstate compact; it is intended to promote offender accountability and to better keep track of offenders across state lines. The compact is an agreement among states that adopt it, with the goal of better supervising offenders and protecting victims and communities.

Number 0171

REPRESENTATIVE OGAN referred to [Article VII of the compact, beginning on page 12 of HB 52]. He stated his understanding that this national commission, with representatives appointed from each state, can have the force of law in states that are members of this compact. He objected to passage of the bill for that reason, saying he believes it undermines Alaska's sovereign powers as a state. He explained that he has a problem with an entity that isn't defined in the state's constitution having the ability of essentially making a law, or something with the force of law, in Alaska. He said he also believes it violates the Tenth Amendment of the U.S. Constitution.

Number 0371

MS. BROWER replied that if a rule that the commission made is in opposition to the constitution, [the state] would not have to follow it. In response to further questions about the review process and whether [a bylaw under the compact] would have to be litigated to be proven unconstitutional, Ms. Brower said, "I don't know that it has to be litigated, no." She explained that the commission would hire a body to oversee the compact and act

as an arbiter in disputes and problems that arise out of disagreements between states or a state's having a problem with the compact. If enough states had a problem with a particular rule, that rule could be overturned. Ms. Brower added, "If it's unconstitutional, we could argue that it's unconstitutional. And if we had a problem with the compact, we could repeal it."

Number 0469

REPRESENTATIVE OGAN countered that the compact takes away what he considers to be a legislative power and delegates it to a national [commission], which will have law-making authority in Alaska that is outside of the state constitution. He said he objects to that strenuously.

Number 0490

REPRESENTATIVE COGHILL remarked that he agrees with Representative Ogan, but believes the safeguards are already in [HB 52]. He asked whether the compact would "cause us to violate any of our existing laws."

MS. BROWER answered, "I don't believe so." She added, "And if we have a representative available during the process of creating the bylaws, we would have representation to ... make sure that that didn't happen."

REPRESENTATIVE COGHILL asked whether anything that caused "tension" with Alaskan law would come before [the legislature].

MS. BROWER replied, "This body would receive a report from the compact, and then, sure, it would come before this body. There will be representation from the legislation ...."

REPRESENTATIVE COGHILL expressed concern that it could overrule [the legislature]; however, as far as legislative powers, he said he agreed with Representative Ogan if it could make policy that could change Alaskan law before [the legislature] had a chance to review it.

MS. BROWER replied:

> It wouldn't change our law, but ... we would be forced to comply with the compact, with the contract or agreement. And if there was a problem with that, ... there are ways that we can deal with that, and part of that is through the compact.

Number 0580

REPRESENTATIVE BERKOWITZ made a motion to report HB 52 from committee with the attached fiscal note.

CHAIR ROKEBERG pointed out that there is a new, lower fiscal note.

Number 0608

REPRESENTATIVE OGAN objected. He suggested the legislature "treads in very dangerous water" when delegating law-making power to a national organization [through] a compact; he expressed doubt that members of such an organization would take an oath to defend Alaska's constitution, as Alaskan legislators do. Noting that the constitution lays out a clearly defined process, Representative Ogan said he believes the intent of the legislation is good and honorable, but on principle, the more powers that [the legislature] delegates to others, the more "we're on a slippery slope to a tyranny."

Number 0675

REPRESENTATIVE BERKOWITZ replied:

> This is a contract. If the constitution is so weak that it can't uphold the state's rights in any contractual negotiation, then we oughtn't be a state at all. I think the constitution is strong enough to safeguard our liberties. His fears of tyranny, I think, it's less of treading in deep water than wading in a shallow pond.

REPRESENTATIVE BERKOWITZ renewed his motion to report the bill from committee.

Number 0707

CHAIR ROKEBERG explained his reasons for supporting the bill. He said the U.S. Constitution explicitly calls for the right of states to enter into compacts. While he can appreciate Representative Ogan's concern, philosophically, about granting powers to a body via contract, Chair Rokeberg said Ms. Brower makes an excellent point that representation in that rulemaking process is a safeguard "and one we should participate in." He said he doesn't agree with the argument on the fundamental

constitutional and philosophical rights, but does agree with Representative Ogan on the need to safeguard rights. He suggested there is an overwhelming need for this legislation in order for Alaska to participate in "interstate trafficking of paroled prisoners and the supervision of those adult offenders."

Number 0786

REPRESENTATIVE JAMES asked about the length of the contract and how many states are involved.

MS. BROWER answered, "To be ratified, there have to be 35 states."

REPRESENTATIVE BERKOWITZ added that the existing [compact] has been in effect since the 1930s.

REPRESENTATIVE JAMES expressed concern that out of 50 states, 15 states [may not] want it, but may be affected. She asked whether a state that disagrees will be a part of it anyway.

MS. BROWER said no.

Number 0911

REPRESENTATIVE OGAN reiterated his objection, saying it might be legal and constitutional, but that it is a bad policy call, giving the compact the ability to make laws in Alaska.

REPRESENTATIVE BERKOWITZ replied, "If the people are comfortable with us making laws, they ought to be comfortable with this organization."

CHAIR ROKEBERG said he doesn't necessarily agree with that. There is clearly the constitutional right and the responsibility to enter into this compact.

Number 0970

REPRESENTATIVE JAMES referred to the comment by Representative Berkowitz; she suggested the general public doesn't buy into what the legislature does, and said the consequences of legislation aren't even known until laws are passed and legislators hear from the people who are adversely affected. She said giving up that right is, to her, a little distressing. Although she wouldn't commit to future actions regarding the bill, Representative James said she would object that day.

A roll call vote was taken. Representatives Meyer, Berkowitz, Kookesh, and Rokeberg voted to report HB 52 out of committee. Representatives Coghill, James, and Ogan voted against it. Therefore, HB 52 was reported from the House Judiciary Standing Committee by a vote of 4-3.

HB 40 - REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

Number 1048

CHAIR ROKEBERG announced the next item of business, HOUSE BILL NO. 40, "An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date". [There had been a full hearing on HB 40 at an earlier meeting.]

Number 1056

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), came forward at the request of Chair Rokeberg, reminding members that HB 40 closes a gap in current law: it provides that if the driver in a fatal accident has committed a traffic violation that doesn't rise to the level of a crime, the person's driver's license would be revoked for a year if his or her driving had contributed to the accident. Mr. Guaneli said these occur a "handful of times a year" when someone falls asleep at the wheel, for example, or is driving too fast for the conditions; he cited an example from previous testimony. He said it is an appropriate law, and the department recommends [its passage].

Number 1166

REPRESENTATIVE COGHILL asked whether [the license revocation] is a possibility now, within the discretion of the judge.

MR. GUANELI answered that most violations for which this arises don't carry the possibility of a court revocation under the statutes.

Number 1201

REPRESENTATIVE BERKOWITZ pointed out that [Section 2] allows the court to make a finding based on a preponderance of evidence. He asked what happens if there is pending civil or criminal litigation at the same time.

MR. GUANELI responded that he thinks this assumes that there is no pending criminal action - such as for criminally negligent homicide or manslaughter - because ordinarily these offenses fall below that threshold. However, often there may be civil litigation pending; the driver will have to choose whether to defend this action or put all of his or her "cards" into the civil action.

Number 1261

REPRESENTATIVE BERKOWITZ pointed out a disparity: in defending against a traffic action, one goes in front of a magistrate; in defending against a civil action, one goes in front of a jury. He suggested there ought to be some way of at least deferring the prosecution of the traffic action, in light of a potentially much more serious civil action.

MR. GUANELI responded that he thinks there is always balancing to be done when laws are changed. The state's interest is in getting bad drivers who have caused a fatal accident off the road, without waiting two or three years for any civil litigation to conclude. He again suggested that people are going to have to make a choice.

Number 1314

REPRESENTATIVE OGAN asked whether there is any danger of this being a lesser included offense in some felony cases.

MR. GUANELI acknowledged that it may have been a problem with prior bills "where we tried to work out some sort of civil negligence standards for criminal cases," but said he doesn't believe it will come into play here.

Number 1340

CHAIR ROKEBERG referred to a letter in packets from David S. Carter, Esq. [dated February 26, 2001, and received after Mr. Carter testified that day], which spoke about a ruling in Scott v. Robinson regarding civil cases. Chair Rokeberg paraphrased from the following portion of the letter: "the proposed legislation should include language which indicates that any

findings made by the court pursuant to proposed [Section 28.15.182] may not be used in evidence in a civil action arising out of the accident."

MR. GUANELI responded that he doesn't believe there is any particular problem with the idea proposed by Mr. Carter; in fact, it would take care of Representative Berkowitz's issue. Mr. Guaneli said he believes it is appropriate to leave the perhaps more serious financial consequences to a civil jury, and not have this determination made by a magistrate, based on a preponderance of the evidence, to be used later against someone in a civil proceeding.

Number 1413

REPRESENTATIVE BERKOWITZ agreed, noting that he hadn't seen the letter prior to the meeting. He said if there is a solution to the problem, this would seem fitting.

CHAIR ROKEBERG asked whether it is a problem.

REPRESENTATIVE BERKOWITZ answered that based on his own experience, he thinks it would be a problem.

MR. GUANELI recalled that Mr. Carter's testimony was that he wasn't sure whether, in fact, the decision by the magistrate based on a preponderance of the evidence could be used at a later civil trial to establish civil liability; Mr. Guaneli agreed, saying he wasn't sure that would be the legal result either. However, there might have been a stipulation and a very quick hearing; Mr. Guaneli indicated he agreed with Mr. Carter that the decision by the magistrate shouldn't be used against someone in a later proceeding. He suggested perhaps it could be accomplished through a conceptual amendment.

Number 1476

CHAIR ROKEBERG offered his understanding that the basic rule of law is that a criminal conviction can be used as evidence in a civil action to prove negligence and so forth.

MR. GUANELI agreed it is the general rule. He said the difference here is that it involves a finding, based on a preponderance of the evidence, not only that the person operated the vehicle, but that there was some factor contributing to or causing the death of the other person. That finding isn't necessary to resolve the traffic citation for crossing the

centerline, for example. Therefore, this additional finding, which is the justification for taking the license away, could potentially be used in a civil action; however, because it isn't essential to the traffic citation, it might not be.

MR. GUANELI suggested the court will have to look at the interests at stake for the individual and whether the person had enough at issue in the traffic citation to really put on a full case. He suggested that if a person had an incentive to put on a full case and litigate this, then he believes the court would say that the determination by the judge could be used against the person later. He suggested it will depend on how these play out, and on how the court assesses this, and will be subject to litigation. He concluded that it is probably "cleaner" to clear it up and have a provision, as Mr. Carter has indicated, that would resolve the issue once and for all.

Number 1579

REPRESENTATIVE JAMES surmised that perhaps the bill came from her own district, where she'd spoken with someone who had lost a family member in an accident and was distressed because the person had continued to drive. She indicated she'd searched but couldn't find anything that she thought would be applied fairly.

REPRESENTATIVE JAMES also expressed concern that someone driving on ice, for example, might spin the car 180 degrees while driving "carefully" on the highway; someone who happens to be there might get killed, yet nothing bad might happen if nobody else was around. She said she couldn't find a comparison between [the action and the possible result]. For this bill, someone whose action resulted in someone else's being killed would lose his or her license. She said it doesn't seem like a severe punishment, but in her district, where people travel a long distance to work, it could be a real problem; she asked whether such a person could get a special license to go back to work.

REPRESENTATIVE JAMES expressed further concern that the bill seems intended to make people [who have lost a loved one] feel better; she questioned that as a reason for legislation. She also restated her concern that there might be some unfair results. She then recounted how her own father's failure to yield while driving resulted in the death of the wife of the other driver, who was traveling at a high rate of speed; although her father received a small fine, she indicated his [psychological] punishment was lifelong. She said she isn't

convinced that taking one's license away for a year will solve the other problems that the person has. She concluded by emphasizing her mixed emotions regarding the issue.

Number 1775

MR. GUANELI replied that this bill resulted from complaints received by the governor's office from a number of families of victims who died in those circumstances, in Representative James' district as well as others. He noted that at the last hearing Representative Ogan had mentioned some families [that he knew of]. Mr. Guaneli suggested it affects many people.

MR. GUANELI pointed out that [HB 40] has a provision that allows the court to grant a limited license for the purpose of getting back and forth to work during the entire period of revocation; it is unlike other revocations in which, for at least some period of time, the person is without the license at all. He agreed there is a limit to how much can be done; for the precise offense of driving over the centerline or too fast for conditions, he asked, "How much do we want to do to that person?" He stated:

> I think ... our feeling was that where a judge has made a determination that beyond a reasonable doubt you've committed this violation, and then makes a further finding that, as a result of that, somebody died, it's not just a matter of making a victim's family feel better - which I think it also will do - but I think that there is a close enough connection to driving. And whether it's ... bad driving or bad judgment in exercising when to drive and how fast to drive, I think there's a close enough connection to driving that ... revoking a license for a period of time is an appropriate sanction.

Number 1870

REPRESENTATIVE JAMES expressed concern that if the judge found out there was some [driving] error and someone had died, the trigger would be that somebody had died. She said she wouldn't have a problem with [the bill] if she could be convinced that the mistake [itself] was severe enough and neglectful enough [to warrant a revoked license].

MR. GUANELI explained that the bill specifies that the judge has to find that the violation of the traffic laws - crossing of the

centerline, falling asleep, or traveling too fast - contributed to the accident. He suggested that if it were the sole cause of the accident, it would be difficult to prove that any person's actions were the only cause of an accident. However, the language "contributed to the accident" means the [driver] had some contributory role to the accident, which gives the connection to driving that justifies the license revocation.

MR. GUANELI first said other language could be looked at, then restated that the judge had to make this finding, and suggested that the good faith of the judicial branch would have to be relied upon to make it in appropriate cases. He said he'd heard that these kinds of situations arise half a dozen times a year, and there isn't an expectation of more. However, they are serious cases, and something needs to be done.

Number 1962

REPRESENTATIVE OGAN expressed support for the bill, telling members that two of his best friends' children - Teddy Richardson and Micah Campbell - had died because of this exact situation. The person who killed these two people wasn't culpable for anything other than violating a traffic law, he noted, and the sentence was miniscule because there were no aggravating factors such as alcohol. He stated his belief that [HB 40] is a few years too late.

Number 2038

REPRESENTATIVE MEYER requested assurance that if somebody makes a judgment error, somehow [the state] will work with that person so that he or she doesn't just get the license back and do it again.

Number 2065

MARY MARSHBURN, Director, Division of Motor Vehicles (DMV), Department of Administration, answered via teleconference that when someone's license is revoked, the person must take the written knowledge test again in order to have it reinstated; that covers traffic laws and behavior. In addition, the person must pay reinstatement fees and any requirements for high-risk insurance. In terms of addressing specific behavior such as spinning 180 degrees while driving, however, [the DMV] doesn't look at that.

REPRESENTATIVE MEYER said he would like it to go a little further; if someone has a problem with driving-behavior patterns, taking a written test won't correct it per se. On the other hand, it can't be proven that people will no longer spin 180 degrees in the middle of the road, he acknowledged.

Number 2126

REPRESENTATIVE BERKOWITZ offered an amendment on [page 2] lines 20 and 23, following "livelihood", to add "or provide care to another". Thus lines 21-23 would read:

> (1) the person's ability to earn a livelihood or provide care to another would be severely impaired without a limited license; and
> (2) limitation can be placed on the license that will enable the person to drive without danger to the public in order to earn a livelihood or provide care to another

REPRESENTATIVE BERKOWITZ explained that someone could be a care provider and therefore need to drive.

Number 2173

REPRESENTATIVE OGAN objected, saying it is ambiguous. For example, he cares for his own wife, or a teenager might care for his girlfriend. Furthermore, he questioned whether "care" means emotional or physical care, for example. He suggested lawyers would come up with "a million reasons" why somebody cares for someone else, which would basically gut the bill.

Number 2193

REPRESENTATIVE MEYER asked Representative Berkowitz whether the intent is to address the situation of someone who has to take care of a handicapped, disabled, or elderly person and would therefore need to drive in order to take care of that person.

REPRESENTATIVE BERKOWITZ affirmed that.

REPRESENTATIVE MEYER suggested maybe there is a way to [make it less broad].

Number 2220

REPRESENTATIVE OGAN asked whether Representative Berkowitz would consider a friendly amendment such as "care for someone that is disabled", in which case he wouldn't object.

Number 2235

REPRESENTATIVE JAMES responded that "disabled" is a pretty broad term. She asked, however, about someone who has to take a child or parent to the doctor. She said she tended to agree with Representative Berkowitz's concern, but suggested that a better term was required.

Number 2261

REPRESENTATIVE BERKOWITZ pointed out that in the event of earning a livelihood, the person would still need to present evidence to the court. He said he understands Representative Ogan's concern that people care for one another all the time.

CHAIR ROKEBERG asked about [the term] "long-term caregiver."

REPRESENTATIVE JAMES proposed dependency on the person [as a criterion].

REPRESENTATIVE BERKOWITZ said he was willing to have assistance with crafting the phrase.

Number 2279

MR. GUANELI told members he thought he had the sense of where they were going with this amendment, as well as with the issue raised by Representative Berkowitz and Mr. Carter. He offered to draft amendments to bring before the committee at the next hearing.

Number 2305

CHAIR ROKEBERG announced HB 40 would be set aside in order to wait for a proposed committee substitute (CS) or amendments. [HB 40 was held over.]

HB 4 - OMNIBUS DRUNK DRIVING AMENDMENTS

[During discussion of Amendment 15, contains some discussion of HB 172.]

Number 2318

CHAIR ROKEBERG announced the final item of business would be to 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.]

CHAIR ROKEBERG informed the committee that there are now 38 amendments. The committee left off with Amendments 13A and 13B at the last hearing. These amendments deal with the inhalant issue and whether the name DUI (driving while under the influence) would be changed [in CSHB 4(TRA)] to DWI (driving while intoxicated) or the bill would stay with DUI and add the word inhalant. Chair Rokeberg announced that he would not offer Amendment 13A.

Number 2366

CHAIR ROKEBERG moved that the committee adopt Amendment 13B [22-LS0046\S.14, Ford, 3/23/01]. [Amendment 13B is provided at the end of the minutes on HB 4.]

REPRESENTATIVE MEYER objected for the purpose of discussion.

CHAIR ROKEBERG explained that he wants to keep the DUI change of definition and nomenclature [so that] the public will know that there is a change to the law that they should be aware of. [Amendment 13B] more accurately reflects the definition of what is considered driving under the influence versus driving while intoxicated.

TAPE 01-43, SIDE B
Number 2466

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), reiterated his testimony from a prior hearing that the title of the bill has no legal effect, although if [the title] becomes too long, it would affect the readability of the

statute. However, he suggested that the committee may want to consider calling the crime "driving while under the influence" and defining "influence" or "under the influence" to mean under the influence of alcoholic beverages, inhalants, or controlled substances.

CHAIR ROKEBERG interjected, "We tried that."

Number 2439

MIKE FORD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, remarked that this law has some peculiarities. He referred to AS 28.35.030, which addresses operating a vehicle, aircraft, or watercraft while intoxicated. However, that statute also includes controlled substances. He asked, "Now, is that intoxication? I don't know." Therefore, he recommended reviewing the progression of the law, which began with intoxication and to which things such as inhalants were added. This law has been changed to mirror current thinking. Mr. Ford acknowledged that Mr. Guaneli's suggestion could be pursued. However, he offered the name of "driving while impaired" because that is what is being discussed.

CHAIR ROKEBERG pointed out that there is already an impairment statute that would have to be changed, which would make it difficult for an officer to make it work.

MR. FORD specified that his point is that it could be defined to be a number of things. He said, "For purposes of the rest of the statutes, 'driving while impaired in violation of' would be fairly simple and easy to understand."

Number 2396

MR. FORD, in response to a statement by Chair Rokeberg, clarified that the options before the committee are to return to use of the word "intoxicated" and amend [AS 28.35].030 in a manner that includes inhalants or to add inhalants to the list and change the language such that one would be under the influence of A, B, C, or D. However, Mr. Ford said that he is suggesting a third option with the use of "driving while impaired" and forgetting [the specific list of items] except under [AS 28.35].030.

CHAIR ROKEBERG asked, "Well, how about under the influence under [AS 28.35].030?"

MR. FORD answered, "Well, but influence of what? It's not influence, it's impairment ... I'm suggesting as the issue."

CHAIR ROKEBERG reiterated that the impairment statutes would have to be changed.

MR. FORD said that if Chair Rokeberg is referring to driving under the influence of intoxicating liquor, that is found in [AS 28.35].030. Mr. Ford said that his suggestion is a way to look to the future because there may be more items that are prohibited.

Number 2318

REPRESENTATIVE JAMES asked if, under existing statutes, impairment can be [charged] if the individual has a [blood alcohol concentration (BAC)] of .05.

MR. FORD agreed that is an example of impairment.

CHAIR ROKEBERG mentioned that many arrests in Anchorage are made under the impairment statute.

REPRESENTATIVE JAMES remarked that the only reason to go to .08 is that it provides another "hammer" in the determination of the guilt as opposed to being stopped for erratic driving.

CHAIR ROKEBERG asked if Mr. Ford could offer another word besides impairment.

MR. FORD pointed out that under [AS 28.35].030 as it reads now, one would not have to pass that threshold in order to be convicted of this offense. An individual can be convicted simply by being under the influence of intoxicating liquor regardless of whether the individual's [BAC] reaches .10. That is merely one example. Therefore, Mr. Ford clarified that he is suggesting that if an impairment standard is used, then a number of examples can be used. He reiterated that use of "under the influence" begs the question.

Number 2228

REPRESENTATIVE BERKOWITZ mentioned that he has prosecuted and defended using these terms and thus he respectfully disagreed with Mr. Ford. He said, "Semantically, what you're saying [is], 'Well, if you're driving while impaired, the defense essentially

is going to be: "Yes, I had some, but I was not impaired"'. If [you're talking] about driving while under the influence, it's not as easy a threshold to convey to a jury." Representative Berkowitz said that impairment is more of a subjective determination, while people can be influenced without being impaired, which is what he believes [the committee] is attempting to address.

CHAIR ROKEBERG related his belief that impairment is a synonym for tipsy, or not quite intoxicated, or under the influence. Furthermore, there are the gradations of how inebriated one is according to weight or blood alcohol [concentration].

MR. FORD interjected, "What I'm suggesting is that's exactly what you use; it's the same [thing]." He specified that it would be driving while impaired from intoxicating liquor or a controlled substance, and there would still be the threshold, the per se defense, and inhalants or any number of things could be added in order to specify that those things trigger the standard.

CHAIR ROKEBERG noted his agreement with Representative Berkowitz.

REPRESENTATIVE BERKOWITZ turned to Representative James' comments. He explained that currently if someone comes in at under .08, it is essentially a guaranteed acquittal because jurors view that as a break point. When people are charged, they are charged dually for being over the limit and for being impaired.

MR. FORD clarified that he was not proposing a change in the standard as much as he was proposing a change in the description of the standard.

CHAIR ROKEBERG said that is problematic. He expressed his desire to keep this legislation as simple as possible and to change the name [of the offense] so that people understand.

Number 2069

REPRESENTATIVE MEYER removed his objection to Amendment 13B.

CHAIR ROKEBERG announced that Amendment 13B was adopted.

Number 2056

CHAIR ROKEBERG moved that the committee adopt Amendment 14 [22-LS0046\S.20, Ford, 3/23/01]. [Amendment 14 is provided at the end of the minutes on HB 4.]

Number 2052

JANET SEITZ, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that Amendment 14 provides the Department of Public Safety (DPS) with some options to dispose of forfeited property.

REPRESENTATIVE BERKOWITZ posed a situation in which a trooper would seize a vehicle, which would then be sold at auction. He asked if there are any existing state agencies that dispose of property.

MS. SEITZ recalled that the Department of Administration (DOA) has a surplus section for state office equipment and the like.

REPRESENTATIVE BERKOWITZ clarified that he is concerned that the DPS will have to do something that it isn't currently set up to do when another state department already has that ability.

MS. SEITZ related her belief that Amendment 14 affords the DPS a bit more latitude. For example, if the department has a vehicle in a rural area, it allows for transference of title at that location rather than requiring the vehicle to be moved and then declared surplus and then transferred [back to its original location]. She pointed out that paragraph 3 of Amendment 14 allows for the [vehicle] to be declared surplus and transferred to the Department of Administration, which could then go through its surplus process. However, [Amendment 14] also provides the option of selling [the vehicle], transferring it to a state or municipal law enforcement agency, or destroying it.

Number 1957

REPRESENTATIVE JAMES said it appears that the current statute already affords the option [encompassed in Amendment 14] because the current statute says, "discretion of the Department of Public Safety." Furthermore, Amendment 14 includes the following language: "**Disposal under this subsection includes, by way of example and not of limitation,"**. She asked if there are separate regulations that indicate that such an option is not available.

CHAIR ROKEBERG recalled that Amendment 14 arose from discussion he had with Lieutenant Dunnagan regarding a suggestion of flexibility with disposition and disposal. He asked if there are existing regulations in the DPS for this type of disposal.

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference and replied that he wasn't aware of any. If the DPS had a vehicle that would not be given to a government agency or taken for use amongst the department, then the vehicle would be turned over to the Department of Transportation & Public Facilities (DOT&PF), where it would proceed through the sale by the DOA. The Department of Administration would charge a 5 percent sales [tax] for handling the sale of the vehicle. This is the current process.

LIEUTENANT DUNNAGAN related his belief that Chair Rokeberg was referring to a discussion the two had when Lieutenant Dunnagan was trying to make the fiscal note as reasonable as possible. The current statute includes discretionary power to dispose of vehicles as the department sees fit. Therefore, the desire in rural areas was to give the vehicles to the Village Public Safety Officers (VPSO) or a city government in an attempt to reduce the cost incurred by the DPS for shipping and storage of impounded vehicles from the outlying areas.

CHAIR ROKEBERG said that the committee agreed with Lieutenant Dunnagan that such flexibility should be available.

MS. SEITZ explained that the DPS felt more comfortable with something specific in statute rather than the general language, "disposed of at the discretion of the Department of Public Safety" that already exists. This amendment was developed with the cooperation of the department.

CHAIR ROKEBERG inquired as to [the department's ability] to give the vehicle to a charitable organization.

MR. FORD informed the committee that [the vehicle], as state property, can't merely be given away.

Number 1785

REPRESENTATIVE JAMES noted her concern with that aspect because sometimes disposing of property costs more than the value of the property. She suggested that the statute should specify that the department be allowed to dispose of property in the most

economical manner. Representative James expressed concern with having an inconclusive list of examples that are "not of limitation". She indicated the need to trust the DPS and related her trust of them, except when they destroy guns that could have been sold for money.

CHAIR ROKEBERG acknowledged Representative James' argument and noted that this is a reaction to the administration's request for clearer guidance [due] to the fact that there are no regulations on disposal.

REPRESENTATIVE JAMES remarked that after doing this the department would write regulations.

LIEUTENANT DUNNAGAN returned to Representative James' reference to the guns. He noted a discussion he and Mr. Guaneli had regarding whether the DPS is free to destroy something. Therefore, he indicated that the committee may want to speak to Mr. Guaneli.

Number 1640

MR. GUANELI recalled that he was one of the people requesting some additional statutory guidance beyond the current general language. He felt that additional guidance was necessary due to the firearms issue referenced by Representative James. In that case, the department didn't want to spend the money to determine whether the firearms were safe and didn't want them returned to circulation, and therefore the firearms were destroyed. The department was sued and the legislature passed a statute that specified what the department should do with such property. Therefore, he added, he felt the need to have statutory authority to dispose of items, and thus the list [of examples] was appropriate. However, he did express the need to include the ability to give to charities in the list, if the committee intends for the DPS to be able to give property to a group other than a government agency. Mr. Guaneli expressed concern in advising the DPS to simply give away property to an entity other than a government agency because it might result in another lawsuit.

REPRESENTATIVE JAMES said that from her practical experience, discretion involves a process; when one makes a decision, the reasons for doing so are substantiated by findings of fact in order to determine whether one could be sued for the particular action.

MR. GUANELI said he understood Representative James' position. However, he was unsure as to the type of findings the state could make to justify simply giving away a valuable car to one charity versus another charity. Therefore, if that authority is going to be exercised, Mr. Guaneli expressed his desire to specify such in statute. Otherwise, he predicted that he would probably advise the DPS that it's safer to sell the vehicle at auction, from which the proceeds would be deposited into the general fund. Mr. Guaneli felt that it would expect much from the DPS to try to determine findings of fact as to why the department wanted to transfer a vehicle to a particular charity instead of another. However, when destroying something, findings of fact are necessary, he added.

REPRESENTATIVE JAMES said that if she were a DPS official, she could certainly write down why she chose to give an item to one charity over another. She emphasized, "There's got to be a reason." Therefore, she didn't see Mr. Guaneli's fear. However, she did believe it to be problematic to list giving to a charity because it is different from the others on the list and thus she suggested that perhaps charities shouldn't be listed. In response to Chair Rokeberg, Representative James said that she would "take it all out ... and leave it like it was." With regard to the charities, she said she believes that the current discretionary language allows that.

Number 1383

REPRESENTATIVE OGAN pointed out that currently the state disposes of property when no one else wants the property.

CHAIR ROKEBERG reiterated that [Amendment 14] is an attempt to accommodate the administration.

REPRESENTATIVE JAMES announced that she wouldn't vote to destroy Amendment 14. However, she wanted to make sure that her points were on the record in case this is [problematic] in the future.

CHAIR ROKEBERG expressed concern that the DPS doesn't feel strong enough with its discretionary [authority] and is fearful enough of the legislature to request this statutory language.

Number 1339

REPRESENTATIVE COGHILL restated the earlier question regarding whether there are any regulations that address this.

CHAIR ROKEBERG recalled that the answer was that the department doesn't have anything in regulation.

MR. FORD explained that once the vehicle is forfeited it is property of the state, which can't simply be given away because the Alaska State Constitution says that things can't be given away unless they are appropriated.

REPRESENTATIVE JAMES surmised that the department is required to take these [forfeited] items. However, she said that if something was going to cost more than it's worth, then she wouldn't take it.

CHAIR ROKEBERG remarked that the DPS has a responsibility, as Lieutenant Dunnagan's example pointed out, to pick up highly damaged vehicles and impound the vehicle, which may have little or no value. Therefore, the vehicle would have to be disposed of.

REPRESENTATIVE JAMES related her difficulty in believing that something of negative value couldn't be given away without it being an appropriation.

REPRESENTATIVE OGAN recalled that a nonprofit fire department obtained property from the state, property which he assumed was available because no one else wanted it.

Number 1164

REPRESENTATIVE BERKOWITZ related his belief that there is a hierarchy of claim on state property and thus there is a difference between giving state property to a volunteer fire department versus a charity. Authorization exists for the fire department to make a claim; the fire department merely has to wait for the municipalities and other state agencies to go first.

REPRESENTATIVE JAMES posed a situation in which the department had something for which the cost of selling would be excessive. If a charity wanted that item, she asked, couldn't the charity pay something for it?

MR. FORD said he thinks that could be done if the disposal process is followed.

REPRESENTATIVE JAMES removed her objection.

Number 1077

CHAIR ROKEBERG announced that Amendment 14 was adopted.

Number 1045

CHAIR ROKEBERG moved that the committee adopt Amendment 15 [22-LS0046\S.21, Ford, 3/23/01]. [Amendment 15 is provided at the end of the minutes on HB 4.]

MS. SEITZ explained that Amendment 15 changes the diversionary program for the .08 to less than .10 and it lengthens the time that the court has to advise the Division of Motor Vehicles (DMV) of a conviction from the end of the following business day to within five working days. Under Amendment 15, the "diversion program now includes a person serving 72 consecutive hours of imprisonment, successfully completing a one-year period of probation during which they cannot commit any alcohol- or traffic-related offenses, paying the cost of treatment, performing 24 hours of community service, [and] paying the fines imposed by the court."

CHAIR ROKEBERG remarked that the result [of Amendment 15] is to almost completely eliminate the diversion program, except for the suspended imposition of sentence. In his opinion, the suspended imposition has the advantage of offering the first-time offender who keeps clean and doesn't exceed the .10 standard the ability to keep that [offense] off his/her record. However, if the offender re-offended, the state would count that individual's first offense as a prior offense.

REPRESENTATIVE BERKOWITZ said that he still objects. He turned to the deletion of the following language: "**no aggravating circumstances associated with the acts upon which the conviction is based**". He pointed out that conceivably someone with aggravating circumstances could be eligible for the suspended imposition of sentence.

CHAIR ROKEBERG interjected that he didn't believe that was the intention.

MS. SEITZ remarked that is what Amendment 15 does.

Number 0915

MR. FORD said that there is no element of aggravating circumstances in the change.

CHAIR ROKEBERG related his belief that if there is an aggravator, then the individual wouldn't be eligible for the diversion.

MR. FORD said that isn't correct. Under the proposed language in Amendment 15, [the individual's eligibility is based on] whether the individual is within the parameters, .08 to .099.

REPRESENTATIVE BERKOWITZ expressed concern with the .08 to .10 window in a courtroom scenario. He informed the committee that people often argue over a rising or falling BAC at the time the test was taken. With such a narrow window and less sanctions, he indicated that it is an invitation to litigation. Therefore, he predicted that every low-range BAC would be heavily litigated in the courtroom because of the aforementioned argument. Once that occurs, costs rise because there is more court time, law enforcement time, prosecutor time, expert testimony time, and defense time. This is a huge cost to the system.

CHAIR ROKEBERG pointed out that according to the fiscal note from the Department of Corrections, it would only be about a $28,000 increase. Chair Rokeberg pointed out that Amendment 15 returns the jail time.

REPRESENTATIVE BERKOWITZ reiterated his concern that this amendment would invite more court time. For example, with the Exxon Valdez case there was discussion regarding when the BAC test occurred, that is, the length of time after the incident.

REPRESENTATIVE COGHILL asked if that same problem would exist even without the window.

REPRESENTATIVE BERKOWITZ replied no and specified that if an individual is over .08, then that individual is over .08, which is the current situation with .10.

REPRESENTATIVE COGHILL asked if the discussion would then revolve around when the BAC test was administered.

Number 0683

REPRESENTATIVE BERKOWITZ answered, "Well, it's when they gave the test." However, he pointed out that there is also case law that says that the intoximeter is an instrument and there are tolerances within that instrument. Furthermore, he said he believes the case law requires that there must be up to a .01

difference and thus everything must be crafted in favor of the defendant. Representative Berkowitz surmised that almost every .10 that has been charged hasn't been charged as a DWI or has been pled as a reckless driving charge. He explained that the defense would argue that the BAC is a .10 on the intoximeter, but because doubt has to be given on the defendant's side, it would read .09 and thus the individual would be outside the statutory range.

REPRESENTATIVE JAMES surmised that .08 would face the same condition. However, if there is a different set of circumstances for offenders with BAC levels between .08 and .10, then both issues are problematic. She commented that there appears to be only a small number of offenders who will fall into that category, and that the fiscal note only reflects a difference of $28,000.

CHAIR ROKEBERG clarified that the $28,000 difference depended on inclusion of the diversion program relating to the three days of jail time. By putting the jail time back in CSHB 4(TRA), the fiscal note would be raised by approximately $28,000.

REPRESENTATIVE BERKOWITZ asked how many cases were estimated for that diversion program.

CHAIR ROKEBERG quantified that the calculations were based on the 10 percent "plug-number," which he believes is incorrect; he offered his belief that 5 percent would be a more accurate number to use in the calculations.

REPRESENTATIVE BERKOWITZ persisted, "5 percent of how many cases, are we talking about?"

MS. SEITZ relayed that the DOC estimated 413 misdemeanor cases and then used a calculation of 10 percent of that number.

REPRESENTATIVE BERKOWITZ considered an estimate of 200 cases a year that could fall under this range. He suggested that that would result in one motion per day, each of which could last almost as long as the trial.

CHAIR ROKEBERG noted that this is a two-tiered system against the [.08] standard. He remarked that the debate was on the whole diversion program, which includes about half the amendments.

Number 0443

MR. GUANELI said that [the DOL] has a strong objection to Amendment 15. He added that [the DOL] thinks that an SIS (a suspended imposition of sentence whereby someone gets a drunk-driving conviction taken off his/her record and is again treated as first-time offender even when he/she commits another offense) is inappropriate. In adopting .08 as the legal standard, he offered that the legislature is making a policy decision based on a lot of good data that shows that people at a .08 BAC level are under the influence and should not be driving. Reaction time more than doubles at .08, and for that reason, he suggested that these offenders ought to be treated the same as other offenders, if not in terms of the sentence that is imposed, at least in terms of identifying them as drunk drivers; in this way, if they continue to commit DWI/DUI offenses they can be treated appropriately. He added that he could not see any justification for giving people that kind of a break to essentially wipe their records clean in all cases.

MR. GUANELI acknowledged that Representative Berkowitz makes some good points with regard to raising the stakes and making trials more difficult. He agreed that "they" may very well have to have a special verdict by the jury to determine whether an offender was under .10. He noted that a number of issues can be taken into account and dealt with at the trial level, but he warned that it raises some aspects of unfairness, for example, if the intoximeter is not working and thus an individual is not given the opportunity to "blow into the machine" and prove that he/she is under .10. He acknowledged that in such a situation the offender could demand a blood test, but he again argued that he did not see any justification for wiping the record clean. He added that he thought part of the purpose of HB 4 was to identify problem drunk drivers at an early stage by adopting .08 and expanding the look-back provisions for third-time offenders, all of which would be circumvented by allowing people to wipe the slate clean.

MR. FORD countered that it is still a prior conviction for purposes of [AS 28.35].030.

MR. GUANELI remarked that that was not what he was referring to.

REPRESENTATIVE BERKOWITZ added, "If it's a suspended imposition of sentence, it goes away."

MR. FORD argued that it did constitute a prior conviction under "this language." Prior conviction includes a conviction in

which a person received an SIS. He added, "If you get a subsequent conviction, and you fall under this diversion program, you have committed a second offense for purposes of [AS 28.35].030."

MS. SEITZ clarified that the language Mr. Ford was referring to is included on page 3 of Amendment 15.

Number 0196

MR. GUANELI acknowledged that he saw that provision, but he countered that it creates a huge ambiguity because the SIS statute says that a person gets [the offense] off his/her record, while language in Amendment 15 says that the person does not get the offense off his/her record. He surmised that when the court weighed the language between the two different statutes, it would resolve the ambiguity in favor of the defendant; thus, as Amendment 15 is currently drafted, the offense is going to come off the offender's record. He also explained that if the offense does not come off a person's record, then it is not considered an SIS because that is the effect of an SIS - the offense comes off a person's record. "We either do it or we don't do it; we can't say we're giving them an SIS, but then don't give them the legal effect of an SIS," he concluded.

MR. FORD said he did not agree with that interpretation; the legislature can certainly craft a provision that provides different treatment, and has done so in this case. If the legislature wants to provide that there are consequences for a subsequent conviction, but the person could, in fact, still be allowed to receive certain benefits if he/she falls within a certain class, it can do so.

REPRESENTATIVE JAMES asked whether, in going to .08, the position of the legislature or intended position of the legislature, is that it will not simply move from .10 to .08 to determine when impairment is severe. In the alternative, she asked if the legislature is intending to phase in the change by taking this one little group of people who fall within .08 to .10 and treating them differently. She opined, "If we're going to just move the ladder down, we ought to just leave it the same as it [is] currently." She asked what the rational was for "sort of doing it, but not totally doing it."

CHAIR ROKEBERG explained that it came, in part, from his drafting and the recommendations of other people; there was a

belief that the chances of passing the .08 standard would be improved by enacting a diversion program along with the .08 standard. He added that the diversion program was crafted so that it only applied to a very narrow group.

TAPE 01-44, SIDE A
Number 0001

CHAIR ROKEBERG offered that currently 80 percent of first-time offenders who are subjected to evaluation and potential treatment, and who also do the jail time, get the message, in part, and don't re-offend. He agreed that they were lowering the standards, and he suggested that offenders who "may have had one too many, and break over that barrier," but who also comply with all the provisions of the stringent diversion program, should be allowed to keep the offense off their record.

REPRESENTATIVE BERKOWITZ, to turn the argument around, suggested that if that were the case, why not allow [the diversion program] now for people who have a .15 BAC level, for example.

CHAIR ROKEBERG answered that it was because they were attempting to change public policy; a BAC of .08 constituted a change of 20 percent in the impairment standard, and the diversion program was created in recognition of that change.

REPRESENTATIVE JAMES said there were also statistics that showed that by the time a person gets stopped for a DWI, that person has already committed the offense a number of times. She then referred to the statistics that said 80 percent of first-time offenders (with a BAC of .10) do not re-offend when they are caught that first time. She suggested that whether the BAC standard is .08 or .10, the same statistics will probably apply; thus she did not see why those offenders should be treated differently. She acknowledged, however, that she could see that by adding the diversion program, HB 4 might get more votes for passage.

CHAIR ROKEBERG said that there is a bit of political reality involved. He said he thought that the success of HB 4 in its entirety, particularly with the .08 provision, hinged upon the diversion program.

Number 0219

REPRESENTATIVE BERKOWITZ, notwithstanding the potential for "a scrap" when making a policy choice, said he agreed with

Representative James that the real issue that the legislature has to come to grips with in HB 4 is whether to lower the BAC to .08 or not. He then offered that when both the Majority Leader and Minority Leader agree on something, everyone else should pay attention. He said that they could "play around" between the .08 and the .10, but that's not reaching the heart of the decision. He suggested that the best way for the legislature to show a judgment would be to vote the .08 provision either up or down; by offering a middle ground, he said he thought they would be giving away something that they did not need to. He opined that, tactical considerations aside, when the time came to vote for a .08 BAC standard, [the legislature] would vote for it.

REPRESENTATIVE COGHILL said that he thought the diversion program was working towards trying to find a way to keep people, especially first-time offenders, from driving drunk, which was the whole point behind the .08 discussion. He said he did not know whether "the window" (.08 to .10) was really the place to attempt it, or if the diversion program should simply start at .08 BAC level. He referred to the experimental courts (wellness court, "mental health court," and "alcohol court"), which try to hold a sentence over somebody in an attempt to get him/her to stop drinking. If using the window creates legal problems, perhaps the current laws should simply be applied to a .08 standard, he suggested. He said he was looking for ways that would allow the court the discretion of the diversion program. He added that he understood the discussion surrounding the SIS, but he suggested that the whole concept of the diversion program was up for discussion.

CHAIR ROKEBERG agreed that the debate surrounding the diversion program was very valuable and would be ongoing. He commented that they were trying to at least offer "the carrot and the stick element" with the diversion program. If that small number of individuals who enter into the program complete the program, they get the rewards of the program, and if they don't complete it, then they will be treated like anybody else, he added.

Number 0461

REPRESENTATIVE BERKOWITZ offered that one of the primary reasons to have criminal laws is to deter people from behavior, and if "we pull punches" by creating this window between .08 and .10, the deterrent value of a [BAC] reduction will be significantly undercut, and it will be very hard to gauge what the impact is. Plus, he continued, it doesn't do as much as "we" can do, and with regard to this whole debate about alcohol, "we" need to, at

some point, aggressively move against it; "we" don't need to be tentative, "we" know it creates a problem out there - "we" know the roads are unsafe.

CHAIR ROKEBERG asked if Representative Berkowitz was suggesting that the totality of CSHB 4(TRA) is being tentative.

REPRESENTATIVE BERKOWITZ responded, "What I'm suggesting is, if we're going to go down to a .08, let's go down to a .08. Let's make it apply equally to everybody."

REPRESENTATIVE MEYER said he agreed with some of Representative James' earlier comments that it makes no difference going from .10 to .08; just do it without the window. He said he thought they were destined to go to .08, whether it is done now or done four years from now, coupled with the risk of losing federal funds. He said he would just as soon go ahead and "make the break" and go to .08, right now.

REPRESENTATIVE JAMES acknowledged that there was some merit to allowing people to participate in a diversion program on their first offense, but she said she did not think it should be done only on the basis of having a BAC between .08 and .10. Already, 80 percent of first-time offenders don't re-offend, and fairness should be considered during the move to a .08 impairment standard, she added; those individuals should be treated the same as other individuals who are impaired. And while she would be voting for Amendment 15, she said she would prefer to see the diversion program made available to all first-time offenders unless they also had also committed other offenses such as causing accidents or fatalities.

CHAIR ROKEBERG commented that that was certainly his philosophy, and that other states have used the diversion program. He added that while the diversion program gives some people in "the industry" some comfort, the organization MADD (Mothers Against Drunk Driving) does not approve of it; thus the proper way to approach a diversion program constitutes a balancing act. He said that he simply believed that those first-time offenders of a new standard should be able to enter into a program, pay their fines, receive treatment, and then be allowed to have "the carrot" of SIS, particularly since, as Mr. Ford says, Amendment 15 is drafted so that a second conviction would be treated as such. And if the language needs to be tightened up to ensure that, he acknowledged that they should do so.

Number 0760

REPRESENTATIVE BERKOWITZ said if that is the case and the concern is to give first-time offenders a second chance, then there should not be an upward cap of .10. Anyone who is a first-time offender, from .08 and up, should be able "to get a fair bite of this, but, if we try and draw that window, that's not fair."

CHAIR ROKEBERG explained that in tandem with the therapeutic court legislation [HB 172], the goal was to get more people into treatment, and that HB 4 should have as an end result more emphasis on treatment. He added that the original intent of HB 4 was to get the habitual drunk driver off the street (and not so much hit the first-time offenders); however, because the .08 standard is something that this legislature needs to speak to, it has been included. He said his proposal is to adopt a therapeutic-treatment-element type of approach for first-time offenders.

REPRESENTATIVE JAMES expressed the concern that there were numerous offenders who were not being caught. She said she thought that the penalty given to first-time offenders would "shape them up." She noted that the diversion program should be available to everyone, and that perhaps offenders with a higher BAC level have a greater need for diversion. She said it seemed to her, on the issue of lowering the standard to .08, that they should simply go to .08 and have creation of a diversion program be a separate issue. She added that she was in favor of the diversion program, but it should be made available to all first-time offenders, rather than tied to .08.

REPRESENTATIVE BERKOWITZ noted his agreement with Representative James.

REPRESENTATIVE OGAN noted that one of the best diversions is when a first-time offender gets the bill for the SR22 (special risk premium insurance).

REPRESENTATIVE COGHILL noted that the recent discussion did not, for the most part, pertain to Amendment 15, and thus the issues surrounding the diversion program would have to be revisited.

CHAIR ROKEBERG suggested that by having the discussion now, the committee could move along more expeditiously.

REPRESENTATIVE BERKOWITZ, on Amendment 15, noted again that the effect would be to remove the aggravator provision as preclusion

from the diversion program; thus a person would merely have to have a BAC between .08 and .10 to get into the diversionary program regardless of any aggravating circumstances.

Number 1010

CHAIR ROKEBERG made a motion to amend Amendment 15 "to put the aggravators back in."

REPRESENTATIVE BERKOWITZ suggested that this could be accomplished by changing "shall" to "may" on page 2, line 21, of Amendment 15. Currently, Amendment 15 mandates that the court "shall" suspend imposition of sentence, he added.

CHAIR ROKEBERG pointed out that the suspended imposition of sentence (SIS) is all the diversion program has left with the adoption of Amendment 15 (as amended with regard to the aggravators). He took the position that the SIS from a first offense would count, should there be a second offense.

REPRESENTATIVE JAMES noted that taking out "not more than .10" would make the diversion program available to everybody.

CHAIR ROKEBERG said that would then mean every first-time offender.

REPRESENTATIVE JAMES confirmed that.

CHAIR ROKEBERG qualified, "Even if they had a .20 [BAC]."

REPRESENTATIVE JAMES asked if his concern is that it is too expensive to give all first-time offenders an opportunity to have diversion.

CHAIR ROKEBERG agreed that that was correct should the diversion program be made "open-ended," and he added that he would rather put the money elsewhere in treatment. It is a balancing act, he noted, and the diversion program in [Amendment 15] has a cheap price, even if the three-day jail time were to but back in for an additional $28,000. He also noted that law enforcement and other interested individuals would be a lot happier having the three-day jail time for first-time offenders included in HB 4 (via Amendment 15). Therefore, the only issue remaining regarding Amendment 15 is the SIS and whether the district court judge should have the ability to put the offender in a diversion program. It brings the therapeutic court element into all

district courts in the state for just that limited number of offenders [who fall within .08 and .10].

REPRESENTATIVE JAMES asked what the cost of the diversion program would be, per person.

CHAIR ROKEBERG noted that the DOC estimated an additional $28,000 for the diversion program, and $88/person a day at a CRC (Community Residential Center).

Number 1207

CANDACE BROWER, Program Coordinator/Legislative Liaison, Office of the Commissioner, Department of Corrections (DOC), explained that by including the three-day jail time in the diversion program, the estimated increase in cost was approximately an additional $28,000 - except that these misdemeanants will still be required to pay for the cost of incarceration, and [the DOC] anticipates being able to collect approximately 80 percent of those costs.

CHAIR ROKEBERG clarified that first-time offenders are required to pay for their incarceration, their treatment, and their court fines in order to be eligible for the diversion program.

REPRESENTATIVE JAMES, on that point, noted then that it would not cost any more to include all first-time offenders in the diversion program rather than limit it to those first-time offenders whose BAC fell between .08 and .10.

CHAIR ROKEBERG referred to Representative Berkowitz's position that the DOL's and the court's costs would go up as more people fought to get into the diversion program.

REPRESENTATIVE BERKOWITZ clarified that his comments pertained to an increase in costs due to having the window of .08 to .10 for eligibility into the diversion program. Without that window, there would not be a need for offenders to challenge their BAC levels; thus [the DOL's] and the court's costs would not increase due to the diversion program.

Number 1352

CHAIR ROKEBERG remarked that this would be another pilot program. He again made the motion to conceptually amend Amendment 15 by adding the aggravators back in.

MR. FORD asked whether the term "aggravators" meant the statutory aggravating factors.

MS. SEITZ referred to language on page 1, lines 15-16, of Amendment 15 as it pertained to aggravating circumstances.

MR. FORD said he was not sure what "aggravating circumstances" meant; there are aggravating factors in Title 12, he added, and if that was what was being referred to, then he assumed that he did know what was meant.

REPRESENTATIVE BERKOWITZ, to clarify, said:

> If we argue to a court that, for example, the circumstances of the incident were so serious that the individual ... doesn't deserve a suspended imposition of sentence. And, typically, when someone comes to get an SIS, it's a first offense and it's of minimal significance. It's an aberrant behavior, and it hasn't been anything really bad. And so the prosecutor ... agrees that a suspended imposition of sentence is appropriate, [and] the court agrees. But if the prosecutor doesn't agree or if the court doesn't agree (... because there was a barroom fight that was particularly nasty) then there is no suspended imposition of sentence. But that's something that the trier of fact gets to get a handle on.

MR. FORD surmised, then, that the court defines what "aggravating circumstances" are.

REPRESENTATIVE BERKOWITZ clarified that the courts do not define it; they simply determine it on a case-by-case basis.

REPRESENTATIVE COGHILL added that it is a present discretion, as he understands it.

MR. FORD said he would also like to clear up any ambiguity associated with what SIS means and what is allowed. To this end, he asked for the committee's permission to add an amendment to the SIS provision that would "clearly craft this as an exception to that."

CHAIR ROKEBERG said he agreed because it is important that the courts don't follow Mr. Guaneli's interpretation and find in favor [of the defendant by taking the first offense off the

record should there be a second offense]. He clarified that Amendment 15, if amended, would return discretion to the judge regarding aggravating circumstances for first-time offenders who are participating in the diversion program, and would also add in the three days of jail time.

Number 1480

REPRESENTATIVE BERKOWITZ remarked that the whole notion of giving an SIS for a DWI is a retreat from the proposition that the legislature considers DWI to be a serious offense. An SIS is something that is usually awarded to someone for some kind of youthful indiscretion.

CHAIR ROKEBERG said he differed with Representative Berkowitz because he recognized that [the legislature] needed to focus on therapy and treating people, and that that should be the emphasis, which was all Amendment 15 would be doing.

MR. GUANELI said he agreed with Representative Berkowitz's description of the current way in which SISs are used, but he wanted [the committee] to clarify for the record exactly what is intended with the diversion program. He pointed out that currently it is "as clear as mud." The only thing that an SIS does, he explained, is allow a person to get a conviction taken off his/her record; if, in another part of the bill, an SIS does not even do that, then he questioned what this person is getting under the diversion program. He asked if the offender would then be allowed to tell the insurance company that he/she has never been convicted and thereby receive a lower rate. He asked what the legal effect of this provision is.

CHAIR ROKEBERG responded that his objective was for the SIS to serve as the "Sword of Damocles" hanging over the head of an offender if he/she "got busted" a second time; the reward would be that the person doesn't have to disclose the conviction if, in fact, he/she completes the program for a year.

REPRESENTATIVE JAMES asked whether the insurance companies had testified on this issue. She surmised that those companies might be taking on a risk that they were unaware of.

CHAIR ROKEBERG reminded the committee that the status quo was being changed by "lowering the bar," and that this would only apply to the people who fall into that BAC window between .08 and .10.

Number 1650

CHAIR ROKEBERG announced at 3:09 p.m. that the committee would stand in recess until 5:15 p.m. with Amendment 15 pending. [Tape 01-44 has approximately 22 minutes of blank tape remaining on Side A, and all of Side B is blank.]

TAPE 01-45, SIDE A
Number 0001

CHAIR ROKEBERG reconvened the meeting on CSHB 4(TRA) at 5:30 p.m., and noted that Amendment 15 was still under discussion. He commented that he had spoken with Ms. Cashen [of MADD] during the recess, and he relayed that she had indicated that if Amendment 15, which includes the three days' jail time for first-time offenders, were to be amended to include the aggravators, then she and the Juneau MADD chapter could support Amendment 15 and the diversion program in total.

Number 0079

CHAIR ROKEBERG again made a motion to conceptually amend Amendment 15 by adding the aggravator [language] back in. He explained that this would mean that if there were other aggravating circumstances surrounding the first-time DWI offense of a person with a BAC between .08 and .10, the judge could preclude that offender from participating in the diversion program.

REPRESENTATIVE MEYER questioned whether Ms. Cashen fully understood the implications of SIS when she indicated to Chair Rokeberg during the recess that the Juneau MADD chapter would support the diversion program. He noted that some people feel that even a person's first DWI offense should not be suspended, and said he was under the impression that that was MADD's position too.

CHAIR ROKEBERG assured the committee that he had relayed to Ms. Cashen what the effects would be if Amendment 15 were to be amended and then adopted, including the provisions of SIS, and that she had expressed support.

REPRESENTATIVE BERKOWITZ noted that there were certain offenses that were not permitted to have an SIS, even on a first offense. He requested that Mr. Guaneli detail some of those types of offenses.

MR. GUANELI explained that currently there are a variety of offenses that are not eligible for SIS: sex offenses, some weapons offenses, felony homicides, assaults, offenses involving weapons in the commission of the offense, and any offense if the offender has been previously convicted of a felony against a person. He noted that there are also other statutes that specifically state that an offender who commits a particular crime would not be eligible for SIS. For the record, he stated that the administration is opposed to Amendment 15. He added that Amendment 15 does not have a quantifiable impact on the DOL; he suggested, however, that Representative Berkowitz's prior comments on increased court and DOL costs related to the .08 to .10 window had merit.

Number 0490

CHAIR ROKEBERG asked whether there were any objections to the conceptual amendment to Amendment 15. There being no objection, the conceptual amendment to Amendment 15 was adopted.

Number 0522

CHAIR ROKEBERG asked whether there were any objections to Amendment 15, as amended. There being no objection, Amendment 15, as amended, was adopted.

CHAIR ROKEBERG brought attention to Amendment 16 [LS-0046\S.8, Ford, 3/21/01.].

REPRESENTATIVE BERKOWITZ requested that Amendment 16 be taken up later, not just because of its length, he added, but because it encompasses sections of CSHB 4(TRA) that have previously been amended.

Number 0608

CHAIR ROKEBERG made a motion to adopt Amendment 17, which read [original punctuation provided]:

> Page 20, line 8:
> Restore deleted language **[RESIDENTIAL TREATMENT FACILITY, HOSPITAL]**
>
> Page 20, lines 10-11
> Delete new language <u>"; appropriate place" does not mean a residential treatment facility or a hospital</u>.

Number 0617

MARGOT KNUTH, Assistant Attorney General, Office of the Commissioner - Juneau, Department of Corrections, informed the committee that she was speaking as a representative of the Criminal Justice Council (CJC), which is a successor group to the Criminal Justice Assessment Commission (CJAC). She noted that the members of CJC are Bruce Botelho, Barbara Brink, Brant McGee, Glenn Godfrey, Karen Perdue, Margaret Pugh, and Stephanie Cole.

MS. KNUTH explained that Amendment 17 impacts the credit that can be given for the time that defendants spend in a residential treatment facility or hospital. As initially drafted, CSHB 4(TRA) on page 20, lines 8 and 10-11, would change the statute that currently says that the commissioner of corrections can determine another appropriate place where imprisonment for first- and second-time DWI offenses can be served should a community residential center not be available. Language in CSHB 4(TRA) removes a residential treatment center or hospital from the list of available options, and the language further stipulates that an "appropriate place" does not mean a residential treatment center or hospital.

MS. KNUTH said the concern the CJC has is that the existing language of the statute provides an incentive to get people with alcohol problems into residential treatment programs, and the CJC believes that this is a very good thing. For many people in Alaska, she continued, alcohol is a serious issue, it is a disease for them, and they need treatment. She surmised that the question is: "To what extent are we willing to go to encourage and to require people to get that treatment?" She said that according to her understanding, the chair believes that there would be value in having every person who is convicted of DWI spend three days in incarceration of some sort, be it a halfway house or a correctional facility.

Number 0850

MS. KNUTH acknowledged that there may be some residential treatment facilities that are inappropriate; however, the CJC has been looking at what are appropriate facilities, and it has come to the attention of the administration that there are a couple of alcohol-education halfway houses that do not meet the criteria that other people have agreed on as being appropriate for a good program. She added that there is a judge who has

allowed credit for those alcohol-education halfway houses; however, they are not residential facilities, but are simply halfway houses that offer an alcohol-education program.

MS. KNUTH explained that currently, there is a subcommittee of the CJC that is going through and investigating every place that offers residential treatment in Alaska; this subcommittee is also creating a list of criteria that it believes is appropriate to require of residential treatment facilities. She said [the CJC] wants to work with the court system to have an approved list of treatment facilities that would be used.

MS. KNUTH, in conclusion, expressed the concern that the language in CSHB 4(TRA) that amends what may be considered an "appropriate place" goes too far, and it would preclude people who are getting residential treatment from receiving credit towards their sentence for that time.

CHAIR ROKEBERG explained that that language, which refers in part to Nygren credits, was an attempt to take care of a problem created by the current practice of defense attorneys who place their clients who can afford treatment into treatment programs so that by the time they get to court, those clients have already acquired Nygren credits for their time served, which enables them avoid any further incarceration and/or treatment.

REPRESENTATIVE BERKOWITZ declared a conflict because he had been a member of CJAC. He went on to say that although he understood Chair Rokeberg's concern, the aforementioned practice by defense attorneys can be curtailed by ensuring in other parts of the legislation that the Department of Health and Social Services (DHSS) has to certify treatment as being appropriate. He acknowledged that since this has not always been the case, there was concern that people were serving time in inappropriate facilities. He posited that this possibility was eliminated through other parts of CSHB 4(TRA).

MS. SEITZ commented that CSHB 4(TRA) did encompass some treatment standards, and that Amendment 10 [adopted 3/26/01] already altered the language referred to in Amendment 17 so that offenders could be in a hospital setting if they needed to be.

Number 1068

MS. KNUTH clarified that Amendment 10 allowed an offender to be in a hospital if they required medical attention, but that would not go to the treatment element.

MS. BROWER remarked that she had not taken into consideration the language encompassed in Amendment 17 when compiling the fiscal notes. She added that not having either residential facilities or hospitals as options would increase the stress on [the DOC] system.

CHAIR ROKEBERG remarked that his concern had been the "gaming of the system" with regard to Nygren credits, but he acknowledged that [the legislature] did not want to dissuade people from receiving treatment.

REPRESENTATIVE BERKOWITZ said that the normal practice is that before someone gets Nygren credit, the defense attorney and the prosecuting attorney discuss the issue; otherwise, the Nygren credit is opposed.

MR. GUANELI added that given that the attorney general [Bruce Botelho] is on the CJC, he certainly supports Mr. Botelho's position [on Amendment 17]. He said he thought that it would be beneficial for all criminal justice professionals to come to an agreement as to which programs have conditions that are sufficiently equivalent to incarceration so that credit for time spent in them justifies credit against a sentence. He acknowledged that there are some problems related to Nygren credits, and he agreed with Chair Rokeberg with regard to defense attorneys' setting things up. However, he suggested that the best way to go about resolving those issues was to have an approved list developed by the criminal justice professionals based on a review of the conditions that exist in each of those facilities; those facilities that are approved would get Nygren credit, and the others wouldn't.

MS. KNUTH, on the issue of gaming the system, said that if the program arranged for by the defense attorneys is not a good one, there is a problem; if it is a good program, however, the fact that somebody's doing it for gaming-the-system motives is essentially irrelevant because studies have now shown that treatment is effective even if the person's motives for being in there are manipulative, and even if he/she is there unwillingly. Therefore, if there is a reason for a judge, a defense attorney, and a prosecuting attorney to encourage somebody to go into treatment, it's a good thing for that person to get that treatment.

REPRESENTATIVE BERKOWITZ advocated that Amendment 17 is a good amendment, and he noted that the criminal justice professionals are in agreement that it is a good idea.

CHAIR ROKEBERG noted that gaming the system with regard to Nygren credits is an issue that has been bothering him because it is corruptive. He acknowledged, however, that preceding testimony had widened his viewpoint with regard to the impacts of treatment and where available funds and efforts should be placed.

Number 1308

CHAIR ROKEBERG noted that there were no objections to Amendment 17. Therefore, Amendment 17 was adopted.

Number 1334

CHAIR ROKEBERG made a motion to adopt Amendment 18, which read as follows [original punctuation provided]:

> Page 22, lines 21-23:
> Delete new paragraph (q) and renumber the remaining paragraph accordingly.

MS. SEITZ explained that according to representatives from the Public Defender Agency (PDA) and the DOC, the language encompassed in [subsection] (q) is already covered in other areas of statute [and Amendment 18 would simply remove that language]. She added that the legislative drafter said that this language is not in conflict with any other provision of state law; hence the language could be left in CSHB 4(TRA). She also acknowledged Chair Rokeberg's intention that it be clear that an offender would not be eligible for "good time deductions" if he/she did not complete alcoholism treatment.

MS. BROWER said that deletion of the language in [subsection] (q) - via Amendment 18 - is an effort to keep CSHB 4(TRA) simple. She explained that she knows from firsthand experience that the other areas of statute encompassing the intent of [subsection] (q) are utilized by the DOC. It is common knowledge and practice that if somebody does not comply with a court order, there are various ways that that person can, and will, be penalized. She added that according to her understanding, if an offender is unable to complete alcoholism treatment because, for example, the state did not provide it

while he/she was incarcerated, then that person would not lose any "good time" credit.

REPRESENTATIVE BERKOWITZ asked if inclusion of [subsection] (q) in CSHB 4(TRA) would give an individual who was incarcerated, but not provided with alcoholism treatment, a cause of action against the state.

MS. BROWER replied that it would not unless the state tried to penalize that person for not completing alcoholism treatment. She also confirmed that if the state did not provide treatment and tried to impose penalties for noncompliance due to circumstances beyond the offender's control, it would increase the state's liability.

Number 1578

BLAIR McCUNE, Deputy Director, Central Office, Public Defender Agency (PDA), Department of Administration, testified via teleconference. He said that the intent of [subsection] (q) is covered elsewhere in current law, and that he thinks those other statutes are carefully drafted to set up a process by which the DOC, the parole board, or a judge can look at failure to do treatment. He offered that Representative Berkowitz had a good point: [subsection] (q) would seem to make somebody ineligible for "good time" deductions if he/she did not complete the treatment requirement, even if there was a good reason for noncompliance, whereas the other statutes are drafted in such a way as to take noncompliance for good reason into account.

REPRESENTATIVE BERKOWITZ, on the point of state liability, said that if the state is requiring an individual to complete a [treatment] program at a place where he/she has no access to a program, then the state should be required to provide the program. Thus, he pointed out, the fiscal note would increase should the committee fail to adopt Amendment 18.

Number 1701

CHAIR ROKEBERG noted that there were no objections to Amendment 18. Therefore, Amendment 18 was adopted.

CHAIR ROKEBERG announced that he would not offer Amendment 19 [22-LS0046\S.24, Ford, 3/26/01] because its subject matter would be addressed by forthcoming Amendment 36.

Number 1737

CHAIR ROKEBERG made a motion to adopt Amendment 20 [22-LS0046\S.23, Ford, 3/26/01]. [Amendment 20 is provided at the end of the minutes on HB 4.] He explained that it removes the requirement that the DMV must refuse to register a vehicle if the applicant does not have a driver's license, it reduces the fiscal note by $547,000, and it removes provisions relating to the Adult Repeat Offender Status System (AROSS). There being no objection, Chair Rokeberg announced that Amendment 20 was adopted.

Number 1776

CHAIR ROKEBERG made a motion to adopt Amendment 21 [22-LS0046\S.22, Ford, 3/26/01]. [Amendment 21 is provided at the end of the minutes on HB 4.] He explained that it would give discretion to the courts to suspend up to $5,000 of the $10,000 fine imposed on third-time DWI offenders.

Number 1780

REPRESENTATIVE MEYER objected for the purpose of discussion.

MR. GUANELI explained that the concern was that treatment is expensive enough, following incarceration, for most offenders, and "hitting" them with a $10,000 fine would take away a lot of money that could otherwise be used for treatment. He noted that according to an Internet list he had come across, the current $5,000 penalty is far and away the highest mandatory fine in the country. Allowing the court to suspend $5,000 of a $10,000 fine on the condition that the person pay for treatment is an appropriate thing to do, he said.

REPRESENTATIVE MEYER inquired what Amendment 21 would do to the fiscal note.

CHAIR ROKEBERG surmised that Amendment 21 would not have much fiscal impact.

Number 1840

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS or the "court"), simply confirmed that Amendment 21 would not have any fiscal impact on the ACS.

REPRESENTATIVE MEYER withdrew his objection.

Number 1852

CHAIR ROKEBERG, noting there were no further objections, announced that Amendment 21 was adopted. [Chair Rokeberg announced that 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 13B [22-LS0046\S.14, Ford, 3/23/01] (adopted):

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,**"

Amendment 14 [22-LS0046\S.20, Ford, 3/23/01] (adopted):

Page 28, following line 6:
Insert a new bill section to read:
"*** Sec. 47.** AS 28.35.036(e) is amended to read:
(e) If not released under AS 28.35.037, a motor vehicle**, aircraft, or watercraft** forfeited under this section may be disposed of at the discretion of the Department of Public Safety**. Disposal under this subsection includes, by way of example and not of limitation,**
(1) sale, as a unit or in parts, including sale at an auction, and the proceeds deposited into the general fund;
(2) transfer to a state or municipal law enforcement agency;
(3) being declared surplus and transferred to the Department of Administration; or
(4) being destroyed."

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. 52"

Amendment 15 [22-LS0046\S.21, Ford, 3/23/01] (original version; adopted after being amended):

Page 7, line 29:
Delete "**execution**"
Insert "**imposition**"

Page 8, line 1:
Delete "**execution**"
Insert "**imposition**"

Page 8, line 13:
Delete "**by the end of the following business day**"
Insert "**within five working days**"

Page 16, line 13, through page 17, line 4:
Delete
"**(i) there were no aggravating circumstances associated with the acts upon which the conviction is based and, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent but not more than 0.1 percent by weight of alcohol in the person's blood or 80 milligrams but not more than 100 milligrams of alcohol per 100 milliliters of blood, or when there is 0.08 grams but not more than 0.10 grams of alcohol per 210 liters of the person's breath, the court shall suspend the execution of the sentence of imprisonment upon the condition that the person successfully completes one year of probation during which the person does not commit an alcohol-related offense or a traffic offense, the person successfully completes the program requirements imposed under (h) of this section, the person pays the cost of treatment required under (h) of this section, the person performs three days of community service, and the person pays the fine imposed by the court under this subparagraph; upon determination by the court that the person has satisfied the terms of probation, the court shall discharge the defendant; however, if the court determines that the terms of probation have not been satisfied within one year from the date on which the terms were set by the court, the court shall require the execution of the sentence of imprisonment determined under this subparagraph;**"

Insert

"**(i) the person had, as determined by a chemical test taken within four hours after the alleged offense was committed, 0.08 percent but less than 0.10 percent by weight of alcohol in the person's blood or 80 milligrams but less than 100 milligrams of alcohol per 100 milliliters of blood, or if there is 0.08 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, the court shall suspend imposition of the sentence; the suspended imposition of sentence is conditioned upon the person's serving 72 consecutive hours of imprisonment and successfully completing a period of probation of at least one year during which the person does not commit an alcohol-related offense or a traffic offense, the person's successfully completing the treatment program requirements imposed under (h) of this section, the person's paying the cost of treatment under (h) of this section, the person's performing 24 hours of community service, and the person's paying the fine imposed by the court under this paragraph;**"

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**"

Page 22, line 1, following "section":

Insert "**, including a conviction in which the person receives a suspended imposition of sentence under (b)(1)(A)(i) of this section,**"

Amendment 20 [22-LS0046\S.23, Ford, 3/26/01] (adopted):

Page 4, lines 16 - 18:

Delete

"(1) does not have a valid driver's license and the applicant's license or privilege to obtain a license has been suspended or revoked; or

(2)"

Page 28, lines 7 - 12:
Delete all material.

Renumber the following bill sections accordingly.

Page 29, line 2:
Delete all material.

Renumber the following bill section accordingly.

Page 29, line 3:
Delete "except as provided in sec. 51 of this Act, this"
Insert "This"

Amendment 21 [22-LS0046\S.22, Ford, 3/26/01] (adopted):

Page 20, line 19:
Delete "**$10,000** [$5,000] and"
Insert "**$10,000, of which the court may suspend up to** $5,000**;**
(2) shall impose [AND]"

Page 20, line 27:
Delete "(2)"
Insert "**(3)** [(2)]"

Page 20, line 29:
Delete "(1)"
Insert "**(2)** [(1)]"

Page 21, line 1:
Delete "(3)"
Insert "**(4)** [(3)]"

Page 21, line 4:
Delete "(4)"
Insert "**(5)** [(4)]"

Page 21, line 8:
Delete "(5)"
Insert "**(6)** [(5)]"

Page 21, line 11:

Delete "**(6)**"
Insert "**(7)**"

Page 22, line 16:
Delete "(n)(3)"
Insert "(n)(4)"

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

ADJOURNMENT

Number 1869

CHAIR ROKEBERG [recessed] the House Judiciary Standing Committee meeting at 6:00 p.m.